

Alternatives to European arrest warrants and pre-trial detention in EU cross-border proceedings: practical insights and perspectives

18 February 2021, 14.00 – 17.00 CET (Online)

Originally intended as an instrument of cooperation in the fight against serious cross-border crimes, the European arrest warrant (EAW) is now disproportionately used for all types of offences, with negative impacts on people's fundamental rights. People subject to EAWs are typically deprived of their liberty, either at a pre-trial stage pending their surrender or after sentencing for the execution of detention orders.

Less restrictive alternative measures have been adopted by the EU, including two potential alternatives to pre-trial detention:

- The European Supervision Order which allows a judicial authority to impose pre-trial supervision measures, such as an electronic bracelet, on a person residing in another Member State.
- The European Investigation Order which allows investigating authorities to gather evidence across borders such as testimonies via video link without having to request that persons be arrested and physically transferred.

In practice however, these alternatives to detention are routinely disregarded, while the use of the EAW has steadily increased since 2005. Prison overcrowding in Europe remains alarming. This worsens prison conditions and undermines mutual trust and the functioning of mutual recognition instruments like the EAW. The COVID-19 pandemic brought the prison crisis to the fore, highlighting the risk of incarceration to life and health. The long-standing crisis in EU prisons is driven in part by excessive use of pre-trial detention. More than 20% of the prison population in Europe are persons held in pre-trial detention, despite being presumed innocent.

Together with national partners, Fair Trials conducted research to identify the obstacles to the use of alternative measures, focusing on Austria, Belgium, Greece, Ireland and Luxembourg. Our findings show a clear lack of knowledge regarding these instruments. They also reveal continued overreliance on detention. Judges, prosecutors and lawyers lack faith in alternatives to detention, in particular in cross-border proceedings where the risk of absconding is nearly automatically presumed for non-nationals or non-residents. They are at greater risk of being detained pending trial than nationals simply because they are from a different EU State or have exercised their right to free movement within the EU. This systemic and systematic difference of treatment conflicts with the EU's commitment to non-discrimination.

The report calls for the European Commission to adopt shared standards on pre-trial detention in order to strictly limit its use to a measure of last resort and put an end to prison overcrowding. This webinar will bring together legal practitioners from across Europe, EU policymakers, civil society experts and other stakeholders. They will explore in more detail the obstacles to the use of alternative measures in the pre-trial stage of the proceedings and the need to tackle the over-use of pre-trial detention at the EU level.

Questions for discussion

- Can the EAW be envisaged for prosecution without automatic recourse to pre-trial detention?
- What is the impact of the use of alternative measures on the fundamental rights of requested persons, as compared to the impact of the EAW?
- What are the main obstacles to the use of alternative measures for prosecution purposes? How can these be overcome?
- How could procedural safeguards ensure release or the better use of alternative measures?



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