

Executive Summary: France

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Executive Summary

Issuing Procedures

- The public prosecutor is the competent authority to issue EAW for prosecution purposes either on his/her own motion or at the request of a French court, and only on the basis of a prior enforceable court decision. Prior to requesting an issuance of an EAW the concerned court shall examine the necessity and proportionality of such measure.
- If she/he deems necessary, the public prosecutor may also issue an EAW for the execution of a custodial sentence or a detention. In those later cases, the public prosecutor examines the opportunity of an EAW.
- Both the European Court of Justice (ECJ) (C-566/19 PPU and C-626/19 PPU, Parquet général du Grand-Duché de Luxembourg et Openbaar Ministerie) and the French constitutional Court (8 December 2017, n° 2017-680 QPC) confirmed that French public prosecutor may qualify as “issuing judicial authority” (under Article 6(1) of the EAW Framework Decision).
- Actually, his/her decision to issue an EAW is subject to review by a court (Investigative Court of the Court of Appeals, Article 170 of the French criminal procedure code) (C-566/19 PPU and C-626/19 PPU). Furthermore, he/she meets the judicial independence standards. Indeed, public prosecutors are free from instruction from the executive in a specific case and under no circumstances a public prosecutor is prevented from exercising his/her discretion as to the proportionality of the EAW.

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- The issuing authority is entitled to perform a proportionality test, based on the appropriateness of issuing an EAW in light of the circumstances of the case. Proportionality of the EAW is regularly raised by the requested person to challenge an EAW before the investigative Court. From 2019, such argument has been thoroughly analyzed by the Cour de cassation (highest French court in criminal matters).
- An EAW for prosecution purposes should not be issued prematurely, and at least not until a court has serious and consistent evidence against the requested person. However, the Cour de cassation seems not to require such guarantee in view of the execution of an EAW (Crim, 30 March 2021, FP) drawing a parallel between the EAW and extradition procedures.

Executing Procedures

- The execution of EAWs issued by other Member States is regularly challenged before French Chambre de l'instruction on the basis of fundamental rights and, more broadly, rule of law issues.
- The French Cour de cassation has aligned its case law with the ECJ's guidance on the independence of the independence of the issuing judicial authority (Crim., 24 July 2019, case no 19-84.068 – Germany; Crim., 7 January 2020, case no 19-87741 - Croatia) to decide on the execution or non-execution of an EAW.
- Courts shall verify “precisely and in a concrete manner”, in consideration of information given by the issuing authority and of the personal situation of the requested person, that current deficiencies of the judicial system are directly affecting the judicial authorities before which the requested person appears (Crim. 12 January 2021, case no 20-87.140).
- French case law considers the indemnification of unnecessary pre-trial detention in the context of EAW procedures (8 November 2016, no 16C-RD.008 – concerns the execution of an EAW by France).
- Even though cautious, French courts more and more rule on proportionality arguments raised by requested persons (such as petty offence, duration of custody or detention, etc.) (Crim., 19 August 2015, 15-84.363). To perform the proportionality test, the Cour de cassation recently referred to the ECJ case law (Crim., 26 January 2021) and introduced a preliminary referral to the ECJ (still pending, C-168/21).

Key interpretation and implementation challenges

- One of the main issues raised by the French case law concerns the relationship between the necessary efficiency of the EAW (through mutual trust and recognition principles) and the protection of the requested person's fundamental rights.
- Along with the evolution of the ECJ and ECHR's case law, French judicial authorities have been taking into account and examined fundamental rights issues considering the general situation of the issuing country and the risk of violation of the requested person's rights (rights of the defence, risk of ill-treatment and torture as regards detention conditions in the executing State, rights to private and family life, fair trial...).
- In most cases, the requested person invokes a violation of the ECHR together with (but not systematically) the violation of the Charter of Fundamental rights (since 2004, around 50 Cour de cassation's decisions refer to the Charter).
- The evolution has led to a more in-depth control over the chambre de l'instruction decisions to surrender or to refuse the execution of individual EAW.

- French authorities' decision to execute an EAW, without taking into account a systematic deficiency in detention conditions in the issuing country, was recently challenged before the ECHR (ECHR, 21 March 2021, *Bivolaru and Moldovan v France*). The ECHR held that French executing authority had sufficient evidence to establish a real risk of degrading and inhumane treatment for the requested person. However, the Cour de cassation generally performs the first step of the test defined in the ECJ's *Aranyosi and Căldăraru* ruling (5 April 2016, nos C-404/15 et C-659/15 PPU – relying on objective, reliable, specific and properly updated information on detention conditions in the issuing State). The second step (specific risk for the individual) has not been performed yet.