

The European Arrest Warrant
Council Framework Decision 2002/584/JHA of 13 June 2002 on the
European arrest warrant and the surrender procedures between Member
States

Set of Case Studies – Guide for Trainers

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The European Arrest Warrant

A. I. Case 1 scenario:

The Head of Police of Heraklion, on behalf of the Public Prosecutor's Office at the Court of Appeal of Eastern Crete, issues an EAW to the Netherlands concerning a medical doctor of Dutch nationality (Dr. Drion), living in Maastricht, who allegedly committed murder and sabotage. The facts of the murder relate to his assistance in putting an end to the life of the Greek national Karalis in Thessaloniki. On the specific request of Karalis, Drion injected him with a lethal substance, which caused his death a few minutes later. The facts of the sabotage relate to the destruction of the property of Aegean Airlines in Athens airport, resulting from the frustration of Dr. Drion when he found out that he had missed his flight back to Maastricht.

Questions:

1. *Is there an obligation for the Netherlands to surrender Dr. Drion, and if so, under which conditions?*
2. *Would it make a difference if the facts had not occurred in Greece, but in the Netherlands?*
3. *Can the Netherlands make an assessment of the offences and qualify them according to Dutch criminal law?*
4. *Does the nationality of the requested person play a role?*
5. *Will the requested person be detained pending the procedure?*
6. *Which authorities will be involved on both sides concerning this EAW?*
7. *What is the procedure provided in the Netherlands and how long will it take?*
8. *What role do the Greek authorities play during the surrender procedure?*
9. *When and how will the surrender take place?*
10. *Imagine the surrender succeeds. Under which conditions can the Greek prosecutor also charge Drion with the further offence of shoplifting?*

A. II. Exercises:

Find the following executing competent authorities and the languages to be used in the Certificate:

1. A Portuguese prosecutor in Braga wants the surrender of the German national Dieter Müller who is currently in Turku Finland for purposes of criminal proceedings.

Competent authority:

Language:

2. The Irish prosecutorial service receives an EAW concerning a judgement of a French national Leon Laselle convicted in absentia by Tribunal de Grande Instance de Bordeaux, France.

Competent authority:

Language:

3. A Spanish competent authority in Málaga seeks the presence of a Russian national Michail Lebedenski, resident in Nicosia, Cyprus.

Competent authority:

Language:

A. III. Case scenario 2, the continuation of Case 1:

At the hearing at the competent Dutch District Court defence counsel for Dr. Drion states that the detention circumstances in Greece are below the standards applied by the European Court of Human Rights and by the Court of Justice in the case of Aranyosi. The defence fears that Drion will face inhumane and degrading treatment in prisons in Greece. This, according to the defence, would violate his rights under Article 3 ECHR and 4 Charter. The defence urges the Court to refuse the surrender.

Questions:

1. *Is the execution authority obliged to deal with this matter?*
2. *If so, how will it deal with it?*
3. *Is there a role to play for the issuing authority?*
4. *Does the executing authority have the possibility to postpone or refuse the execution of the EAW?*

A. IV. Extra task: EAW to Norway?

Take case Scenario 1 and replace the Netherlands by Norway and Dutch by Norwegian and Maastricht by Bergen. All other facts remain the same. How and on which basis should the Arrest Warrant now be issued and the question of Case scenario1 be answered?

Part B. Additional notes for the trainers regarding the cases

A. I. Case 1:

Depending on the Member State where the seminar takes place the countries from the case scenarios 1 and 2 will change. Make sure that you take a Member State that is strongly opposed to euthanasia and a Member State that allows it under certain circumstances.

A. IV. Extra task: EAW to Norway?

This task may be used if time permits and should be given to more experienced practitioners.

Part C. Methodological approach

I. General idea and core topics

The focus of the first case is to address the meaning of the concept of mutual recognition. This places a lot of trust in each other's criminal justice systems and requires that cooperation may take place, even in situations in which the solution found would be entirely different in one's own Member State. It is important to see that national legal qualifications often do not apply. In principle, arrest warrants must be taken as they are and executed. In most situations, the issuing Member State determines the conditions. However, there are a few exceptions. In the case law of the Court some exceptions have been developed that are not referred to in the Framework Decision with which practice must work. In preparing for their authorities, court staff must develop sensitivity to recognise these situations as they may cause delay or even an impediment to the cooperation or lead to consequences that apply after the surrender.

The Cases and its questions have been designed to allow the trainer and participants to deal with:

1. The structure and basic presumptions of mutual recognition in general and in the specific context of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States in particular; NB: The EAW is, as the oldest and exclusive tool of extradition/surrender, the laboratory for all other instruments on mutual recognition. Case law developments on the EAW therefore have an immediate impact on any other form of cooperation!
2. Finding which authorities are involved on both sides;
3. How the tasks between the issuing authority and the executing authority have been divided;
4. How contact between the authorities can be established and what kind of guarantees must be given;
5. What the consequences of a surrender are for prosecuting in the issuing Member State;
6. What the consequences of a surrender are for the detention in the issuing Member State;
7. The role the defence may play in trying to block surrender or obtain better conditions.

II. Working groups and structure of the seminar

In advance of the seminar the trainer will send a one-page questionnaire to get to know the experience of the participants on the Framework Decision (FD) and its practice. S/he will also ask what expectations and questions there are. The information thus obtained will be used in the presentation as well as influence the choices that must be made in varying on the level of tasks to be discussed and potential additional questions. It is important to have this information available as it may be expected that among the participants the level of experience, their linguistic capabilities and daily tasks in practice may vary.

The trainer will provide the participants with a brief presentation (Power point) highlighting the important features of **Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States** – scope, definitions, competent authorities, distinction between surrender for prosecution and execution, role of the nationality or domicile of the requested person, grounds for refusing, time limits, governing law, subsequent decisions, obligations for the MS (**approx. 15-20 min**).

Case scenario 1 is designed to deal both with very basic issues, as well as a more in-depth analysis of several problems that may occur. The participants will work in groups of 4-5 and will have a laptop connected to the internet in order to solve the questions. Especially the websites of EJV, Eurlex and the Court of Justice are recommended. It is intended that participants learn to use these websites to obtain the information they need and to use it in solving the problems at stake. Solving Case 1 and answering the questions should take **approx. 1 hour and 40 minutes**. Groups may be formed by bringing participants of the same experience level together.

A 10-minute break is recommended at this point.

Solving the **exercises** from point A.II should take around **10 minutes** as they are meant to help the participants in understanding the mechanism for finding a competent authority and the language to be used in the Certificate. After having already consulted the EJV website, this exercise can also be used as a control exercise. In case solving Case 1 took much more time than anticipated, this exercise could be skipped and given as homework.

Case scenario 2 will force the participants to deal with issues that cannot be found in the text of the Framework Decision, however, they do apply to the practice of it and require a prompt answer. The participants will work in groups of 4-5 and will have a laptop connected to internet in order to solve the questions. Solving Case scenario 2 should take **approx. 40-45 minutes**.

Any remaining questions should be discussed at the end of the seminar (for **approx. 5-10 minutes**).

III. Additional material

All participants must **bring** a copy of **Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States** comprising the Forms in the Annex. Also, the participants must bring or have access to their national provisions implementing the Framework Decision.

(note for the trainers: It will be interesting to see and check whether the text participants have available is not only the text in their own national language, but also the text that includes the amendments (such as FD 2009/299) and rectifications made to the original text. It still often happens that the text published in 2002 is used in practice without the subsequent amendments. NB: concerning rectifications: this differs from language to language and can

come years after 2002: e.g. the Dutch version OJ 2020 L 118/39. If time permits, this is a moment to train them to use eurlex and [the consolidated version of legal texts](#))

It is essential to stimulate using online tools!

IV. Recent developments

Please check whether there is any new case pending or preliminary reference made to the Court of Justice over the last three months.

Part D. Solutions

A. I. Case 1 scenario:

Questions:

Q1. Is there an obligation for the Netherlands to surrender Dr. Drion, and if so, under which conditions?

Preliminary matters

The nature of the issuing authority should trigger a preliminary question and that is whether the issuing authority is a *judicial authority* as meant in Article 6 of the Framework Decision. A police authority cannot be such an authority, so the Court held in the [Poltorak case \(C-452/16 PPU\)](#). More recently, the Court also added additional requirements for public prosecutors (see [C-489/19 PPU - NJ \[Parquet de Vienne\]](#)). In essence, this means that it must be clear that there has been an individual assessment of the proportionality of the EAW and that there is judicial oversight by a judge or a court. In addition, it must be clear that the European Arrest Warrant is based on a national arrest warrant, see [the Bob-Dogi case \(C-241/15\)](#). Some Member States apply a system in which only one arrest warrant covers both. The Court wishes to see two.

These requirements developed in case law may lead to questions by the executing authority to the issuing authority. Unfortunately, it may also lead to delay and frustration.

Once the character of the issuing authority as a *judicial authority* is established or repaired (NB: as a rule of thumb most formalities can be repaired. There is no *ne bis in idem* on issuing EAWs) the EAW can be processed. See further the answer to Question 3.

Q2. Would it make a difference if the offences had not occurred in Greece, but in the Netherlands?

When the conduct took place in the Netherlands, not in Greece, the ground for refusal of Article 4(7) does apply. The offences took place in the Netherlands and that entitles the country to refuse. NB: the heading of Article 4 speaks of “may refuse”. There is no obligation to do so. NB: if there is time, it may be interesting to see how the various Member States have implemented this optional ground for refusal. Some kept it optional, others converted it into a mandatory ground for refusal.

Q3. Can the Netherlands make an assessment of the offences and qualify them according to Dutch criminal law?

In principle there is an obligation to surrender. The assessment to be made is that each individual count is checked. The first relates to murder. This is a so-called list offence and listed in Article 2 (2), to be sure that the offence fulfils the minimum requirement of Article 2 (1) concerning the custodial sentence to be imposed. As a result of the fact that the Greek authorities ticked the box of murder, the executing authority may not make its own assessment of the offence, but must simply accept this. This is also the case in a situation in which there might be a clear differing view as to the criminality of the offence or the application of grounds of excuse. In the concrete circumstances of the case, the Netherlands’ authorities cannot put the views applicable under Dutch law in the place of Greek law.

The second offence is *sabotage*. This is also a list offence and the same applies as stated concerning murder. The minimum threshold of Article 2 (2) is 3 years. Would it matter that the Netherlands does not know a criminal offence called sabotage? [**note for the trainers:** this may result in a rather interesting discussion. Fact is that the Dutch Penal Code does not have such a crime and this may be so for more Member States. However, that is not decisive. What counts is that the issuing Member State ticked the box of sabotage, as a consequence of which the national law of the executing Member State is not relevant anymore.]

Q4. Does the nationality of the requested person play a role?

Yes, it does. The requested person has the nationality of the executing Member State. On the basis of Article 5(3) Framework Decision, the executing authority may make surrender subject to the condition that the person, after being heard, is returned to the Netherlands in order to serve the custodial sentence or detention order passed against him in the issuing Member State (*return to sender obligation*).

Participants ought to be able to find out whether the Netherlands will require this condition to be fulfilled. This information cannot be found in the notification of the Netherlands (see [the Bob-Dogi case](#)), but in Article 6(1) of the national implementing law. See [this judicial library on the EJN website](#).

NB: warning. Translations of national legislation are hardly ever up to date. **This question also requires staff to think ahead and check whether the offences at stake give reason to both surrender and transfer on Framework Decisions 2008/909. There must be at least six months to serve (Art. 9 (1) h)).**

Q5. Will the requested person be detained pending the procedure?

The answer is given by Article 12 FD: it is the executing authority that makes the decision whether that is necessary on the basis of national law. See [the Lanigan case \(C-237/15 PPU\)](#).

The trainer may stimulate to check what the practice in the Member State concerned and the Member State of origin of the participant is. Often Member States see in the fact that the requested person would lose the protection of Article 5 (3) if he were to abscond a reason not to detain their own nationals pending the surrender procedure.

Q6. Which authorities will be involved on both sides concerning this EAW?

The issuing authority is Public Prosecutor's Office at the Court of Appeal of Eastern Crete, of which you will find the contact details in the Judicial Atlas.

Name:	Public Prosecutor's Office at the Court of Appeal of Eastern Crete (Eisaggelia Efeton Anatolikis Kritis)
Address:	Plateia Daskalogianni
Department (Division):	
City:	Irakleio
Postal code:	71201
Phone number:	+30 2810 247813
Mobile phone:	
Fax number:	+30 2810 247813
Email Address:	eisefankr@yahoo.gr

Depending on the question whether this prosecutor may issue an EAW individually or needs the decision of a court or Judge, that authority may have to be involved as well. The executing authority is one for the whole country:

Name:	Officier van Justitie te Amsterdam (Central Authority EAW) IRC Amsterdam
Address:	Postbus 115
Department (Division):	
	Central Authority for EAWs
City:	Amsterdam
Postal code:	1000AC
Phone number:	+31 88 6991270
Mobile phone:	+316 53332848
Fax number:	
Email Address:	eab.amsterdam@om.nl

NB for trainers: you may vary with the executing Member State and take another state that has not centralised EAW tasks. You must then localise the place of residence of Dr. Drion in that Member State.

Q7. What is the procedure provided in the Netherlands and how long will it take?

The procedure will take place at the Amsterdam District Court, following the rules of the Framework Decision and the national implementing act. It is good to look at the time limits set in Article 17 FD. As a result of that a decision should be taken within 10 days in cases of consent of the person. (NB; if time permits, it would be a good learning exercise to raise the question what the consent procedure

entails and what its consequences are.) In other cases the decision must be taken within 60 days and is subject to stating reasons, may be extended to 90 days. In general, Member States often do face difficulties to maintain the time limits. See p. 9 and 10 of [this report for statistics applicable to the Netherlands](#). The Framework Decision does not provide a sanction when the time limits are not respected. However, these cases must be reported to Eurojust, see Article 17(7).

Q8. What role do the Greek authorities play during the surrender procedure?

They must be available to answer any questions for clarifications that may arise. For the rest they have no role.

Q9. When and how will the surrender take place?

The surrender must take place as soon as possible on a date agreed between the authorities concerned (Article 23(1)). According to Article 10(2) it may not be later than 10 days after the decision to surrender. Please note that it can be extended and that Article 23(4) provides temporarily postponement in case humanitarian reasons, such as illness, apply. The Framework Decision does not state how the surrender factually takes place. This is also determined by the authorities in practice. The most common way is a regular flight between the two Member States by which the requested person is accompanied by police. Neighbouring countries may surrender at a border post.

Q10. Imagine the surrender succeeds. Under which conditions can the Greek prosecutor also charge Drion with the further offence of shoplifting?

This question triggers the analysis of the rule of speciality that protects the requested person against a prosecution for an offence for which the surrender has not been requested **or**, for which it has been requested but refused.

After surrender, additional consent for further offences may be requested. Article 27(4) provides the procedure. In practice, the assessment will then be as follows:

Shoplifting is not a list offence. This means that Article 2(4) applies and double criminality must be checked. The issuing authority must provide the applicable legal provisions, check whether the minimum threshold of 12 months imprisonment is fulfilled and give an accurate description of the facts. The executing authority will verify whether it is an offence under Dutch law. It is most likely that the offence of shoplifting will meet all these requirements and that additional consent will be given.

Court or prosecution staff in the issuing Member State should, before issuing the EAW, raise awareness on the question whether there are more offences for which the requested person is wanted in their Member State. If so, an assessment must be made whether it is appropriate to add that offence(s) to the EAW. This would have the advantage that all offences can be dealt with in one procedure and prevent further additional requests.

Court staff in the issuing Member State for which subsequent to the surrender criminal proceedings are pending must be aware of the limitations imposed by the rule of speciality as stated in Article 27(2). No prosecution may take place. NB: Article 27(1) allows for dropping this limitation, but only between Member States that have made such a notification. Participants can perform the exercise of finding whether this is the case between the two states involved. (Participants must know this for their own state) The answer is that neither Greece nor the Netherlands have made such a notification. In practice, very few Member States have given such a notification. NB: in the case that the Framework Decision refers to a notification please note that a notification may be revised. In other words: always double check the EJN website on this. See for instance the recently revised [notification of Romania of 13 March 2020](#).

A. II. Exercises:

Find the following executing competent authorities and the languages to be used in the Certificate:

In order to find the competent authorities we will use the [Atlas](#) available on the EJN website – www.ejn-crimjust.europa.eu select the executing MS as the executing countries and *901. European Arrest Warrant*.

Regarding the languages for the Certificate, we will use the section –Notifications for each of the MS [available here](#).

If not notified of anything following to Article 8 (2) of the FD, then the official language(s) of the MS will be used.

The results should be as follows:

1. A Portuguese prosecutor in Braga wants the surrender of the German national Dieter Müller who currently is in Turku, Finland for purposes of criminal proceedings.

The competent Portuguese authority is in Guimarães, see the EJN website.

Name:	Tribunal da Relação de Guimarães
Address:	Largo João Franco 248
Department (Division):	
City:	Guimarães.
Postal code:	4810-269
Phone number:	
Mobile phone:	
Fax number:	
Email Address:	

There is one central authority for the country as a whole. According to the notification, Finland accepts EAWs in Finnish, Swedish and English. NB: I noted (in May 2020) that the document uploaded at the EJM website supposedly to give the translation of the notification in English is not in that language, but in Finnish.

(NB: Trainer: it may be very useful to do this searching exercise together with the plenary group on the screen. Search together on the EJM website. There are several ways of finding the answer. What is important is that the participants find their way on the site.)

Name:	Prosecution District of Southern Finland (Etelä-Suomen syyttäjääalue)
Address:	Porkkalankatu 13
Department (Division):	
City:	Helsinki
Postal code:	00180
Phone number:	+358 29 562 2100
Mobile phone:	
Fax number:	+358 29 562 2203
Email Address:	etela-suomi.syyttaja@oikeus.fi

(If time permits, the question may be put to the participants whether it is necessary to provide a translation of the EAW into German as the requested person is a national of that state. This links in the application of Directive 2010/64 on Translation and Interpretation. In reality, the question may come up once the requested person is involved in the procedure. It will then depend on whether the requested person is able to understand the language of the EAW.)

2. The Irish prosecutorial service receives an EAW concerning a judgement of a French national Leon Laselle convicted in absentia by Tribunal de Grande Instance de Bordeaux, France.

Name:	Cour d'Appel de Bordeaux
Address:	Place de la République
Department (Division):	
City:	BORDEAUX CEDEX
Postal code:	33077
Phone number:	(+33) 556013400
Mobile phone:	
Fax number:	(+33) 556442830
Email Address:	
Name:	Central Authority for EAW
Address:	Department of Justice and Law Reform 51 St Stephens Green
Department (Division):	Dublin 2
City:	
Postal code:	
Phone number:	00 353 1 408 6100
Mobile phone:	
Fax number:	00 353 1 408 6117
Email Address:	warrantsmail@justice.ie

There is one central authority for the country as a whole. According to the notification, Ireland accepts EAWs in Irish and English.

3. A Spanish competent authority in Málaga seeks the presence of a Russian national Michail Lebedenski, resident in Nicosia, Cyprus.

The Spanish competent authority is competent for the whole country:

Name:	Servicio Común de Registro, (Para el reparto entre los Juzgados Centrales de Instrucción)
Address:	Goya 14
Department (Division):	
City:	Madrid
Postal code:	28071
Phone number:	(+34) 91.400.62.13/26/25
Mobile phone:	
Fax number:	(+34) 91.400.72.34/35
Email Address:	audiencianacional.scrda@justicia.es

The authority competent in Cyprus is:

Name:	Ministry of Justice and Public Order
Address:	125 Athalassas Avenue
Department (Division):	
City:	Nicosia
Postal code:	1461
Phone number:	+357 22805928; +357 22805950/951
Mobile phone:	
Fax number:	+357 22518328; +357 22518356;
Email Address:	akyriakides@papd.gov.cy

There is one central authority for the country as a whole. According to the notification, to be [found on the EJN-website](#).

Cyprus accepts EAWs in its official languages and English. NB: this notification requires that the issuing authority, if it does not send the EAW in English, knows what the official languages of Cyprus are.

(If time permits, the question may be put to the participants how the translation of the EAW into another language is made. The basic question here is whether the translator performing this task will be given the full original document and subsequently make a translation thereof, or whether s/he will be referred to the fact that the EAW and its form is available in all authentic languages of the European Union. If no further instructions are given, there is a serious chance that the translator will translate everything from scratch, including the form. The result of that could be that terms of the form are given another meaning than in the original text. This may lead to misunderstandings, need for clarifications and delay. Translators only need to translate what has been filled in the form, not the form itself. [All authentic texts can be found and downloaded here](#). This remark is equally relevant for those translating the set of cases and instructions.)

A. III. Case scenario 2, the continuation of Case 1:

This question adds a more modern problem to the execution of an EAW that has come up as a result of the case law of the Court of Justice (See 5 April 2016, Joined Cases [C-404/15 and C-659/15 PPU](#), *Pál Aranyosi (C-404/15) and Robert Căldăraru (C-659/15 PPU)*). It very much shows that mutual recognition is not absolute and that certain limitations may exist on the general obligation to comply with an EAW. The demands imposed by the Court impact both the executing authority and the issuing authority. The former will be obliged to ask for

information concerning the prison conditions that the requested person will face after surrender. The latter will have to answer these questions and may have to give a guarantee that the requested person will be brought to and detained in a specifically mentioned prison.

Q1. Is the execution authority obliged to deal with this matter?

Yes, it is. The defence claim relates to the potential violation of absolute rights in the issuing Member State. The Court has indicated that a requested person must always be protected against such a risk.

Q2. If so, how will it deal with it?

The consequence of the Court's case law is now that the issuing Member State will have to indicate a prison in which the requested person will be received, in which the circumstances are undisputed. This information should relate to the place of which it is actually intended to detain the requested person. It thus emphasises foreseeable effects in the short term. In the concrete circumstances of our case it means that if it is the assessment of the Amsterdam District Court that the conditions of the prison to which Drion will be brought are not in compliance with Article 4 Charter, the Greek authorities must provide another prison that can sustain the test. NB: the Court has indicated that, in principle, this whole issue may lead to postponement, but not to a final refusal.

Q3. Is there a role to play for the issuing authority?

Yes, there is. It will have to provide very concrete information on the prison conditions that will be experienced by the requested person. That even comes down to the number of square metres available per person, as well as availability of hours outside the cell, and any other facilities. E.g. in [the Dorobantu case \(C-128/18\)](#), the issuing authority provided the executing authority with the information “that Mr. Dorobantu would, while being held on remand during his trial, be detained in a 4-person cell measuring 12.30 m², 12.67 m² or 13.50 m², or in a 10-person cell measuring 36.25 m². Should Mr. Dorobantu be given a custodial sentence, he would be detained, initially, in a penal institution in which each prisoner has an area of 3 m², and subsequently in the same conditions if serving a custodial sentence in a closed prison, or, if he were to be held in an open or semi-open prison, in a cell with 2 m² of space per person.”

Q4. Does the executing authority have the possibility to postpone or refuse the execution?

Yes, it does. As mentioned before, in principle the outcome must be the execution of the EAW. However, the Court has now envisaged that in some exceptional circumstances this may not be the case.

A. IV. The Norwegian case

The 2006 Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway entered into force on 1 November 2019. The similarities with the EAW are immediately visible. However, *Arrest warrants* are issued, not EAWs to and from Norway and Iceland. Article 3 of the Agreement requires the same conditions as to facts that qualify for a surrender as Article 2 EAW FD. Please note that the 1957 Council of Europe European Convention on Extradition is no longer applicable with Norway and Iceland (Art. 34 Agreement). It is likely that Norway will also allow the surrender for all three offences.