

Executive Summary: Ireland

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Executive Summary

Issuing Procedures

- In Irish law, the decision to proceed with a prosecution in all indictable offences is solely entrusted to the Office of the DPP who is fully independent. The DPP must be satisfied that the evidence in the case is sufficiently strong to justify a prosecution, and it is proportional and in the public interest to commence a prosecution.
- The domestic warrant forming the basis of the EAW application is issued by a District Court judge who is fully independent.
- The application to issue an EAW must be brought on behalf of the DPP to the High Court.
- The independence of the judicial authority responsible for issuing EAWs in Ireland has to date not been challenged.
- There must be a domestic warrant in existence before an application to issue a EAW can be made.
- There is no duty on the DPP to assess proportionality. That duty is placed on the High Court alone.
- The Irish criminal justice system contains no principle of mandatory prosecution. Domestic arrest warrants issued by the District Court will be for offences punishable by a minimum of five years.
- The assessment of proportionality by the High Court in deciding whether to issue a EAW must include consideration of the interests of the victims of an offence.
- It is unclear from available sources whether the High Court considers case readiness.
- Any remedy to challenge the issuing of the warrant before the surrender of the person would depend on the law of the requested state.

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- As soon as the person has been returned to Ireland, they may challenge the issuing of the EAW through a *Habeas Corpus* application to the High Court. A successful application results in the person being released immediately and unconditionally from custody.
- As soon as requested persons are returned to Ireland, they benefit from all the rights accorded to arrested persons in Ireland.
- They have a constitutional right of immediate access to a lawyer, a constitutional right to silence, a right of access to the 'materials of the case' as provided under the Right to Information Directive and to translation.

Executing Procedures

- The Supreme Court have refused surrender where it has been established that the issuing judicial authority is not independent of the executive.
- The High Court should not engage in a proportionality test to consider whether the EAW should have been issued, nor should the High Court apply a proportionality test to a potential sentence. Consideration of proportionality in the issuing of a EAW is a matter for an issuing State and does not arise for consideration by the executing judicial authority.
- A person resisting surrender will have to satisfy the Court that the issuing state is in fact not complying with its requirement to respect fundamental rights. The Court may make its own enquiry and seek further information from the issuing state in order to be so satisfied.
- A person shall not be surrendered if there are reasonable grounds for believing that they would be tortured or subjected to other inhuman or degrading treatment. The evidential burden is on the person to establish the risk. They must establish that a real risk exists, rather than the probability of ill treatment.
- The Information Directive provides that a person arrested for the purposes of execution of a EAW is entitled simply to information about the content of the warrant, the rights of access to a lawyer, to translation and the right to be heard by a judicial authority. There is no right to access essential documents needed to challenge the arrest or detention. Once the person has been surrendered, they then become a person arrested for the purpose of domestic proceedings, and thereby become covered by those articles of the Information Directive that bestow broader rights to information.
- A number of cases have opposed surrender based on fair trial concerns due to an absence of an independent and impartial tribunal. Where a person resisting proffers material indicating that there is a real risk of breach of the fundamental right to a fair trial on account of systemic or generalised deficiencies so far as concerns the independence of the issuing Member State's judiciary, there is a further stage to the test. The Court must determine, specifically and precisely, whether there are substantial grounds for believing that that person will run such a risk if surrendered to that State.
- The Irish Constitution protects fundamental rights, encompassing an obligation to protect and vindicate inter alia, personal liberty and family rights. The courts have been very unwilling to grant relief on this ground and insist on a very high threshold being reached by the applicant.
- The Irish courts have on some occasions refused surrender for reasons that do not feature in the FD as grounds for refusal.

- Irish courts have refused surrender based on the requirement in the 2003 Act that a decision has been taken to 'charge and to try' the requested person.
- Surrender has been refused by Ireland because of the court's interpretation of Irish law on extraterritorial jurisdiction, and by its reliance on a common law doctrine, abuse of process.

Key interpretation and implementation challenges

- In terms of its assessment of the proportionality of issuing the EAW, Ireland has been unable to give consideration to other less coercive judicial cooperation measures than the issue of a EAW, having only very recently transposed available measures into Irish law. Ireland did not however opt in to the European Investigation Order.
- The inclusion of the requirement in the Irish transposing legislation of the requirement of a decision to charge and to try before surrender may be ordered continues to be a challenge to mutual trust and contribute to delays.
- A further challenge to the mutual recognition principle is posed by the Irish court's finding that reciprocity forms part of the EAW system. The same applies to the Irish courts' use of a common law doctrine, abuse of process, as a ground for refusal.