The European Arrest Warrant (EAW) and its Implementation in the Member States of the European Union

International Research Questionnaire
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(Cyprus)

1. Constitutional issues

a. Please specify views of doctrine and judicature in your country concerning the legal character of the third pillar framework decisions (FD) issued on the basis of art. 34.2 TUE

According to the decision of the full court of the Supreme Court of Cyprus “ ….”

b. Please indicate the position of the doctrine and courts in your country concerning the relation between the domestic norms being a result of implementation of framework decisions – and conventions on European cooperation in criminal matters, accepted within the EU/Council of Europe?

According to the most recent constitutional amendment: “No provision of the Constitution is considered to cancel Acts that are enacted, actions that are held or measures that are taken from the Republic that are established as necessities from its obligations as a member state of the European Union nor can it obstruct Regulations, Instructions or other actions or binding measures of legislative nature that are enacted from the European Union or from the European Communities or from their statutory instruments or from their competent bodies based on the treaties that founded the European Communities or the European Union from having legal effect in the Republic.”

c. Is the doctrine and judicature in your country opting for “pro-european” (“European – friendly”), interpretation of domestic law, including constitutional law? Is it also applied as regards third pillar instruments?

Both the policy and the judiciary are in Cyprus European-friendly. Before the constitutional amendment the constitution used to be superior to any other law, European or domestic. After the amendment any obligation arises from the induction of Cyprus in the EU should be met even though this is in contrast to the Constitution. Whether this interpretation includes the third pillar instruments this is questionable. I personally have the opinion that according to the wording of the new amendment it covers the hole scope of obligations, including the third pillar obligations.

d. What is the influence of ECJ judicial decisions on the implementation of domestic law (e.g. Pupino case)?

The Supreme Court in the Constantinou case made a clear reference to the recent decision of the Court of the European Communities in the Maria Pupino case, C-105/03, of 16/6/2005, arguing that in that case, too, it is left to the Court of every
Member State to decide whether an interpretation of its national law is in accordance with the Framework Decision.

e. Is interpretation of domestic law implementing framework decisions in your country possible solely by referring to the wording or inhalt of the framework decisions? Is it possible also when a framework decision is not yet implemented into the domestic legal order?

The domestic Court when interpreting a law take into account all the relevant statutes or explanatory memorandum which can lead them to the right decision. If a FD is not implemented in the domestic legal order then it can not be taken into account.

f. To what scope, if at all, is it possible to ask EJC preliminary questions as refers to the interpretation of framework decisions (art. 35 TUE). Can such question be asked by constitutional court (or equivalent)?

There is no specific constitutional provision or statutory provision for an ECJ preliminary question. However, this is an option for every court if the requirements are met.

g. What is the technical form of implementation of the framework decision on EAW in your country (e.g. separate law, a part of the CCP, separate from extradition provisions, other ways?)? When exactly did the law implementing the framework decision enter into force?

The Law L. 133(I)/2004 on the EUROPEAN ARREST WARRANT AND THE SURRENDER PROCEDURES OF REQUESTED PERSONS was implemented and entered into force on the 30th of April 2004. It is a new law separate form the extradition provisions.

h. Was the law implementing the framework decision and the framework decision itself subject of proceedings of the constitutional court in your country?

In the Constatinou case. The English version of the decision is attached.

i. Is the surrender procedure according to the EAW understood as a form of extradition or is it treated as a separate legal instrument?

Although the Attorney General tried in the Constatinou Case to present the EAW as surrender procedure, the Supreme Court had the view that this is an extradition procedure.

2. The implementation of the FD on the EAW in the domestic legal order

a. Are there differences between the way of implementation of the EAW in your country and the “pattern” provided by the framework decision? If so, do the differences concern:
   - the negative premises (compulsorily and optional) of surrender?

   No differences.
- the catalogue of “crimes” listed in art. 2.2. FD. Are all those “crimes” criminalised in your country. Please specify which are not criminalized?

No differences.

- the period of time for execution of the EAW?

No differences.

- other issues. Please specify.

No differences.

b. Can lack of dual criminality in cases other than mentioned in art. 2.2. FD constitute optional reason to refuse the execution of the EAW (to surrender)?

It is not an optional reason to refuse but mandatory. According to art. 7 of the Law “The European arrest warrant shall be issued for acts which are punishable according to Cypriot criminal laws with a custodial sentence or a detention order for a maximum period of at least twelve (12) months or, in the event where a penalty or order has already been passed, for a sentence for a period of at least four (4) months.”

c. Did your country make a proper notification to the Secretary of the CUE, concerning the waiver of the specialty rule (according to the art. 27.1 FD)?

No.

d. Did your country appoint a central authority (art. 7 FD). If so, which one? What is the scope and tasks it is supposed to perform and its practical meaning?

Central authority: As a basic principle, the Ministry of Justice and Public Order is the competent authority for the issuing and the executing of foreign international assistance request. This is being carried out by the police force on agreement with the Law Office of the Republic. The Law Office of the Republic, as the legal representative of the Ministry of Justice and Public Order, has the role of dealing in Court all the matters of extradition and surrender of a requested person. In this respect, the Law Office of the Republic has the role of assembling national case law, especially concerning surrender decisions.

3. The principle ne bis in idem and EAW

a. What is the meaning of the identity of an act in the context of the art. 3 FD (ground for refusal of the execution of EAW) – is it its description or legal qualification as made by the domestic court?

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2 For any further information contact Ms Eleni Loizidou, who is the coordinator of the enforcement of EAWs in Cyprus, e-mail> roc-law@cytanet.com.cy.
The principle of *ne bis in idem* incorporates the meaning that both facts and the legal basis should be the same. Furthermore, in the common law countries covers every count that could have been filled on the basis of the same facts.

b. **Is the valid judgement/conviction/discontinuance of the procedure in your country a mandatory ground for non – execution of the EAW?**

Yes.

c. **Is the valid judgement/conviction/discontinuance of the procedure in other UE Member State the same ground for refusal as in “b”?**

Yes.

d. **What is the meaning and/or interpretation of “the finally disposal of the trial” in art. 54 SDU in your country?**

- Is such a disposal the valid decision on discontinuance of the criminal process because its legal inadmissibility?

Yes, could be.

- Is such a disposal the valid decision on discontinuance of the criminal process because lack of advisability of prosecution?

Yes, could be.

e. **Was the problem of the European application of the principle *ne bis in idem* a subject of judicial interpretation in your country (e.g. by the Supreme Court, Constitutional Court)?**

We follow the England jurisprudence.

4. **The issuing of the EAW**

a. **Which judicial authority in your country decides on the issuing of the EAW?**

According to article 6 of the relevant Law, the competent authority for the issuance of the European arrest warrant for the purpose of criminal prosecution as well for the purpose of the execution of a sentence is the District Judge having territorial jurisdiction for trying of the offence for which the arrest and surrender of the requested person, are required, or the Court which has issued the decision with regard to the sentence or the detention order.

b. **Is, according to the domestic law, the decision on issuing of the EAW made on a motion (on request) of a national organ or *ex officio*. If the former, on which organ’s motion/request?**

The judicial decision is made after a request by the police under the assistance the Attorney General’s Office.
c. If a court is entitled to issue the EAW – of what rank and panel?

By a District judge.

d. Do the parties or other participants to the process have the right or duty to take part in the session?

Under the law there is no specific provision. However, under the jurisprudence there is great possibility when the requested asks to participate in the session, the Judge will allow his or his lawyer participation.

e. Is evidence procedure made in the proceedings on the issuing of the EAW?

No.

f. Who (party, other participant), if anyone, is entitled to appeal against the decision on the issuing (accordingly: rejecting issuing) of the EAW? Which judicial authority reviews these decisions?

There is no specific provision. However, as the EAW is *mutatis mutandis* a domestic arrest warrant is expected that the requested person can appeal the decision through the prerogative order of *certiorari*.

g. Can the EAW be issued retroactively? (as regards to crimes allegedly committed before the implementation of the EAW)?

Yes.

h. How many EAWs were issued in your country until the day mentioned above in point 1g of the questionnaire?

Not known.

i. Which “crimes” mentioned in art. 2.2. of the FD on EAW were subject to issuing the EAW in your country? If possible, please specify exact numbers?

Not known.

j. Were the EAW’s issued in your country subject to crimes other than “crimes” mentioned in art. 2.2. FD. If so, in how many cases?

Yes, but exact numbers are not known.

k. How many such requests were rejected by the deciding judicial authority? (applies only if EAW’s are issued on request)

None.

l. Which information channels are used before/along with the issuing of the EAW in your country (SIS, EJN, Europol, other means)? Is EAW issued only if the
exact place of residence of the requested person is known? If not, what is the procedure if the place of residence of the requested person is not known?

Europol and Interpol. SIS still not in use.

m. How many EAW’s issued by the judicial authority in your country were executed in other Member States? In how many cases was the requested person effectively surrendered?

Not known.

n. In how many cases did the executing of the EAW issued by judicial authority in your country refuse? What were the grounds for refusal?

Not known.

5. Executing of the European Arrest Warrant

a. Which judicial authority in your country decides on executing of the EAW?

In practice, the reception of a Red Notice documentation issued by a foreign national jurisdiction has to be conducted by law enforcement agents of the national jurisdiction constitutionally empowered to do so. At the same time, it has to be noted that the formal reception of EAW issued by a foreign national authority is conducted by the police and the ministerial bodies responsible for justice and public order. Upon receiving Red Notice documentation from a foreign government, national law enforcement agencies need to undertake the necessary investigation proceedings for the timely detection and provisional arrest of the person identified on the Red notice documents. Subsequently, as soon as the national law enforcement agents take the requested person into temporary custody, they need to duly inform the national ministry of Justice and Public Order, as well as the foreign national authorities submitting the request in question, of the positive outcome of their investigation.

In turn, as the foreign national authorities become aware of the details of the detection and arrest of the person wanted they have to promptly forward an EAW to the relevant ministerial authorities of the country responsible for receiving and executing the Red Notice request. The Ministry of Justice then proceeds to include the Attorney General’s office in the process by informing it of the developments following the newly issued EAW, and by asking it to initiate the appropriate proceedings for the surrender of the person wanted by the foreign authorities. For its own part, the Attorney General then moves to designate a legal counsel member of staff to be responsible for overseeing the effectiveness and the legality of the whole proceedings. In particular, the designated legal counsel is called upon to assist the arresting authorities in taking the case to court as well as to present the very request for extradition before a court with appropriate jurisdiction.

Where the central authority receives the EAW and satisfies itself that the warrant has been issued in due form, it shall issue a certificate and shall see to the arrest of the requested person\(^3\). Upon presentation of the certificate to the competent judge along

\(^3\) Art. 16(1) of Law n. 133(I)&2004.
with the EAW, the judge shall proceed to the issuance of the EAW for the purposes of
this Law, provided that he is satisfied that the conditions of issuance of the warrant of
the requested person, are fulfilled.

In the event of urgency, the competent judge may issue a provisional arrest
warrant of a requested person for whom an EAW is in force, and prior to its
transmission, at the request of the issuing state of the warrant, by post, by wire or
through the International Organization of Criminal Police or by any other means.\(^4\)

b. Is the decision on execution of the EAW performed ex officio or on request of
other domestic judicial authority. If yes – what is that judicial authority?

Ex officio.

c. Does your domestic law envisage a period in which the decision on the execution
of the EAW should be made? If so, what is that period of time?

In cases where the requested person consents to his/her surrender, the competent
District Judge shall decide on the execution of the European arrest warrant within ten
(10) days after consent has been given. In cases where the requested person does not
consent to surrender, the final decision on the execution of the warrant shall be taken
within sixty (60) days from the arrest of the requested person. In specific
circumstances, where the European arrest warrant cannot be executed within the time
limits laid down in subsections (1) and (2), the Court before which the case is pending
shall immediately inform, through the Central Authority, the issuing judicial authority
thereof, giving the reasons for the delay. In such cases, the time limits may be
extended by a further thirty (30) days. Where in exceptional circumstances the judicial
authority which decides on the execution of the warrant, including the Supreme Court
in the event of an appeal, cannot observe the time limits provided for in this section, it
shall inform «Eurojust», giving the reasons for the delay.

d. Can the judicial authority deciding upon the execution of the EAW verify the
information provided in the EAW? Can it perform evidence?

Where the judicial authority, which decides about the execution of the warrant, considers
that the information which has been forwarded by the issuing Member State of the
warrant is not sufficient to allow it to decide on the issue of surrender, it shall request,
through the Central Authority, to be furnished, as a matter of urgency, with the
necessary supplementary information and it may also fix a time limit for the receipt
thereof, taking into account the need to observe the time limits set in section 23 of this
Law. The decision concerning the execution or non-execution of the European arrest
warrant shall be reasoned.

e. How, if at all, does your domestic law regulate the solution of the concurrent
EAWs?

If two or more Member States have issued European arrest warrants for the same
person, the decision on which one of the European arrest warrants shall be executed
shall be taken by the competent District Judge who decides on the execution of the

\(^4\) Art. 16(4)(a) of Law n. 133(I)&2004.
warrant. In taking such decision, due consideration shall be given to all the circumstances and especially the relative seriousness and place of the offences, the respective dates of the European arrest warrants and whether the warrant has been issued for the purposes of prosecution or for execution of a custodial sentence or detention order. The competent Judge who decides on the execution of the warrant may seek the advice of “Eurojust” when making the choice referred to in subsection (1).

f. Does the domestic law in your country envisage the collision of an EAW and extradition procedure? If so, please clarify.

In the event of a conflict between a European arrest warrant and a request for extradition presented by a third country, the decision on whether the European arrest warrant or the extradition request takes precedence shall be taken by the Minister of Justice and Public Order with due consideration to all the circumstances, in particular those referred above and those mentioned in the applicable convention.

g. Is the EAW issued in other Member State of the EU a sole legal basis for the deprivation of liberty for the sake of procedure of execution of the EAW, or is a separate judicial authority decision on arrest (provisional arrest) required?

Where the requested person is arrested on the basis of the European arrest warrant, he or she shall be conducted within twenty-four (24) hours to a competent District Judge. After being satisfied with regard to the identity of the requested person, the District Judge shall inform the latter about the existence and the contents of the warrant, the right to have legal counsel and an interpreter and the possibility of consenting to surrender to the issuing State of the warrant. Following the arrest of the requested person and the attestation of his or her identity, the competent District Judge shall decide whether such person should remain in detention, in order to prevent him/her absconding or to release same, with or without restrictive measures. The District Judge may order the provisional release of the requested person and the imposition of restrictive measures.

The restrictive measures which have been imposed on the requested person may be replaced by detention, in the event of danger of such person absconding.

h. What is the maximum period for the arrest of the requested person before his or her effective surrender?

See answer in question c.

i. What rank – and panel – of the court decides on surrender (the execution of the EAW)?

A District Judge sitting alone.

j. Do parties or other participants of the proceedings have the right or duty to take part in the session?
Where the arrested person does not consent to his/her surrender, the competent Judge shall fix a date for hearing. The person in question shall have the right to appear in Court with legal counsel and an interpreter of his or her choice or, where he or she does not have one, the person in question shall have the right to ask for the appointment of legal counsel by the competent Judge.

k. Can the decision on surrender be complained? Who has the right to complain? Which judicial authority reviews this decision?

In the event of non consent of the requested person, the requested person or the Attorney General of the Republic of Cyprus shall have the right to file an appeal before the Supreme Court against the final decision of the competent Judge, within 3 days of the publication of the decision. The Supreme Court shall take a decision within eight (8) days after the appeal has been filed. The requested person shall be invited by the Chief Registrar of the Supreme Court, in person or through his or her authorized attorney, within twenty-four (24) hours before the hearing.

l. Does the person in question have the right to:
   See answer in question j.
   - the assistance by the defense lawyer?
   - the right to interpreter?

m. Does the domestic law in your country envisage any barriers as refers to the surrender of own nationals?

   According to the Law, the executing judicial authority of the warrant shall refuse to execute the European arrest warrant in the following cases:
   a. if the person who is the subject of the European arrest warrant, for the execution of custodial sentence or detention order, is a national and the Republic of Cyprus undertakes the obligation to execute the sentence or detention order according to its criminal laws,
   b. if the person who is the subject of the European arrest warrant for his prosecution is a national, unless it is ensured that after being heard, he or she shall be transferred to the Republic of Cyprus, in order to serve a custodial sentence or a detention order which shall be passed against him/her in the issuing State of the warrant.
   However, under the above mentioned amendment of the Constitution it seem that there is no problem in the surrender of Cypriots if the crime is committed after the 1st of May 2004.

n. How many EAWs issued by other MS was executed by your country from the date mentioned in 1g of the questionnaire. In how many cases was the person effectively surrendered?

   Not Known.

o. In how many cases did judicial authority in your country refuse to execute the EAW. What were the grounds for non – execution?

   Not known.
p. For what “crimes” listed in art. 2.2 of the FD were EAWs executed in your country. If possible, please specify by providing exact numbers.

Not known.

q. Was the EAW executed for crimes other than listed in the above mentioned art. 2.2. FD? If so, in how many cases?

Not known.

r. Were there cases in your country, in which courts rejected the executing of the EAW because of possible violation of guaranties of the requested person in the country of issuing of the EAW (esp. human rights)?

No.

s. How often does the requested person consent to the “fast track” surrender procedure?

In half of the cases.

t. In how many cases was the decision on the execution of the EAW subject of the judicial control? What were the results of such control? In how many cases was the decision on the execution of the EAW revoked?

There are three decisions of the Supreme Court. The two of them the surrender succeeded, and in one the surrender of the Cypriot national has failed (is the Constantinou case).

u. What is the average period of time between the execution of the EAW and the effective surrender of the requested person?

Not known.

6. Others

a. Are there any special difficulties in putting the EAW into practice, resulting from particularities of legal system in your country (esp. common law countries)?

The first problem in the way the FD on EAW was implemented into the legal system of the Republic of Cyprus arouse in the decision of the full bench of the Supreme Court of Cyprus in the case Attorney General vs. Konstantinou, Civil Appeal 294/2005, which was delivered on the 7th of November of 2005.

The case concerned an application by the UK to the Cypriot authorities to hand over a person with dual UK and Cypriot nationality charged with conspiring to defraud the British government. A question that had to be answered was whether the way in which the Framework Decision had been introduced into the Cyprus legal system was in compliance with the Cyprus Constitution of 1960. It was argued that the law that
introduced the Framework Decision was incompatible with article 11.2 (f) of the
Constitution that states:

“Nobody is deprived of their liberty except in those cases where the law so
provides, namely: [……] (f) “for the arrest or detention of a person in order to prevent
his entry into the Republic without a permit or in the case of an alien against whom
procedures have been instituted to have him expelled or extradited.”

The Court further noted that the Polish Court had also found that the extradition of a
same legal status as the arrest and handing over of a person subject of an EAW.
Regarding the last finding, the Court cited a relevant decision of the Conseil d’ Etat of
France. In contrast to the aforementioned arguments, the Attorney General maintained
that a basic element of the EAW is the surrender of the sought person and not his
extradition to the requesting Member State.

The full Bench of the Supreme Court accepted that Law 133(1)/2004 introduced the
Framework Decision into the law of Cyprus, in effect reproducing all the provisions of
the Framework Decision. The unanimous decision also found that article 11 of the
Constitution of Cyprus provides an exhaustive list of the reasons for which a person may
be arrested. Arresting a person in the context of an EAW is not one of the reasons stated.
The Court reiterated a previous relevant decision in Cyprus5, where it was decided that
the extradition of a Cypriot citizen on the basis of article 11(f) of the Constitution is
prohibited. In arriving at this finding, the Supreme Court made a clear reference to the
recent decision of the Court of the European Communities in the Maria Pupino case, C-
105/03, of 16/6/2005, arguing that in that case, too, it is left to the Court of every
Member State to decide whether an interpretation of its national law is in accordance
with the Framework Decision6.

Regarding the question of whether the Law that introduced the EAW is superior to the
Constitution, it was decided that the Framework Decision leaves the method and the
means of how to realise its goal up to the member States, and even if achieving that goal
is compulsory, it does not have an immediate effect. Consequently, the correct legal
procedure should be used to ensure the introduction and integration of the EAW into the
Cyprus order. This had not been done since the law concerned is incompatible with a
specific provision of the Constitution.

Under the new provision of art.11 of the Constitution:
“Arrest or withholding of a person with intent of obstructing the entrance without
permit into the territory of the Republic or arrest or withholding of an alien against
whom actions were taken with intent to deport or extradite or arrest or withholding a
citizen of the Republic in order o extradite or surrender him, having in mind of the
reservations of the following provisions:

... (i) The arrest or withholding of a citizen of the Republic with the intention of
surrendering him based on a European Arrest Warrant is possible only with regard to
facts that supervened or actions committed after the date of the accession of the
Republic into the European Union…»

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6 Paragraph 48 in Pupino.