

Europe's New Arrest Warrant

By [Ciarán Morrissey](#), Comment Editor (2015/16)

Wednesday 26 November 2014



Image: [European Parliament](#)

With all the uproar and debate caused by the European Arrest Warrant (EAW henceforth), you could be easily forgiven for assuming it was a new piece of legislation dating back a month or so. The reality is much more complicated.

The EAW in its current form dates back to 2002, but the general idea behind it is much older. The European Convention on Extradition was a treaty drawn up in 1957 by the then-Council of Europe, which was the binding set of legislation regarding extradition within the EU until the adoption of the EAW, which was initially drawn up in 2002, and which became signed into law in eight European countries (including the UK) in 2004.

Given that we signed it into law in 2004, why has it suddenly become an issue now? The EAW was revised as part of the terms of the Lisbon Treaty in 2007. The Lisbon Treaty, among other things, provided for the first time a clear means for a member state to exit the EU. In accepting the Lisbon Treaty, we would both accept the EAW and accept the opportunity to withdraw from the EU in the future. Instead of adopting the Treaty in 2007, it was postponed to 2014, which is why the vote occurred this month instead of seven years ago.

Now that we've established why it took so long for a ten year old bill to actually get signed into law, let's look at the practical implications of the European Arrest Warrant and why you should care.

At its core, it's just an extradition treaty. It provides a way for one country to contact another and ask them to transfer people that are wanted for questioning. Proponents of the treaty say that it will speed up the legal process and make it more difficult for criminals to hide abroad. For instance, if a British criminal was in Spain, the Metropolitan Police would be able to get ahold of him just as easily as if he were in Scunthorpe. It is easy to see why people support the treaty; it streamlines the extradition process across the EU.

Opponents of the treaty see the process as becoming a bit too streamlined. Under the framework of the EAW, a court doesn't actually have to provide any evidence of the accusations they're making. Instead of having to meet the same burden of proof as a local court, any country invoking the EAW would be able to demand the extradition of any person without any evidence.

There's also the fact that there's no way to refuse the extradition of our own citizens. This means that if any country wishes to try a British citizen in their courts, we must hand that person over and cannot demand to see proof that they have committed a crime. Obviously this raises questions about our sovereignty, the balance of power within Europe and the powers of individual national parliament vs. the European Commission.

In closing, it's very easy to understand why we might want to adopt the EAW. It provides an easy and efficient framework for the extradition of criminals across the EU, and enables justice to be performed quicker and more reliably. But in its current form, the EAW's loopholes allow for the extradition of any person within Europe without evidence. It is not hard to see how this may be used for undesired ends by governments across Europe. We should oppose all measures to extradite anyone without the same standard of evidence that we would expect in our own courts. So, why should you care? You should care because the EAW is a piece of legislation that threatens both the rule of law and the sovereignty of every European member state, and your elected representatives were denied a vote on its adoption.



4 comments

Sjanie

1 Dec '14 at 5:49 am

Your summary does not begin to portray the true horrors of the EAW and "justice" in most Continental countries. Off the cuff -The EAW is a direct breach of habeas corpus, ours for many centuries and vital to any half-decent, half reasonable system. Habeas corpus is virtually unknown on the Continent - in many countries it is so routine to lock up suspects and only then start investigating the crime - if one was actually committed - and keep people in jail without charge or trial for a year or more that few in those countries who experience it think it odd or unacceptable - let alone dare to complain when finally they are released without even being charged let alone tried in court. There is no jury system that we would recognise as such - not least with total independence to make up their own minds, free of instructions from judges, and indeed to acquit in defiance of the facts and the law if they believe the law to be wrong (Principle of Jury Nullification) juries in those countries that do have them have judges present during their deliberations, to help them decide. Investigating Magistrates in some countries not only control the investigation but also determine charges and then preside at trials - wholly unacceptable, surely. Prosecutors are career employees of the State who only ever prosecute, with their progress up their career ladders influencing their methods. Chris Lees, a former LD Councillor, had become an estate agent in Spain when he was required to go to the police station because illegal drugs were found in a home for which he was the letting agent. At the police station he was taken politely down a corridor, into a room and then savagely beaten up to force him to admit guilt. He was also warned that if he did not he would stay in jail for a year or more awaiting trial, but if he pleaded guilty he would be there only two months or so. Brave man that he was, he refused and after a year or so was released without charge. THESE are the legal systems that we are shipping people to on an almost daily basis - and IT HAS TO STOP. On a lighter note (I think) a friend who has lived in Rome for 35 years or more told me about 10 years ago of a report in a mainstream Italian newspaper of a very senior Italian Judge who, on learning that the daughter of a colleague had failed her "judge" examination (in her 20s!) advised her to apply for re-assessment - and then she, the senior Judge, broke into the store room of the examination organisation to add amend and add to the failed examination papers. She was caught because as she left the documents in the file she realised that she had no copies and used the office copying machine to produce some, keying in her own Government code. Unfortunately for her she failed to realise that when the machine stopped printing it had done so because it was out of paper, not out of pages to be printed. When staff arrived the following morning, saw that more paper was needed and added it, the copier started working, pushing out more documents from its memory! I am confident that (in the highly unlikely event of such a thing happening) here, the Judge would have been fired immediately, or resigned in

disgrace. So what happened in Italy to this Judge? Everyone who read the report roared with laughter, thinking it a huge joke, and little if anything was done about it. ARE THESE THE SORT OF PEOPLE WE SHOULD SHARE A JUSTICES SYSTEM WITH?

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Tofart

3 Dec '14 at 1:06 pm

In your post, you admit that Liberal Democrat MEPs (in particular, but not only, Sarah Ludford) have [cellad](#) for reform of the European Arrest Warrant, and so has Nick Clegg in his recent statement. So why do you still imply further down that the Liberal Democrats do not support reform? Is it because you wish to paint the party as uncritically supportive of anything that any EU institution does, when their record shows that they are not? Lib Dems support the principle of a Europe-wide arrest warrant. This does NOT translate to slavish support for the system as it currently stands, as the pronouncements of our MEPs has shown. It is the same as supporting the principle of UK-wide policing and justice systems does not mean uncritical support for everything the UK police and justice services do. Why do people so often miss this fundamental point? Even when pro-EU people clearly state they support reform of EU institutions, this is wilfully ignored or twisted to suit the preferred narrative that it's only possible to be either anti-EU or uncritically pro-everything-the-EU-does.

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Binata

5 Mar '15 at 3:56 pm

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Redhitta

10 Apr '15 at 4:32 am

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