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Symposium ImprovEAW

*Improving mutual recognition of European Arrest Warrants through Common
Practical Guidelines*

Lublin, 27-28 June 2022

Time Limits – Art.17 of FD/2002/584/JHA

Legal Framework

Pursuant to Art.17(2) EAW's should be executed within :

- 10 days if the person consents to surrender.
- 60 days if person does not consent to surrender.
- Extension of 30 days allowed in specific cases (Art. 17(4)) however, in such cases the issuing judicial authority must be notified immediately, including reasons for delay.
- Eurojust must be informed as to reason for delay.

Exceptional circumstances that contribute to delay include:

- Risk if surrendered of suffering inhuman or degrading treatment, breach of fundamental right to fair trial.
- Stayed proceedings due to preliminary request.

Non-observation of time limits

- National legislation should not mandate release of suspect where time limits cannot be observed.
- If suspect released, measures should be implemented to prevent absconding.
- If serious risk of absconding EAW does not depend decisively on compliance with time limits.
- Supplementary information – Neither the Art.15(2) of FD nor the ECJ obliges the executing judicial authority to fix a deadline.
- Adjust time limits to particular case / however need to respect time limits in Art. 17 FD.



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Recommendations

Recommendations to the EU authorities and institutions

4.2 - The Fundamental Rights' Agency is recommended to advance its database to a constantly updated, digital hub of information regarding present detention conditions in Europe that should include recent ECtHR case law and the accumulation of other resources from NGOs or other organizations that the Agency itself deems reliable and updated.

4.3 - The EU is recommended to amend the Handbook on the EAW to include a template on what type of supplementary information in the context of *Aranyosi and Căldăraru* and Minister for Justice and Equality (Deficiencies in the system of justice) could be requested, incorporating the EU requirements of prisons standards and independence of the judiciary; such template(s) should be made available to all judicial authorities. Such templates should include space to request additionally a guarantee (thus, not only request for information).

Recommendation to Member States

4.6 - Member States are recommended not to request or supply supplementary information regarding the appreciation of the merits of the case at the issuing Member State (e.g. statute of limitation in the issuing Member State, evidence supporting the case). Member States should not send standardised lists with questions/questionnaires automatically when requesting information in the context of Art. 15 (2) of FD 2002/584/JHA. The use of Art. 15(2) must be limited to cases in which supplementary information is strictly necessary for the executing judicial authority to take its decision and must be limited only to questions that are relevant for the ad hoc case

4.8 – Issuing judicial authorities are recommended to include the guarantee of return of Art.5(3) of FD 2002/584/JHA in the initial EAW in section (f) (if the requested person is their national or resident), in order to avoid the delay caused when executing judicial authorities have to request for it.

4.9 –The Netherlands is recommended to amend its legislation that restricts the extension of time limits of Art.17 of FD 2002/534/JHA to only specific and exhaustively described in that legislation cases.



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Recommendation to the EU legislator

5.2– Reconsider the setup of the FD EAW along the following lines – (among others) Amend the time limits by setting a time limit of 60 days after completing the EAW in cases where supplementary information is needed.

Recommendation to the European Commission

5.4 - Facilitate direct communication between judicial authorities on case related and general issues. Put in place a digital platform for information exchange and debate and discussion between judicial authorities of different Member States and to support elearning possibilities and provide for facilitation of the use of the platform by the EU Commission.

5.7 - Implement the common practical guidelines for requesting/supplying supplementary information, including: set a realistic deadline.