

Home Affairs Opt-out: The European Arrest Warrant

BACKGROUND

A debate on the UK's Justice and Home Affairs Opt-outs will be held on Thursday 10th July where it will be established whether or not Britain should opt back into the European Arrest Warrant (EAW).

Protocol 36 of the Treaty of Lisbon allows the Government to decide whether the UK should continue to be bound by approximately 130 pre-Lisbon EU police and criminal justice measures or if it should exercise the right to opt-out of them all.

On the 9 July 2013, the Home Secretary announced that the UK will opt out of all the measures adopted before the Lisbon Treaty came into force with the intention of opting back into 35 of them. Amongst the 35 is the controversial European Arrest Warrant.

It is important to note that once the decision to fully opt out has been made it is irreversible, coming into effect on 1 December 2014. In view of this it is vital that due consideration goes into the status of the EAW.

KEY POINTS

- The EAW is incompatible with the systems and principles of justice in Britain:
 - The EAW is regularly used in other countries for minor offences, resulting in Britain receiving far more warrants than it issues.
 - The EAW does not function efficiently in practice because of inconsistencies among member states regarding appropriate treatment of accused criminals.
 - British citizens can be extradited for crimes that are not an offence in the UK and be extradited several years after the time of the offence.
- The proposed reforms are not enough to safeguard British citizens from these abuses of justice and so the British Government should not opt back into the EAW until it has been appropriately reformed.

WHAT IS THE EUROPEAN ARREST WARRANT?

The EAW was introduced as an attempt to speed up and simplify the extradition processes of the Member States for those accused of serious crimes. Established by an EU framework decision in 2002, the EAW allows EU-wide extradition for the purposes of law enforcement cooperation.¹ Article 2 of the Council Framework Decision on the EAW states that:

“A European arrest warrant may be issued for acts punishable by the law of the issuing Member State by a custodial sentence or a detention for a maximum period of at least 12

¹ Framework Decision on the European Arrest Warrant
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/117679/european-arrest-warrant1.pdf

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months or, where a sentence has been passed or detention order has been made, for sentences of at least four months.”²

The Home Secretary has stated that *“since 2009 alone, the arrest warrant has been used to extradite from the UK 57 suspects for child sex offences, 86 for rape and 105 for murder.”³* However, during this time there have been many cases where use of the EAW has led to violation of individuals’ human rights with damaging effects.

Why was the European Arrest Warrant Introduced?

Conor Burns MP suggests that the introduction of the EAW was due to two main reasons:

1. As a response to terrorism and extremism in a post-9/11 Europe, pushing for greater security.
2. Due to the integrationist’s desire for greater assimilation in Europe.⁴

PROBLEMS WITH THE EUROPEAN ARREST WARRANT

What is clear is that the EAW is in urgent need of reform if Britain is to opt back in to this EU justice law. As it currently stands, the EAW has various problems that need to be addressed.

Despite these intentions, the EAW has caused some damaging miscarriages of justice:

- **Fair Trials International** believes that the powers were rushed through without proper consideration of their application in different legal systems of the member states.⁵
- **Conor Burns MP** believes that extradition is a serious decision that the state must make over an individual’s liberty and it should not be reduced to *“a bureaucratic process by a desire to harmonise European legal systems that are fundamentally different.”⁶*
- The Chairman of the Home Affairs Select Committee, **Keith Vaz MP** has raised the issue of EAW’s being issued by member states for *“trivial matters”*, warning that *“we should be negotiating to ensure that member states [also] understand their responsibilities”⁷*.
- The Deputy Prime Minister, **Nick Clegg MP**, has noted that *“there are instances of it being used in trivial cases and we need to look at how we prevent that so that use is always proportionate and citizens can have confidence in the system”⁸*.
- Britain’s senior extradition judge, **Lord Justice Thomas** has also publicly stated that the EAW system is *“unworkable”⁹*.

² Ibid

³ MPs debate UK’s 2014 Justice and Home Affairs opt-out decision
<http://www.parliament.uk/business/news/2014/april/mps-debate-uks-2014-justice-and-home-affairs-opt-out-decision/>

⁴ Conor Burns MP, *The Case against the European Arrest Warrant*
http://www.bigbrotherwatch.org.uk/files/ConorBurns_EAW.pdf

⁵ FTI: The European Arrest Warrant http://www.youtube.com/watch?v=i3EP970VY_0&feature=youtu.be

⁶ Conor Burns MP, *The Case against the European Arrest Warrant*

⁷ <http://www.parliament.uk/business/news/2014/april/mps-debate-uks-2014-justice-and-home-affairs-opt-out-decision/>

⁸ BBC News <http://www.bbc.co.uk/news/uk-politics-17289986>

⁹ The Times, *Justice works across borders without Brussels*

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- **Dominic Raab MP** warns that “the EAW’s broad net is swallowing up too many innocent people” in light of the large number of people extradited from the UK (between 2004-2011 3,107 were extradited from Britain under EAW’s – including 193 British citizens),¹⁰

The use of the European Arrest Warrant for minor offences

There is a large disparity between Member States in respect of the number of EAWs issued and received:

- Appendix 1 highlights the disparity despite being incomplete as some countries did not respond. These figures show that **Poland issued the most EAWs** in 2009 (4,844 compared to the UK’s 220.)
- Appendix 2 shows that the **United Kingdom received the most EAWs** in 2009 (4,100, 38.8% of the total number issued across the EU.) Of these 4,100 received, 2,403 came from Poland.
- Appendix 3 shows that the **greatest number of EAWs the UK issued were to Spain** (58).

The vast difference between the number of EAWs issued and received between the UK and other Member States, such as Poland, is partly due to the differing uses of the EAW. Some Member States, including the UK, only use EAWs for serious offences and following extensive investigation. However, others, including Poland, appear to repeatedly use the EAW for minor offences. In Poland, sentencing guidelines are such that it is:

“relatively easy to receive a custodial sentence for four months – the minimum threshold at which an EAW may be requested. This means that a large number of warrants are issued for relatively minor offences. Examples have included extraditions to Poland in connection with exceeding a credit card limit, piglet rustling, and the theft of a wheelbarrow, some wardrobe doors, a small teddy bear and a pudding.”¹¹

According to a report by the journalist **Andrew Gilligan for the Daily Telegraph**, many people “are extradited from Britain to Poland on minor charges that special fortnightly military flights are operated for them from a London airfield.”¹²

The different standards of justice throughout Europe

Fair Trials International’s Chief Executive, Jago Russell, sums up the differing standards of justice seen throughout Europe when he states that the EAW “is based on the naïve assumption that all EU member states guarantee fair trial rights all of the time. That’s simply not true.”¹³

Because the EAW enables the extradition of British citizens without having an opportunity to demonstrate their innocence, the EAW has been accused of not conforming to the concept of

<http://www.thetimes.co.uk/tto/opinion/columnists/article3664183.ece>

¹⁰ Politics Home, *Time to re-negotiate the European Arrest Warrant*

<http://www.politicshome.com/uk/article/49895/dominic-raab-time-to-re-negotiate-the-european-arrest-warrant.html>

¹¹ Pre-Lisbon Treaty EU police and criminal justice measures: the UK’s opt-in decision Home Affairs Committee Ninth Report. <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/615/615.pdf>

¹² The Telegraph, *Britain left to count cost of European Arrest Warrant*

<http://www.telegraph.co.uk/news/uknews/law-and-order/7969981/Britain-left-to-count-cost-of-European-Arrest-Warrant.html>

¹³ FTI: The European Arrest Warrant

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habeas corpus.¹⁴ In various cases, British citizens were exposed to systems that failed to adequately protect their fundamental human rights.

This can be seen clearly in the case of **Andrew Symeou** who was extradited in July 2009 and spent eleven months in a Greek jail, despite the fact that Symeou did not fit the description of the culprit. Additionally, it has been reported that several people claim that they were held for eight hours, beaten and threatened until they implicated Symeou. Symeou went on to be cleared in June 2011.¹⁵

Symeou's experience is not unique as a number of individuals have suffered similar abuses liberties as a result of the EAW. The cases of Edmond Arapi, Gary Mann, Michael Turner and Jason McGoldrick tell a similar tale.^{16,17}

The dual criminality principle

Under the EAW, individuals living in the UK can be extradited to another Member State for crimes that are not offences under UK law. There are thirty-two criminal offences which are punishable without verification of the double criminality of the act.¹⁸

In 2002 the Home Affairs Select Committee (HASC) raised concerns about the ability of foreign judiciaries to classify offences as 'swindling or 'racism and xenophobia', in cases where UK law would not do so.¹⁹ The European Scrutiny Committee has commented that many of these offences are not defined at EU level. HASC found that:

*"If the UK is asked to execute a European Arrest Warrant, it will not be able to refuse to execute the warrant on the grounds that it disagrees with the issuing state's legal classification of the offence. The UK will, in effect, be bound by the classification made by the issuing authority."*²⁰

Retrospective use

Deborah Dark's experience is an example where EAWs have been issued for historic crimes. In 1989 Dark was arrested in France and acquitted of all charges the same year. However, an appeal was heard in 1990 which found her guilty. Dark had no knowledge of this until she was arrested at gunpoint in 2007 in Turkey. She was arrested twice more after this and the French authorities did not remove the EAW until 20 years after it was first issued. Commenting on Dark's case, **Fair Trials International** said it highlights *"the injustices of the European arrest warrant system with its fast-track extradition."*²¹

¹⁴ Conor Burns MP

¹⁵ "Andrew Symeou-Greece." *Fair Trials International* http://www.fairtrials.net/cases/article/andrew_symeou1.

¹⁶ Edmond Arapi, <http://www.stokesentinel.co.uk/Chef-s-legal-battle-jail-nightmare/story-12519610-detail/story.html>

¹⁷ Gary Mann, Michael Turner and Jason McGoldrick
http://www.fairtrials.org/documents/FTI_Report_EAW_May_2011.pdf

¹⁸ Framework Decision on the European Arrest Warrant

¹⁹ *Effect of the European Arrest Warrant Home Affairs Committee Report* <http://www.parliament.the-stationery-office.co.uk/pa/cm200203/cmselect/cmhaff/138/13804.htm>

²⁰ Ibid

²¹ The Guardian, *France drops Deborah Dark arrest warrant*
<http://www.theguardian.com/world/2010/may/25/france-drops-deborah-dark-arrest-warrant>

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PROPOSED REFORMS

The Home Secretary has, in order to tackle the issue whereby EAWs have been issued disproportionately for very minor offences, amended the **Anti-Social Behaviour, Crime and Policing Bill** to ensure that an arrest warrant can be refused for minor crimes.

However, with these amendments, the Government introduced a proportionality test that is similar a measure operating in some Member States such as Germany. **Dr Hart Hoenig, a lawyer operating in Germany**, has commented that there is no guarantee that Member States would be influenced by the UK reforms meaning it is likely that we will continue to see the issuing of warrants for the same minor causes.²²

The Home Secretary has stated that she plans to amend the Extradition Act 2003 to ensure that:

“People in the UK can be extradited under the European arrest warrant only when the requesting state has already made a decision to charge and a decision to try, unless that person’s presence is required in that jurisdiction for those decisions to be made... [which] would have allowed Andrew Symeou to raise, in his extradition hearing, the issue of whether a decision to charge him and a decision to try him had been taken.”²³

However, this does not ensure the EU’s adoption of the amendments. Therefore, the amendments would only effect the UK. Additionally, even if the EU passed the amendments, there is no guarantee that this would alter the behaviour of those such as the Greek authorities.

As Andrew Symeou’s Member of Parliament, **Nick de Bois MP**, points out:

“Although steps have been taken to prevent people from being held for unnecessary periods when a case is not trial-ready, [Symeou] is certain that the Greek authorities lied in his case, and that there is nothing to prevent them from doing so again.”²⁴

In the case of Andrew Symeou, the Greek authorities did not abide by Article 3 of the European Convention on Human Rights that states *“no one shall be subjected to torture or to inhuman or degrading treatment or punishment.”²⁵* **Therefore, there is no guarantee that the proposed amendments will be enough to protect British citizens from the same abuses that the European Convention on Human Rights failed to curb.**

The Government has stated that it intends to place greater emphasis on the use of the **European Investigation Order (EIO)**. The Home Secretary states that this will, where possible, be used instead of the EAW.²⁶ However, as the **Home Affairs Select Committee Ninth Report on EU Police and**

²² Pre-Lisbon Treaty EU police and criminal justice measures: the UK’s opt-in decision Home Affairs Committee Ninth Report.

²³ Extradition and the European Arrest Warrant – Recent Developments

<http://www.parliament.uk/business/publications/research/briefing-papers/SN06105/extradition-and-the-european-arrest-warrant-recent-developments>

²⁴ MPs debate UK’s 2014 Justice and Home Affairs opt-out decision

<http://www.parliament.uk/business/news/2014/april/mps-debate-uks-2014-justice-and-home-affairs-opt-out-decision/>

²⁵ European Convention on Human Rights, http://www.echr.coe.int/Documents/Convention_ENG.pdf

²⁶ <http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm130709/debtext/130709-0001.htm#13070952000002>

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Criminal Justice Measures states, it is still subject to negotiation and many of the measures which it will supersede “are not included in the Government’s opt-in package, which may be relevant if the EIO is not adopted before 1 December 2014 when the opt-out will take effect.”²⁷

Other proposed reforms include amending the law so in cases where part of the conduct took place in the UK, and is not criminal in the UK, the judge must refuse extradition for that conduct as well as greater emphasis on the use of the prisoner transfer framework decision. In addition, the Home Secretary plans to either allow the temporary transfer of a consenting individual so that they can be interviewed by the issuing state’s authorities, or to allow them to interview through means such as video-calling in the UK.²⁸

However, these reforms are not enough to ensure the protection of British citizens’ human rights and do not warrant a speedy decision on whether the Government should opt back into the EAW. The upcoming debate and vote on the matter are key opportunities to push for greater reforms to better ensure individuals’ liberties.

²⁷ *Pre-Libson Treaty*

²⁸ *ibid*

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APPENDIX 1 – Number of EAW's Issued by Member States (2009)

| Country | <i>Total EAW issued (2009)</i> |
|----------------|--|
| Poland | 4844 |
| Germany | 2433 |
| Romania | 1900 |
| France | 1240 |
| Netherlands | 530 |
| Belgium | 508 |
| Spain | 489 |
| Slovakia | 485 |
| Czech Republic | 439 |
| Lithuania | 354 |
| Austria | 292 |
| Sweden | 263 |
| United Kingdom | 220 |
| Latvia | 171 |
| Finland | 129 |
| Greece | 116 |
| Portugal | 104 |
| Denmark | 96 |
| Estonia | 46 |
| Luxembourg | 46 |
| Ireland | 33 |
| Slovenia | 27 |
| Cyprus | 17 |
| Malta | 7 |
| Bulgaria | <i>n/a</i> |
| Hungary | <i>n/a</i> |
| Italy | <i>n/a</i> |

APPENDIX 2 – Number of EAW's Received by Member States (2009)

| | |
|----------------|------|
| United Kingdom | 4100 |
| Spain | 1629 |
| France | 967 |
| Netherlands | 683 |
| Belgium | 565 |
| Romania | 473 |
| Austria | 387 |

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| | |
|----------------|------------|
| Ireland | 326 |
| Czech Republic | 310 |
| Poland | 286 |
| Greece | 216 |
| Portugal | 99 |
| Slovakia | 97 |
| Sweden | 93 |
| Denmark | 58 |
| Slovenia | 56 |
| Lithuania | 52 |
| Estonia | 38 |
| Cyprus | 27 |
| Latvia | 27 |
| Finland | 26 |
| Luxembourg | 21 |
| Malta | 8 |
| Bulgaria | <i>n/a</i> |
| Germany | <i>n/a</i> |
| Hungary | <i>n/a</i> |
| Italy | <i>n/a</i> |

APPENDIX 3 – Number of EAW's issued to the UK by Member State

| | |
|----------------|------|
| Poland | 2403 |
| Germany | 235 |
| Romania | 197 |
| Lithuania | 183 |
| Spain | 167 |
| Czech Republic | 120 |
| Netherlands | 112 |
| France | 106 |
| Italy | 100 |
| Belgium | 90 |
| Hungary | 72 |
| Latvia | 55 |
| Slovakia | 54 |
| Ireland | 43 |
| Bulgaria | 42 |
| Austria | 30 |
| Portugal | 23 |
| Greece | 22 |
| Sweden | 11 |

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| | |
|------------|---|
| Cyprus | 8 |
| Slovenia | 7 |
| Estonia | 6 |
| Finland | 6 |
| Denmark | 3 |
| Malta | 3 |
| Luxembourg | 2 |

APPENDIX 4 – Total number of EAW requests made by the UK to Member States (2009)

| | |
|----------------|----|
| Spain | 58 |
| Ireland | 39 |
| Netherlands | 31 |
| France | 25 |
| Poland | 19 |
| Cyprus | 5 |
| Germany | 4 |
| Belgium | 3 |
| Italy | 3 |
| Romania | 3 |
| Greece | 2 |
| Hungary | 2 |
| Lithuania | 2 |
| Portugal | 2 |
| Austria | 1 |
| Bulgaria | 1 |
| Finland | 1 |
| Malta | 1 |
| Sweden | 1 |
| Czech Republic | 0 |
| Denmark | 0 |
| Estonia | 0 |
| Latvia | 0 |
| Luxembourg | 0 |
| Slovakia | 0 |
| Slovenia | 0 |