



European Arrest Warrant

Makes Europe a safer place

Factsheet for legal practitioners | October 2017

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The European arrest warrant (EAW) is an instrument that simplifies cross-border judicial process of surrender – for the purpose of prosecuting or executing a custodial sentence or detention order. A EAW issued by one EU Member State's judicial authority is valid across the entire territory of the EU.

How does it work?

A request is made by a judicial authority in one EU Member State to arrest a person in another and surrender them for prosecution, or to execute a custodial sentence or detention order issued in the first Member State. The system is based on the principle of mutual recognition of judicial decisions. It functions via direct contacts between judicial authorities.

How often is it used?

The EAW is the most used EU instrument of mutual recognition in criminal matters. In 2015 it was issued over 16 thousand times. The EAW is also the first EU instrument of mutual recognition in criminal matters. It has been in use since 1 January 2004. Over the past 13 years, the EAW has been subject to many important rulings of the Court of Justice of European Union (CJEU).

The task of national judicial authorities dealing with EAWs is not always easy.

To assist the national judicial authorities in dealing with EAWs, the European Commission published the Handbook on How to Issue and Execute a EAW.

Handbook on How to Issue and Execute a EAW

The Handbook guides the national judicial authorities through every step of the surrender procedure. It is divided into two parts:

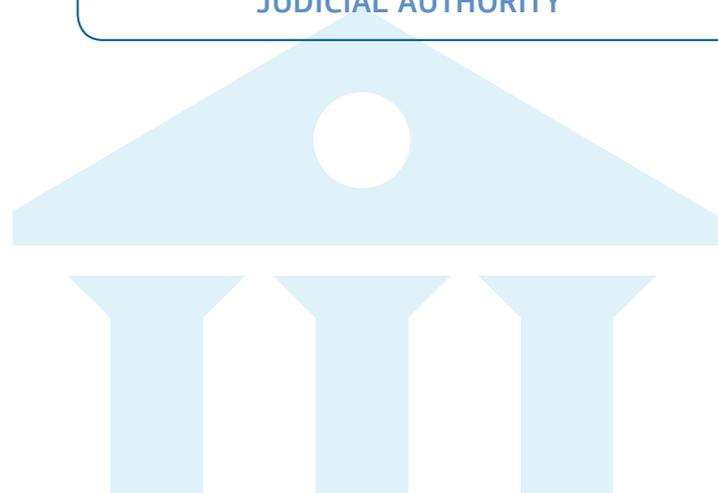
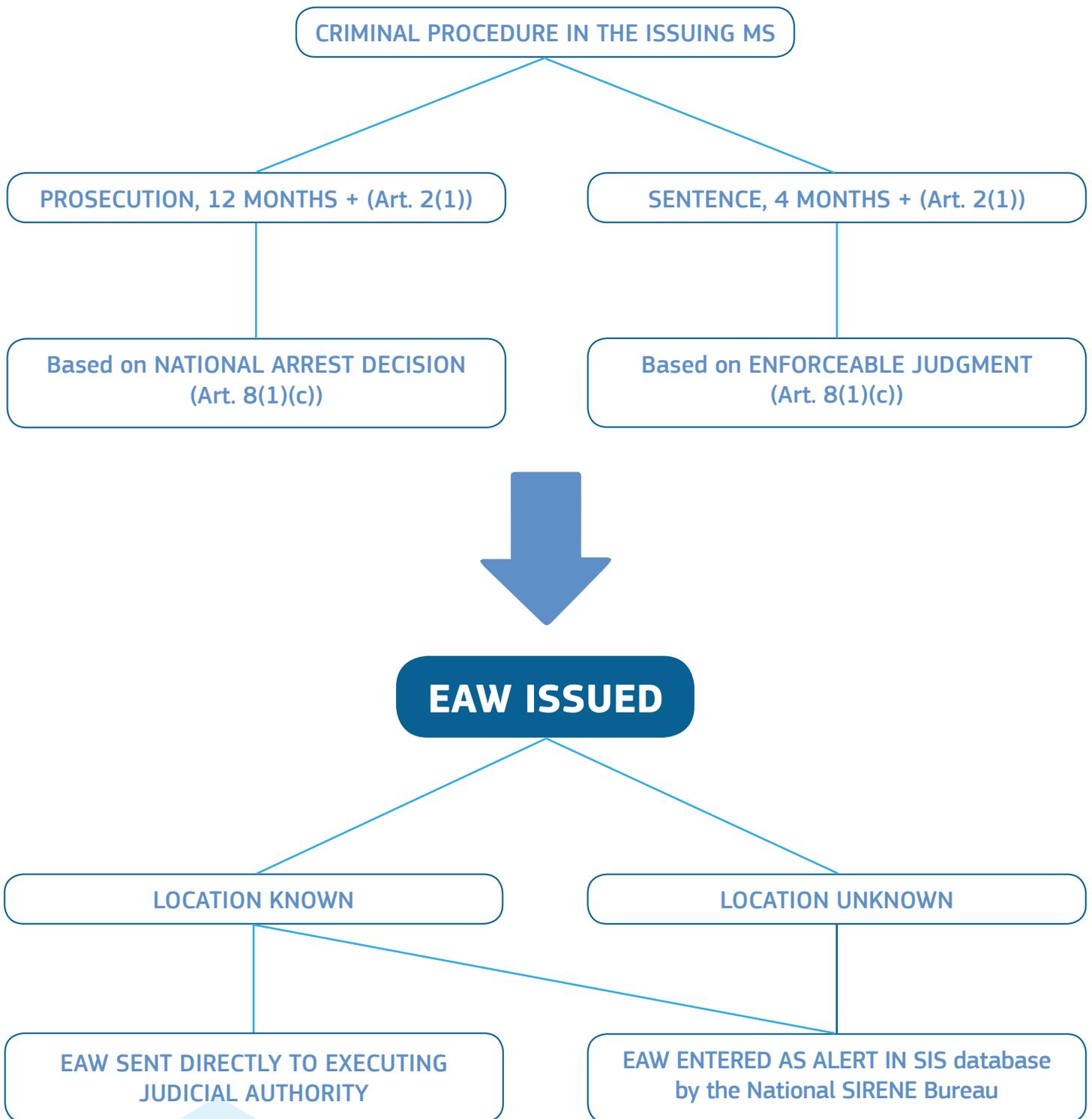
- ✓ Issuing EAWs and
- ✓ Executing EAWs.

Each part is comprehensive and dedicated to the tasks of the respective judicial authority.

The Handbook also provides for a complete explanation of the major case-law of the CJEU interpreting particular provisions of the Framework Decision on EAW.

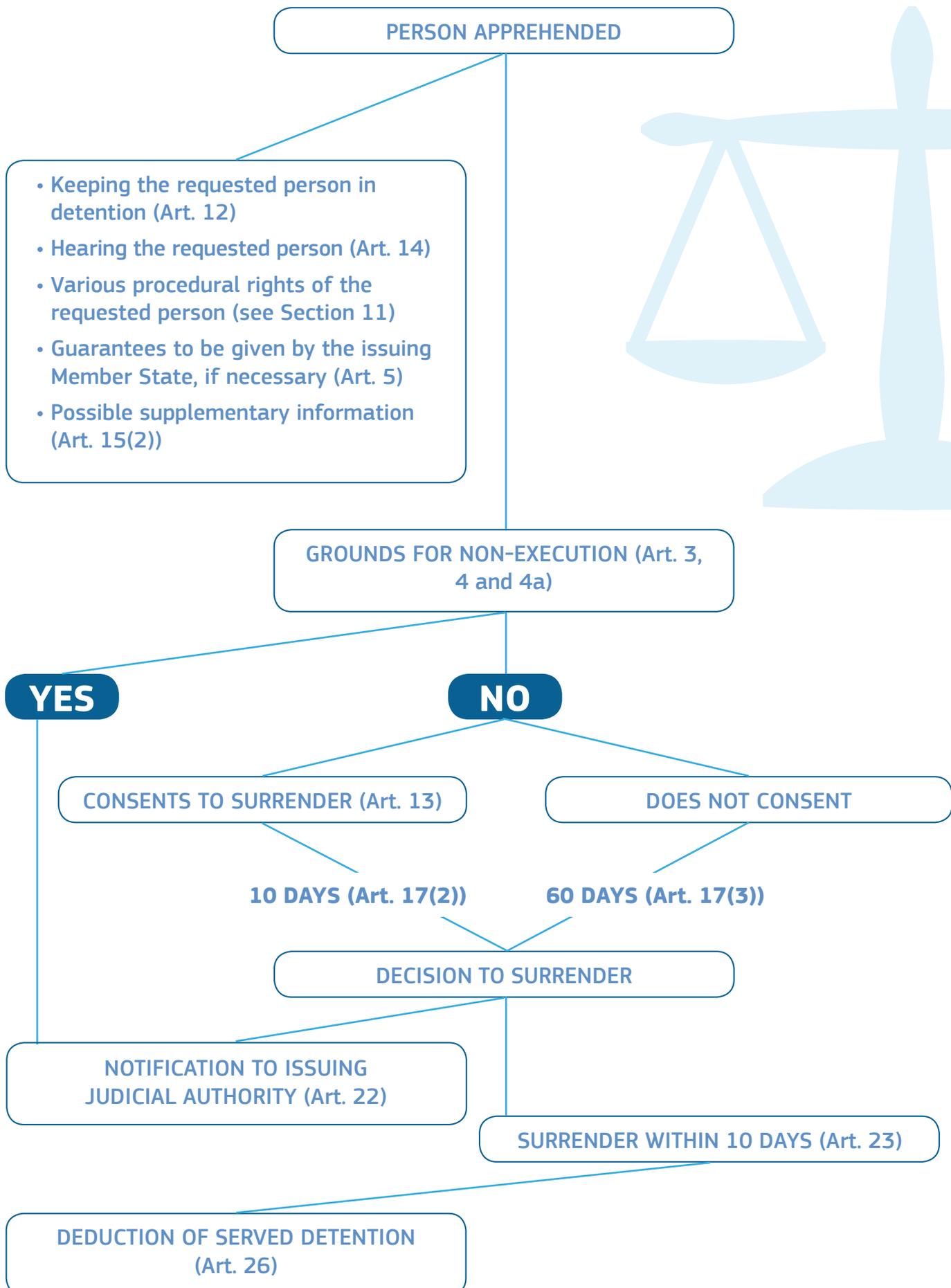
ISSUING A EUROPEAN ARREST WARRANT

Main steps



EXECUTING A EUROPEAN ARREST WARRANT

Main steps



Who is a judicial authority and what is a judicial decision?

The terms of “judicial authority” and “judicial decision” were recently clarified by the CJEU in a series of case-law: *Poltorak, Kovalkovas and Özçelik*.

In *Poltorak*, the CJEU found that the term judicial authority is not limited to judges or courts, but must be interpreted more broadly as referring to the Member State authorities that administer criminal justice. The CJEU however concluded that the term excludes police services.

In *Kovalkovas*, the CJEU found that judicial authority cannot be interpreted as covering an organ of the executive of a Member State, such as a ministry.

In *Özçelik*, the court concluded that a confirmation by the public prosecutor’s office of a national arrest warrant that was issued by the police, and on which the EAW is based, is covered by the term judicial decision.

Is there a need for a national arrest warrant to issue a EAW?

The issuing judicial authorities must always ensure that there is an enforceable domestic judicial decision before issuing the EAW. The nature of this decision depends on the purpose of the EAW. In the *Bob-Dogi* case, the CJEU confirmed that the national arrest warrant or other judicial decision is distinct from the EAW.

Is it proportionate to issue a EAW?

The issuing judicial authorities should consider a number of factors to see whether issuing a EAW is justified. In particular the following factors could be taken into account:

- ✓ the seriousness of the offence;
- ✓ the likely penalty imposed if the person is found guilty of the alleged offence;
- ✓ the likelihood of detention of the person in the issuing Member State;
- ✓ the interests of the victims of the offence;
- ✓ are there any other judicial cooperation measures that could be used instead of a EAW.

What about the fundamental rights of the requested person?

The CJEU stressed that fundamental rights of the requested person must always be respected. In *Aranyosi and Căldăraru*, the CJEU stated that if the judicial authority of the executing State is in possession of evidence of a real risk of inhuman or degrading treatment of individuals detained in the issuing State, it must assess the existence of that risk. If the existence of that risk cannot be discounted within a reasonable period, the executing State must decide whether the surrender procedure should be brought to an end.

This must be done in accordance with a specific procedure outlined in the judgment. The Handbook guides through the stages of this procedure.

Where I can find the Handbook?

You can download the Handbook from the e-justice portal:

https://e-justice.europa.eu/content_european_arrest_warrant-90-en.do