

Social Fieldwork Research (FRANET)

European Arrest Warrant proceedings –
safeguards for requested persons

Ireland,

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EXECUTIVE SUMMARY

In 2019, the EU Fundamental Rights Agency (FRA) published “Rights in Practice”,¹ a study of how key procedural rights in criminal and European Arrest Warrant (EAW) Proceedings are applied in practice in eight EU Member States. The European Council found this a valuable contribution in assessing procedural rights of persons requested in EAW proceedings, and therefore invited the FRA to consider the possibility of continuing the study and extending it to all Member States.²

The extended study focuses exclusively on European Arrest Warrant proceedings and is based on a series of interviews with lawyers, judges, and prosecutors in each Member State. The following is the country report from Ireland, based on desk research and eight interviews with legal experts in Ireland.

In general, procedural rights of the person requested were considered by interviewees to be well protected under Irish law, and well respected in practice.

1. Right to information. Interviewees highlighted that information is given to persons requested at multiple stages of the proceedings and in various forms. The High Court also checks that the person fully understands the information given, in particular the implications of consent to surrender, where the person chooses to surrender. However, for several interviewees, the **Schengen Information System (SIS)**, fully adopted by Ireland in 2021, presented some barriers to the right to information and other rights in the short term. This is because the SIS alert generally does not have a copy of the warrant with it, and usually only contains very brief information about the offence.

2. Right to interpretation and translation. It was held to be fully covered in law and in practice, insofar as a person requested would always be provided with an interpreter where needed, at all stages of the proceedings. However, there are no quality assurance standards for interpreters in Ireland, and many interviewees felt that there were major issues with **quality of interpretation**.

3. Right to access to a lawyer. In Ireland, as executing State, it was held to be unquestionably covered, both in law and in practice. Logistical difficulties around lawyers being able to meet with their clients in custody in a timely manner were the main barriers cited. There is **no right to a lawyer in the issuing State** under Irish law, although one is frequently employed. Difficulties cited in this regard included identifying and communicating with the issuing State lawyer and getting the issuing State lawyer to accept payment terms under the Irish legal aid system.³ The report also briefly discusses the Trade and Cooperation Agreement with the United Kingdom,⁴ since this does extend the right to a lawyer in the issuing State to arrest warrant proceedings with the United Kingdom.

4. Issuing and execution of the EAW. While interviewees felt that Ireland generally was very mindful of **proportionality** when issuing EAWs, many expressed frustration and concern at certain Member States where no proportionality test beyond the strict legal requirements appeared to be met. This

¹ European Union Agency for Fundamental Rights (2019), [Rights in practice: access to a lawyer and procedural rights in criminal and European arrest warrant proceedings](#), Luxembourg: Publications Office of the European Union, 2019.

² Council of the European Union (2020), Council Conclusions [2020/C 419/09](#) of 4 December 2020, ‘The European arrest warrant and extradition procedures – current challenges and the way forward’.

³ According to the [Legal Aid Board’s website](#), The “Legal Aid - Custody Issues Scheme (formerly known as the Attorney General’s Legal Aid Scheme) provides payment for legal representation in the High Court and the Supreme Court for certain types of cases not covered by civil legal aid or the Criminal Legal Aid Scheme.”

⁴ European Union (2021), Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, [OJ 2021 L 149/10](#), Title VII on surrender.

led to cases where a person might be requested for a very minor offence, committed many years ago, and after a lengthy and expensive High Court process would be forcibly returned on a military plane, only to be released weeks later. Interviewees stressed, however, that proportionality was a matter for the issuing State, and that the issuing State always affirmed that they wished to maintain proceedings, when enquiries were made.

All other factors that might in law prohibit surrender are duly considered by the High Court, including conditions of detention, rule of law, and trials in absentia in the issuing State, and the right to family life in Ireland. The threshold for refusal is very high, but postponements due to family or individual circumstances quite regularly take place.

INTRODUCTION

○ A NOTE ON THE IRISH LEGAL SYSTEM AND TERMINOLOGY

“We are an adversarial system, and a common law system. So, we are maybe not a square peg in a round hole [when it comes to the European Arrest Warrant System], but maybe not a perfectly round peg either.” (Lawyer, Ireland)

The Irish legal system works quite differently from the majority of EU states.

A person requested by a European Arrest Warrant (EAW) will first be arrested by a member of **An Garda Síochána** - the Irish police force. The **Gardaí** (police officers) will put the person requested in touch with a **solicitor**. The legal profession in Ireland is divided into solicitors (who do most of the client facing work) and **barristers**, also known as **counsel**, who are hired by solicitors to argue the client’s case in Court.

In Ireland’s **adversarial** system, this arrangement is replicated on the other side of the court room also. Thus, the State (Ireland) is represented by the **Chief State Solicitor’s Office**, which will prepare the EAW issued by another Member State for endorsement by the High Court judge, and will make the case for surrender, once all the requirements are met. The Chief State Solicitor’s Office will also hire a barrister to make the case in Court, and barristers might act for the State in one EAW case, and for the person requested in another.

The High Court judge listens to the arguments on both sides and makes their decision accordingly. As a common law system, more emphasis is placed on **case law** than in a civil law system. Barristers for both sides will therefore refer extensively to previous cases in their arguments, as will the judge in their decision. The judge may also take the opportunity in their judgement on a specific case to lay down some guidelines or tests on various factors which might affect surrender.

When an EAW is **issued** from Ireland, it is prepared by the **Office for the Director of Public Prosecutions (DPP)** on the basis of a file from An Garda Síochána. The DPP then applies to the High Court to issue the warrant, as the **High Court is the sole issuing authority** in Ireland.

○ PREPARATION OF FIELDWORK, IDENTIFICATION AND RECRUITMENT OF PARTICIPANTS

As requested by FRA, FRANET Ireland conducted eight interviews with legal professionals, all with extensive experience in dealing with EAW. In the ‘**lawyer**’ category, we interviewed one solicitor, and three barristers. Two of these barristers had experience in acting both for the State and the person requested. In the ‘judge/prosecutor’ category, we interviewed two High Court judges, one prosecutor from the Office for the Director of Public Prosecutions with experience in issuing warrants, and one official from the Chief State Solicitor’s Office, with experience in executing warrants. Since there are

relatively few individuals in each of these positions, we have used the term ‘national authority’ instead of judge or prosecutor for this category.⁵

The interviews were conducted by FRANET Ireland’s social fieldwork expert, who holds an LLM in Human Rights Law, with support from the FRANET Ireland project manager and the legal expert.

Initial approaches were made by identifying and contacting solicitors with EAW expertise, and through contacts at the Irish Centre for Human Rights. Once the initial interviews had been secured, identifying, and confirming further interviews was facilitated through the first interviewees’ recommendations. Busy schedules were often challenging, as was the ongoing COVID-19 pandemic situation, which meant that some interviews originally scheduled for in-person were conducted using online platforms. Of the eight interviews, five were carried out online and three in-person.

○ **SAMPLE AND DESCRIPTION OF FIELDWORK**

Lawyers:

Requested: 4, completed: 4

Judges/prosecutors:

Requested: 4, completed: 4

Table 1: Sample professionals

Code	Group	Expertise in European Arrest Warrants	Gender
1	Lawyer	Barrister with EAW experience; also delivered local continuing professional development training on EAWs.	M
2	Lawyer	Barrister with extensive EAW experience, acting both for the person requested and for the State.	F
3	Lawyer	Solicitor working for a firm dealing with EAWs; formerly trained as a barrister so has experience of both.	M
4	Lawyer	Barrister with extensive EAW experience, acting both for the person requested and for the State, has written several articles on EAWs.	M
1	Prosecutor/Judge	High Court judge, experienced in both issuing and executing EAWs.	M
2	Prosecutor/Judge	High Court judge, experienced in both issuing and executing EAWs.	F
3	Prosecutor/Judge	Senior public prosecutor with experience in issuing EAWs.	F
4	Prosecutor/Judge	Senior official in the Chief State Solicitor’s Office, which represents the State when executing EAWs.	F

⁵ The decision is respectful of the concerns expressed by some interviewees about being easily identifiable. The identification becomes even easier when gender is specified.

Each of the interviews lasted approximately one hour. Despite their busy schedules, all participants were welcoming, and answered the questions fully and reflectively. All participants agreed to be recorded, but some required reassurance that their contributions would not be identifiable.

- **DATA ANALYSIS**

FRA provided a set of structured qualitative questions for each interview, with the possibility of follow up questions at the interviewer's discretion. Each interviewee was asked the same set of questions, for the purposes of uniformity. Although no one interviewee had the expertise to answer every question, between the eight interviews every question was covered in detail.

Each of the eight interviews were recorded for research purposes only. An interview report was completed according to the structured template provided by FRA, which allowed for thematic analysis. Tables of data were also filled out building on templates provided by FRA, which allowed for a more rigorous interpretation of the data.

- **BRIEF OVERVIEW OF THE REPORT'S CONTENTS**

The report follows a standard template set out by the Fundamental Rights Agency. This is the same for each Member State, to allow for analysis and comparison between Member States.

There are five topics covered by the report, each in its own chapter: right to information; right to interpretation and translation; right to access to a lawyer; issuing and execution of the European Arrest Warrant; and use of digital and technological tools.

In each chapter, a brief legal overview of the topic is given, followed by a discussion of the interview findings. Any additional promising practices or challenges are identified, and each chapter concludes with a summary of findings.

RESEARCH FINDINGS

1. Right to information

a. Legal overview

The European Arrest Warrant (EAW) Framework Decision⁶ is given effect in Irish law by the European Arrest Warrant Act 2003, which has been amended at various points.⁷

Ireland opted-in to the Right to Information Directive⁸ but considered that the requirements of the Directive had already been met through pre-existing legislation and case law around the rights of persons in custody.⁹

Accordingly, persons arrested on foot of an EAW must be informed of their rights to:

- consent to being surrendered to the issuing State,
- obtain, or be provided with professional legal advice and representation, and
- where appropriate, obtain, or be provided with, the services of an interpreter.¹⁰

The person should be informed of the charges against them orally and in ‘ordinary language’.¹¹ While the legislation does not specifically mention the Letter of Rights, the ‘Notice of Rights’ used in Garda stations in all arrests is similar to the Letter of Rights format.¹² The person is also provided with a copy of the relevant sections of the EAW. The person must be provided with a copy of the EAW on arrest.¹³ Where interpretation is being provided, a translation of the EAW must also be provided as soon as possible.¹⁴

A person may also be arrested on foot of a Schengen alert without warrant.¹⁵ Since March 2021, when Ireland gained full access to the Schengen Information System, this has become the norm.¹⁶ The right to be informed about their rights also applies to persons arrested without a warrant, and they are to be provided with the warrant as soon as possible following their arrest.¹⁷

⁶ Council Framework Decision [2002/584/JHA](#) of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States - Statements made by certain Member States on the adoption of the Framework Decision.

⁷ Ireland, [European Arrest Warrant Act, 2003](#) (Act 45 of 2003).

⁸ [Directive 2012/13/EU](#) of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings.

⁹ Ireland, Dáil Éireann [Lower House of Parliament], (2019), Dáil Éireann Debate on EU Directives, [Parliamentary question by Catherine Connolly T.D.](#), 17 September 2019.

¹⁰ Ireland, [European Arrest Warrant Act, 2003](#) (Act 45 of 2003), Section 13(4).

¹¹ Ireland, [S.I. No. 119/1987](#) - Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987, Section 8.

¹² An Garda Síochána (n.d.), [Notice of Rights](#), Dublin.

¹³ Ireland, [European Arrest Warrant Act, 2003](#) (Act 45 of 2003), Section 13(3).

¹⁴ Ireland, [S.I. No. 564/2013](#) - European Communities Act 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations, 2013, Section 8.

¹⁵ Ireland, [European Arrest Warrant Act, 2003](#) (Act 45 of 2003), Section 14.

¹⁶ Ireland, Department of Justice (2021), [Minister Humphreys and Garda Commissioner Harris mark six months of Ireland's connection to Schengen Information System \(SIS II\)](#), Press Release, 16 September 2021.

¹⁷ Ireland, [European Arrest Warrant Act, 2003](#) (Act 45 of 2003), Section 14(2) and (4).

The person is also informed of these rights again at their appearance before the High Court, which will happen as soon as possible after their arrest.¹⁸

With regard to **consent to surrender**, the High Court must ensure that the person voluntarily consents to surrender and is aware of the consequences of consent, before ordering a surrender.¹⁹ Further, the High Court must be satisfied that the person obtained or had the opportunity of obtaining or being provided with professional legal advice before consenting.²⁰ However, a person may also be surrendered without their consent, where it is not prohibited by other provisions, and where the High Court is satisfied that the person before it is the correct person sought by the EAW.²¹

The **rule of speciality** holds that that persons surrendered may not be prosecuted or sentenced for prior offences, other than those for which they were surrendered. According to the EAW Framework Decision, the rule of speciality applies unless a specific declaration renouncing the speciality rule has been made by the executing Member State. Ireland has stated it does not intend to make a notification under Article 27 (1) with regard to renunciation of the speciality rule.²²

b. Right to information in practice

- Provision of information (when, how by whom)

All interviewees were unanimous in saying that persons arrested on foot of an EAW were informed of their rights upon arrest by the arresting Garda (police officer), in accordance with the law. Not all were certain whether the information was provided in written form as well as orally, but since those closest to that part of the process indicated that it is done in every case, there is no reason to believe otherwise.

- Information about rights

Most interviewees mentioned the three rights that feature in the European Arrest Warrant Act (right of consent to surrender, right to legal representation and right to an interpreter). One of the lawyers mentioned the right to consular assistance, which features in the Notice of Rights, though not in the EAW Act specifically.

¹⁸ Ireland, [European Arrest Warrant Act, 2003](#) (Act 45 of 2003), Section 13(4) and (5).

¹⁹ Ireland, [European Arrest Warrant Act, 2003](#) (Act 45 of 2003), Section 15(1)(d) and Section 15(2)(b)(iii).

²⁰ Ireland, [European Arrest Warrant Act, 2003](#) (Act 45 of 2003), Section 15(1)(e) and Section 15(2)(b)(iv).

²¹ Ireland, [European Arrest Warrant Act, 2003](#) (Act 45 of 2003), Section 16.

²² Council of the European Union (2003), [Notification](#) under articles 6.3, 7.2, 8.2 and 25.2 European Arrest Warrant by Ireland, 23 December 2003.

Table 2: Are persons arrested on an EAW informed about their procedural rights?

	L/1	L/2	L/3	L/4	J/1	J/2	J/3	J/4	TOTAL
YES	1	8							
In writing (Letter of Rights)	-	-	-	-	-	-	-	-	0
Orally	-	-	-	-	-	-	1	-	1
In writing (Letter of Rights) and orally	1	1	1	1	1	1	-	1	7
NO	-	-	-	-	-	-	-	-	0
Don't know/remember	-	-	-	-	-	-	-	-	0
Did not answer	-	-	-	-	-	-	-	-	0

- Information about the EAW – content and procedure

All interviewees indicated that, where the warrant was available at time of arrest, the person arrested would be told of the contents of the EAW and given a copy, including in their own language. However, since Ireland joined the **Schengen Information System (SIS)**, the vast majority of arrests are made on foot of an SIS alert. As indicated by the lawyer below, the information available on the SIS alert is generally very brief.

“If it’s a SIS arrest...the Garda might not have the warrant, so all they will know is what’s in the SIS alert and often times, that’s...a very perfunctory piece of information...I saw one recently that said, ‘offence against property’ and when the warrant came through later it was actually a much more complicated series of events relating to fraud and theft.” (Lawyer, Ireland)

This presents challenges, not just for the proper understanding of the procedure by the person requested, but also for decisions around the granting of bail. As explained by two lawyers interviewed, there is a difference made between persons requested for prosecution, as against those who have already been convicted, since the convicted person has more incentive to flee, and therefore is less likely to be granted bail. But frequently, it is not clear in the SIS alert system whether the warrant has been issued for the purposes of prosecution or conviction.

Sometimes, an Garda Síochána [Irish police force] may be able to find this information through SIRENE,²³ the EU channel for police-to-police information, and the national authorities interviewed stressed that they made every effort to obtain the warrant with as short a delay as possible, as outlined below:

“Well, in my experience, we have been able to be extremely fast in giving them the warrant...they [persons requested] would have it...within a couple of days. We would see it of the utmost importance to get them that information as soon as we can possibly get [it]. In fact, that’s something we were very

²³ SIRENE stands for supplementary information request at the national entries. According to the European Commission’s [SIRENE Cooperation](#) framework, each member state using SIS has a national SIRENE Bureau, responsible for exchanging information and coordinating activities connected to SIS alerts. Europol also has a SIRENE bureau.

conscious about ourselves, in terms of people’s rights and access to information...but it hasn’t actually posed an issue as of yet.” (National authority, Ireland)

However, at least three of the four lawyers interviewed felt that it did cause problems, particularly with regard to bail:

“It is actually difficult to advise the court as to whether there are good grounds for bail or not...if you don’t have the warrant...it’s only a couple of days, but a couple of days in prison is a couple of days in prison.” (Lawyer, Ireland)

Table 3: Are persons arrested informed of the contents of the EAW against them?²⁴

	L/1	L/2	L/3	L/4	J/1	J/2	J/3	J/4	TOTAL
YES	1	1	1	1	1	1	-	1	7
In writing (Letter of Rights)	-	-	-	-	-	1	-	-	1
Orally	-	-	-	-	-	-	-	-	0
In writing (Letter of Rights) and orally	1	1	1	1	1	-	-	1	6
NO	-	-	-	-	-	-	-	-	0
Don’t know/remember	-	-	-	-	-	-	-	-	0
Did not answer	-	-	-	-	-	-	1	-	1

- Information on consenting to surrender

“Yes...they are absolutely brought through it [in the Garda station] and that is invigilated by the High Court, putting them into the witness box and making sure that they are examined to prove that they know the precise ramifications of their consent to surrender.” (Lawyer, Ireland)

All interviewees who were familiar with the process indicated that information on consent to surrender was given in all cases, as set out in law.

The person requested would always make the decision on whether or not to consent to surrender with the assistance of their lawyer. Whether or not to consent is a matter for the person requested to decide themselves, but the lawyer might outline possible points of objection or conversely, might explain to them why they felt contesting the surrender would be unlikely to succeed if the lawyer saw no grounds for a reasonable objection.

One lawyer interviewed added that, even if surrender were refused, which is relatively rare, this did not cancel the actual warrant. If that person were to travel to another jurisdiction, they might be arrested again. For this reason, this interviewee sometimes feels obliged to advise a client to consent to surrender, particularly in circumstances where the sentence would be relatively brief, rather than try to obtain a refusal to surrender.

²⁴ There is a caveat concerning this table: when the information comes through the SIS alert system, the arresting Guard will not have that warrant immediately. Two lawyers and two national authorities pointed this out (they are highlighted in grey).

Where the person requested consents to their surrender, the High Court goes to some lengths to ensure that they understand the implications, as indicated in the quote above.

The rule of speciality has not been renounced by Ireland, meaning that the person can only be prosecuted for the crime specified on the European Arrest Warrant. However, the speciality issue does arise in two contexts. Firstly, a person requested may sometimes argue that their surrender would result in a breach of speciality, where someone might be requested for a particular offence, and then charged with another on return. Secondly, the executing judicial authority may sometimes get a request for permission to prosecute the person who has been returned on a separate charge than the one that they were returned for. When this arises, this is treated similarly to a standard EAW hearing in the High Court, and usually heavily contested.

Table 4: Are the requested persons informed about what consenting to their surrender entails?

	L/1	L/2	L/3	L/4	J/1	J/2	J/3	J/4	TOTAL
YES	1	1	1	1	1	1	-	1	7
NO	-	-	-	-	-	-	-	-	0
Don't know/remember	-	-	-	-	-	-	-	-	0
Did not answer	-	-	-	-	-	-	1	-	1

- Understanding of information

In general, all interviewees thought that there were excellent safeguards to ensure that persons requested understood the information provided. Information is provided at the point of arrest by the Garda, explained by the person's lawyer at multiple points in the process, and explicitly checked by the Court to ensure that the information is understood by the person requested.

"I think we go to great lengths to ensure that they do [understand the information provided] In this jurisdiction, it's very much about having the person present and making sure that the person is given fair and reasonable representation, and we would all feel duty bound as officers of the Court to ensure that that's the case." (Lawyer, Ireland)

While lawyers interviewed agreed with the statement above, that the Court does all that they can to ensure understanding, several of them pointed out that nonetheless, there might still be certain circumstances in which the person requested will not fully understand the information provided. Two lawyers pointed out that in all criminal proceedings, defendants with a poor level of education may struggle to understand the complexity of the procedure. One lawyer mentioned that, given that some EU member states may conduct trials wholly *in absentia*, the person may be entirely unaware of the proceedings, and that affects understanding. A second lawyer affirmed this:

"Sometimes they don't really [understand the information] ...It depends on whether it was expected or not. For some people, it comes as a bit of a bolt out of the blue, if they didn't know, maybe, that there was a warrant out for them, it can be a big shock and they might not process [the information]." (Lawyer, Ireland)

For several interviewees (both lawyers and national authorities), the understanding of the information is bound up with the right to legal representation, in that their lawyer will explain the information to their client at various stages. However, this does not mean that the Court will be content that, once a lawyer is appointed, the client is fully informed. The judge will always ask whether the person understood why they were there and if there were any concerns, would seek to address them. For example, there are instances where the judge will ask the interpreter to read out the warrant in court to the defendant or facilitate a private meeting between the person requested and their lawyer before continuing with the proceedings.

c. Additional best practices or challenges

The main concern which arose regarding the right to information is the paucity of information on the **Schengen Information System alert**, and several interviewees had suggestions to improve this. Two of them (one lawyer and one national authority) suggested that a copy of the warrant should always be included with the alert, and one lawyer suggested that, at a minimum, there should be information as to whether this was a warrant for prosecution, or whether a conviction had already been made, as that would assist in making bail decisions.

d. Discussion of findings

Despite the various barriers to understanding mentioned above, it is clear that interviewees agree that **the right to information is fully implemented in practice as it is in law**. It is the understanding of all those interviewed that these rights are fully given at the moment of arrest, although none of those interviewed are actually present for that. However, both lawyers and national authorities agreed, from personal experience, that the Court does all in its power to ensure that the person requested understands their rights and what they entail.

2. Right to interpretation and translation

a. Legal overview

Persons in custody or in criminal proceedings have the right to an interpreter, and to the translation of specified documents, at no cost to themselves.²⁵ These documents are the charge sheet, the recognisance (for persons released on bail), and the arrest warrant. If the written translation is not immediately available, an oral translation or summary of the documents should be provided as soon as possible.

The Garda in charge (in a Garda station), or the Court (in criminal proceedings), are responsible for deciding whether an interpreter is necessary.²⁶ Significantly, “[i]n case of doubt it shall be presumed that interpretation is required”.²⁷

Once that decision is taken, the arrested person is entitled to an interpreter during any communication with their solicitor, during any police interview, and at all Court hearings.²⁸

The regulations do not provide for a specific remedy where an interpreter or translation is not provided, in custody or in criminal proceedings. Challenges in relation to the **quality** of interpretation, however, are provided for. If a complaint is made by the arrested person in a Garda station, the member in charge must investigate the matter and replace the interpreter if he or she sees fit.²⁹ In criminal proceedings, the Court, of its own motion or on application by any of the parties, can direct the interpreter to be replaced where it deems the quality unsatisfactory.³⁰

There are no quality assurance rules around the provision of interpretation and translation in Ireland. This has been highlighted numerous times by the Irish Translators’ and Interpreters’ Association, most recently in a 2021 letter to the European Commissioner for Justice, Didier Reynolds; however, there has been no substantive response by either the Commission or Ireland to this submission.³¹

A recent case before the Court of Appeal found that interpreting provided for a French speaking defendant was inadequate and found that the trial was unfair on that basis.³² While this was not an EAW case, this could have an effect on EAW cases, and could potentially form part of a future appeal.

²⁵ Ireland, [S.I. No. 564/2013](#) - European Communities Act 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations, 2013, Section 3; Ireland, [S.I. No. 565/2013](#) - European Communities Act 1972 (Interpretation and Translation in Criminal Proceedings) Regulations, 2013, Section 3.

²⁶ Ireland, [S.I. No. 564/2013](#) - European Communities Act 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations, 2013, Section 4(1), (3); Ireland, [S.I. No. 565/2013](#) - European Communities Act 1972 (Interpretation and Translation in Criminal Proceedings) Regulations, 2013, Section 4.

²⁷ Ireland, [S.I. No. 564/2013](#) - European Communities Act 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations, 2013, Section 4(2).

²⁸ Ireland, [S.I. No. 564/2013](#) - European Communities Act 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations, 2013, Section 5; Ireland, [S.I. No. 565/2013](#) - European Communities Act 1972 (Interpretation and Translation in Criminal Proceedings) Regulations, 2013, Section 4.

²⁹ Ireland, [S.I. No. 564/2013](#) - European Communities Act 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations, 2013, Section 7(2).

³⁰ Ireland, [S.I. No. 565/2013](#) - European Communities Act 1972 (Interpretation and Translation in Criminal Proceedings) Regulations, 2013, Section 7.

³¹ Correspondence with Mary Phelan, ITIA Chairperson, 29 March 2022 and 30 June 2022.

³² Ireland, [DPP v HM and BO](#), Court of Appeal, November 2021.

b. Interpretation and translation in practice

- Provision of interpretation (decision and means)

If we are informed that somebody has good English, we [national authorities] would have to be pretty certain that their lawyer is satisfied with that, and that they would inform the Court of that. We would always err on the side of caution and ensure that there was an interpreter present.” (Lawyer, Ireland)

Interviewees confirmed that it is the responsibility of the arresting Garda [police officer], in the first instance, to ascertain the need for an interpreter at the moment of arrest and provide one accordingly. The Chief State Solicitor’s Office will check that this has been done by reading the arrest papers and would inform the Court as to the interpretation requirements for the hearing. If it is not a straightforward case - for example, if the EAW came from Romania, but the person requested was actually Polish, then the arresting Garda will have ascertained this, in conjunction with the person’s lawyer, and will flag to the Chief State Solicitor’s Office that a Polish interpreter is needed.

However, while technically it is a decision made by the Gardaí in the first instance and the Court thereafter, interviewees flagged that it was typically the person requested themselves will indicate whether they needed interpretation and in what language, and that such requests are never refused.

Generally, the interpreter would attend in person at a Garda station, although where that is not physically possible due to the distance, it might be possible by phone. In the Court, the interpreter is always present in person, even where the person is appearing by video link from custody for a minor point of the proceedings.

However, many interviewees expressed frustration that, while an interpreter was always booked for the relevant hearing, there were often delays in obtaining that interpreter. This might be due to proceedings running over in another Court, the interpreter being pulled in to lawyers’ consultations, or simply not turning up to Court. In such instances, the Court would postpone proceedings until later in the day, or halt proceedings until an interpreter was found. Occasionally, if the person requested indicated through their lawyer that they were happy to proceed without an interpreter, the Court will proceed, but generally only if they are assured that the person has good English, and that a minor matter (not the substantive hearing) is being dealt with.

- Translation of documents

All interviewees indicated that key documents, including the Notice of Rights, the warrant itself, and the correspondence between Ireland and the issuing State were provided in a language that the person requested could understand. For the warrant and the correspondence, this was generally straightforward, in that the person requested generally spoke the issuing State’s language as their native language and therefore a copy already existed. However, several interviewees highlighted that, in a minority of cases, the person requested did not speak the language of the issuing State. In these cases, the key documents would be translated, but it would take more time. Two of the interviewees (one lawyer and one national authority) mentioned a recent test case on third languages. In this instance, the Minister for Justice accepted that if somebody speaks a language which is not the

language of the issuing State, they are entitled to the warrant being translated into that language as a matter of course, rather than upon request.

“Ultimately, the Minister agreed...that it would have made a nonsense to what is set out around having it in a language that you understand [to have any barriers to third language translation].” (Lawyer, Ireland)

One interviewee mentioned that the lack of translation by legally trained translators was a problem:

“Working with documents that have been translated by people who are not lawyers, that’s a big challenge. If you send something to a country that uses a different legal system, and you’re asking for very precise information that has a legal context. And because it has to go from your language into their language, and the response has to go from their language into your language, that’s a double opportunity for things to get lost in the mix, and I think that probably does result in huge amounts of problems.” (Lawyer, Ireland)

- Interpretation of consultations with lawyers

In the Court, interpretation is provided by one of a number of state-appointed companies, rather than interpreters working directly for the State. Lawyers must appoint their own interpreters for consultations, but this is covered under the legal aid scheme.

In practice, arrangements tend to be rather ad hoc. One lawyer indicated that they used a Polish speaking member of staff in the solicitor’s office as their interpreter for consultations. Another lawyer said that, given the shortage of interpreters, the Court interpreter and the interpreter appointed by the lawyer might be the same individual. Furthermore, a lawyer would not usually appoint their own interpreter for a Court appearance, since the Court would provide one, but might use the Court interpreter for consultations immediately before or after the Court appearance. This sometimes causes delays, as the lawyer might require an interpreter for a consultation at the same time as that interpreter was needed in Court for another matter.

c. Additional best practices or challenges

“Training [of interpreters] is a massive issue... It would almost take legally qualified people to act as interpreters, and we don’t live in that kind of Utopia... Some kind of a legal criminology training, I think, would be very helpful. But...the quality of training and the levels of qualifications and experience required in Ireland seems to be quite low.” (Lawyer, Ireland)

As outlined in the legal overview, there are no quality assurance standards for interpretation and translation in Ireland, and many interviewees felt that this was a significant issue. One interviewee felt from experience:

“Interpreters being brought into Garda stations could have just come off a construction site, they may have no qualifications whatsoever. I don’t know if the same principle applies to interpreters who come into a courtroom.... So, at some point, we will need regulation.” (Lawyer, Ireland)

Interviewees stressed that, as far as possible, the Court officials and lawyers worked to ensure that interpretation was being done.

“We're all quite mindful of watching the interpreters making sure they're doing their jobs, sometimes they don't.” (National authority, Ireland)

“Everybody has a role in ensuring that interpretation is being provided. If I was [acting] for the Minister and saw the interpreter wasn't interpreting something... I would ensure that the proceedings were brought to a halt to make sure that the interpretation was occurring. The [lawyer for the person requested] ...will usually pick that up, but sometimes it doesn't happen because they are concentrating on something.” (Lawyer, Ireland)

However, interviewees also pointed out that, without speaking both languages themselves, it was very difficult for anyone in the Court to assess the quality of the interpretation, thus highlighting the importance of pre-determined standards and regulation.

d. Discussion of findings

The right to interpretation was considered well implemented by interviewees in the sense that **everyone who might require interpretation and translation was provided with it without question.** However, issues around quality and, to a lesser extent, delays, meant that the right was not being as completely fulfilled as could be hoped for. **Interviewees pointed to the need for training, standards, and regulation of interpretation and translation in Ireland.**

3. Right to access to a lawyer

a. Legal overview

The right to legal advice and representation is well established in Irish law, including in the European Arrest Warrant Act 2003 with regard to Ireland as an executing state.³³ Where the defendant does not have means to engage legal advice with their own funds, they can apply to the Legal Aid-Custody Issues scheme.³⁴

There is no automatic right to free legal aid, and each case is determined by the Court on application by the arrested person through their lawyer. This determination is made at the end of the proceedings. However, as we shall see below, in EAW cases, the person is generally assumed to have limited means and legal aid has always been granted in the cases with which the interviewees are familiar. In the Garda station, the requested person will be asked whether they already have a lawyer, and if not, they will be given a list of solicitors and asked to pick one.

Ireland opted out of Directive 2013/48/EU³⁵ and there is no specific right in Irish law for a person arrested in Ireland on foot of an EAW to appoint a lawyer in the issuing Member State.³⁶ However, the Trade and Cooperation Agreement with the United Kingdom³⁷ specifies this right for persons requested in the UK.

b. Right to access to a lawyer in practice

- Information about legal assistance (including on dual representation)

Q: When a person is arrested in Ireland on an EAW issued by another EU member state, is that person informed about their right to be assisted by a lawyer in the proceedings in Ireland?

“Yes, absolutely... By An Garda Síochána in the first instance, and then that’s repeated again in Court. But, at that stage, they normally have a lawyer there, so...the Court would say, ‘you’re entitled to a lawyer, and I see that you have exercised that right.’” (National authority, Ireland)

³³ Ireland, [S.I. No. 119/1987](#) - Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987; Ireland, [European Arrest Warrant Act, 2003](#) (Act 45 of 2003), Section 13 (4) and (5).

³⁴ According to the [Legal Aid Board’s website](#), the “Legal Aid - Custody Issues Scheme (formerly known as the Attorney General’s Legal Aid Scheme) provides payment for legal representation in the High Court and the Supreme Court for certain types of cases not covered by civil legal aid or the Criminal Legal Aid Scheme.”

³⁵ Directive [2013/48/EU](#) of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, Protocol 58.

³⁶ Ireland, Dáil Éireann [Lower House of Parliament], (2019), Dáil Éireann Debate on EU Directives, [Parliamentary question by Catherine Connolly T.D.](#), 17 September 2019.

³⁷ European Union (2021), Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, [OJ 2021 L 149/10](#), Title VII on surrender.

All interviewees agreed that persons requested are told of their right to access a lawyer in Ireland, from the moment of arrest. This right features in the Notice of Rights, as well as in the relevant section of the EAW, which each person is given. A person can choose to represent themselves if they wish, but it is rare.

One lawyer interviewed provided detail on how, practically, the person requested can get in touch with a lawyer. The person requested will be asked if they already have a solicitor or know of one that they would like to use. If not, the Gardaí will provide the person requested with a list of solicitors and ask the person requested to choose one. The Garda will then ring the solicitor chosen and will ask them if they are available to speak to the person requested over the phone. This can happen at any time of the day or night. The solicitor might not see the person requested face to face until their first appearance at the High Court, but this appearance normally happens in very short order.

“Generally speaking, what happens is, the person is arrested, brought to a Garda station, and then is immediately brought to the next sitting of the High Court. So, a person could be arrested at 9 or 10 o’clock in the morning, and they should be before the High Court at 2 o’clock or 3 o’clock...There is no reason for [the solicitor] to be in the Garda station. It’s just for processing, really.” (Lawyer, Ireland)

As discussed above, **Ireland does not provide for the right to a lawyer in the issuing State**, and therefore this is not mentioned on arrest. However, the Trade and Cooperation Agreement with the UK does provide for this right, and the national authorities are mindful of ensuring that this information is given to the person requested from the UK, both in the Garda station and in Court. However, the national authority quoted below considers that the right to a lawyer in the issuing State would most likely be exercised with the assistance of the lawyer for the person requested in Ireland.

“We haven’t seen enough of these [Trade and Cooperation Agreement] cases to see how it will move, but they are being informed of [the right] in the first instance. Then, usually, while we will inform them of their rights, like the right to consent, they will move forward with the exercise of that right through their own lawyers.” (National authority, Ireland)

In practice, in the absence of such a right, persons requested do frequently avail of the services of a lawyer in the issuing State, either through their own contacts or those of their Irish lawyer, as discussed further below.

Table 5: Are persons informed of their right to access a lawyer?

	L/1	L/2	L/3	L/4	J/1	J/2	J/3	J/4	TOTAL
YES	1	8							
In writing (Letter of Rights)	-	-	-	-	-	-	-	-	0
Orally	-	-	1	-	-	1	-	-	2
In writing (Letter of Rights) and orally	1	1	-	1	1	-	1	1	6
NO	-	-	-	-	-	-	-	-	0
Don’t know/remember	-	-	-	-	-	-	-	-	0
Did not answer	-	-	-	-	-	-	-	-	0

- Legal assistance in executing state (access, consultations, lawyer's tasks)

"Persons requested are then [after initial arrest] seen by lawyers with, I think, some degree of regularity." (National authority, Ireland)

All interviewees agreed that there is no difficulty with the person requested having their lawyer with them at all times during the Court proceedings. The frequency of consultations with a lawyer outside of Court varied depending on the complexity of the proceedings. One barrister indicated that they had met with one client as much as twenty times, while for other clients, it might be only once or twice. However, the solicitor for the client would meet with them more frequently.

Several interviewees mentioned **delays in obtaining consultations with persons in custody**, which impacted on the tight EAW timelines. In the view of one lawyer:

"EAW proceedings should be given priority ... because, you know, it's a forcible rendition on a flight, not just a District Court hearing or whatever else. So, there's a problem with facilitation of timely consultations. Sometimes it can take two or three weeks to get a consultation, depending on the prison." (Lawyer, Ireland)

While, since Covid, videolink appointments are available in place of face-to-face consultations, this does not appear to have improved matters.

"It can be complex in all circumstances, but it was an awful lot easier when you booked your appointment, and then you all rolled in to the prison, and you brought your interpreter with you face-to-face." (Lawyer, Ireland)

Other difficulties mentioned include persons being brought late to the video conference room, meaning that perhaps only 20 minutes would be available to speak to the defendant in a 30-minute slot, video calls failing, and interpreters not performing their job correctly.

"It can be really frustrating if you have an inexperienced interpreter who has a side conversation, instead of actually interpreting. So, you ask a one sentence question...and there are ten sentences interpreted, and twenty sentences reply, and you're on a videolink to a prison which has a 30-minute slot....and you're trying to find out what actually happened." (Lawyer, Ireland)

All interviewees agreed that the **standard of legal representation** provided to persons requested is exceptionally high. This is in part due to the fact that all EAWs in Ireland are processed through the High Court, rather than the lower courts. While one national authority questioned whether this is best use of the High Court's time, all agreed that it contributed to a high standard of legal representation.

In terms of the **lawyer's tasks**, the role of the barrister, acting on the instructions of the solicitor, is first to secure bail if possible, and then to work with the person requested to see if there are points of objection to consenting to surrender. The lawyer would then prepare written submissions and argue the case in Court. If the objections fail, they might seek leave to appeal to the Court of Appeal.

- Legal assistance in issuing state (access, consultations, lawyer's tasks)

Where Ireland is the executing State

It is clear from interviewees that even if there is **no automatic right to a lawyer in the issuing State**, an issuing State lawyer is very often employed in EAW cases where Ireland is the executing State. However, the State did not provide assistance in appointing this lawyer, and the ways in which the issuing State lawyer was accessed and the tasks they performed varied greatly.

This is in part to do with the way legal aid is structured. In Ireland, the legal aid scheme can extend to obtaining **expert statements** from the issuing State, including from a lawyer. These would include, for example, statements on conditions of detention, but might also cover points of law specific to the case itself, for example whether or not the person requested would or would not have been aware that their case was tried *in absentia*.

In these cases, contact will generally be made through the lawyer in the executing State, generally through word of mouth and professional contacts. Many interviewees found that it was difficult to find a lawyer and suggested that having a centralised database would be helpful. The European Criminal Bar Association (ECBA) does provide such a list,³⁸ but one lawyer pointed out that it would be more helpful if the list could be vetted in some way, to ensure that the lawyers listed had sufficient expertise and qualifications.

However, for issues surrounding the **merits of the case** itself, or making representations in the issuing State, this is not covered under legal aid in Ireland, as the High Court will say that this is a matter for the issuing State. One lawyer pointed out this would probably be the case even where the right to a lawyer in the issuing State existed in Ireland, so therefore it would make little difference.

On issues for the merit of the case, therefore, it is more likely that the person requested themselves, or their friends and family, would look for a lawyer and deal with them directly, although their lawyer in Ireland may advise them in this process. In these cases, the issuing State lawyer might make representations on their client's behalf, either in Court in the issuing State or with the issuing authorities. For example, one lawyer interviewed said that in several cases concerning defaulting on a loan, the issuing State lawyer was able to facilitate the payment of the outstanding amount by the person requested and succeed in getting the EAW withdrawn.

Another lawyer highlighted that, in the relatively rare cases where surrender was refused, the EAW remained in place, and that person was liable to be arrested again if they went to their home country or any other EU member state. In this case, the role of the issuing State lawyer was key:

Q: What would you advise them to do? [in circumstances where surrender had been refused, but the EAW was still outstanding].

“Try and use the lawyer in their home state, to get the warrant cancelled. That’s the way to get the warrant cancelled...and it does seem to be possible to do that. We’ve had cases where we’ve gotten warrants withdrawn, or an agreement that if the person goes back voluntarily, it can be dealt with.... That’s why having a lawyer in the home state is vitally important, I think, because they can make representations.” (Lawyer, Ireland)

³⁸ The “Criminal Defence Lawyers in Europe” database is available at the ECBA’s [website](#).

Where Ireland is the issuing State

In a very small minority of cases, according to one national authority, an executing State has asked about a lawyer in Ireland as an issuing State. In some of these cases, where the defendant had left Ireland when proceedings were already in train against them, the Office for Public Prosecutions will establish who was representing the person requested in the substantive matter and pass on that information to the Central Authority. What is done with this information thereafter is unclear.

One national authority commented:

“There isn’t specific legislation which gives that right (to a lawyer in Ireland as the issuing State). However, because we are a common law system, theoretically an application could be made to the High Court if they had a legal point to be argued...It hasn’t yet been tested.” (National authority, Ireland)

However, most interviewees could not see that there was a great deal that a lawyer in Ireland could do before the person is returned to Ireland.

“They [lawyers in other Member States] seem to be able to make representations [on the issuing of an EAW]. I have a case at the moment of a client of ours in Spain [a person requested by Ireland], and they are talking to me, ‘well, can you not make representations to the [Director of Public Prosecutions] to do x, y and z’, and I’m saying ‘Well, no. That’s just not the way the system works in Ireland.’...but it seems that maybe in other countries there is maybe more power to do that.” (Lawyer, Ireland)

From the national authorities’ point of view, there is a good reason for this. Since EAWs are generally issued only for the most serious of crimes in Ireland, there is little that can be done on the substantive issues prior to return. If, on the other hand, the executing State requested the assistance of a lawyer in Ireland as the issuing State on a serious point of law concerning the EAW itself, then the national authorities of their own volition would look to consider this issue in the High Court and consider whether the person requested needed legal representation there.

- Communication between the lawyers in both states

Many interviewees indicated that communication with lawyers in an issuing State was not straightforward, even after a lawyer had been found. For expert statements, the communication tends to be directly lawyer to lawyer, with the lawyer in Ireland submitting the statement from the issuing State lawyer as part of their submissions. The main challenge here related to the short timeframes surrounding EAWs, and language barriers.

Where it involved the merits of the case, this was even more complicated, in that the lawyer in Ireland is generally only dealing with the issuing State lawyer second hand through their client. One lawyer interviewed felt that sometimes, the issuing State lawyer might overpromise what they can do for the client. They will often take substantial fees from the client, but when the executing State lawyer looks at what they intend to do, they can see that this will not produce the results that were promised.

- Free of cost access to a lawyer (or legal aid)

Where Ireland is the executing State

As stated above, Ireland will cover the cost of expert statements from an issuing State lawyer in legal aid, and national authorities seemed to feel that this was straightforward enough:

“[Although there is no automatic right to the lawyer in the issuing state] any lawyer who feels that they need assistance from the issuing State, simply comes to the Court and says, can I have an extension of the legal aid...scheme to cover the cost of getting a lawyer, and the answer is always yes.” (National authority, Ireland)

Lawyers acknowledged the generosity of the Irish scheme in this respect. One lawyer felt that, while the legal aid did not extend to representations made in the issuing State, there was a possibility to commission a report about the results of such representations which could be considered by the High Court, thus ensuring at least part legal aid payment for the issuing State lawyer.

However, in EAW cases, the award and payment of legal aid is made only after the proceedings are closed, which can be a lengthy process. For most lawyers, this compounded the difficulties that they experienced in accessing issuing State lawyers:

“You have to say to them: “I can’t... give you a cast iron guarantee that you are going to get paid, and I don’t have any way of getting a guarantee that you will get the fees you want to get, so I’m...asking you on a wing and a prayer.” (Lawyer, Ireland)

Another lawyer highlighted this aspect, and also that some issuing State lawyers seemed to have high expectations when it came to fees:

“By far the most difficult aspect of the EAWs, is trying to make contact with the foreign lawyer, and then trying to get information from them, and then trying to get them paid...In terms of legal aid] you have to wait till the end of the case before you get paid, anyway, and it can take a number of months...and this drives the experts [lawyers in other MS] mad, they don’t seem to understand this at all, I don’t know is it different in other European countriesthey also seem to have completely unrealistic expectations around how much money they would get, and so frequently, the expert will be looking for more money than we would get for doing the case.” (Lawyer, Ireland)

None of those interviewed were aware of any legal aid that was available to persons requested in the issuing State for an issuing State lawyer.

When Ireland is the issuing State

Only one interviewee commented on this, saying that if a person requested were to have a concrete reason to need a lawyer in Ireland as the issuing State, then a lawyer could apply to the High Court for leave to appear, and to apply for legal aid. However, their view was that this had not arisen, and was unlikely to arise given the circumstances listed above.

Table 6: Cost-free legal assistance, interview findings³⁹

Free of cost lawyer provided	When your country is an executing state		When your country is an issuing state for the purposes of procedures in the executing MS (e.g., to assist the lawyer in the executing state)	
	YES	NO	YES	NO
L/1	1	-	N/A	-
L/2	1	-	N/A	-
L/3	1	-	N/A	-
L/4	1	-	1*	-
J/1	1	-	N/A	-
J/2	1	-	N/A	-
J/3	N/A	-	N/A	-
J/4	1	-	N/A	-
TOTAL	7	0	1	0

c. Discussion of findings

Interviewees believe that the right to a lawyer in Ireland as the executing State is fully implemented in practice as it is in law. No right exists in Ireland to a lawyer to the issuing State, although one is frequently employed. While national authorities tended to think that caused no particular problems, **lawyers pointed to difficulties in identifying, communicating with, and obtaining legal aid payment for issuing State lawyers.**

³⁹ The answers to this question were more nuanced than yes/no. For instance, all interviewees indicated that there was never a problem with persons requested availing of legal aid in Ireland as an executing State, but several (highlighted in grey) pointed out that there is in fact no absolute right to free legal aid. One lawyer (marked with an asterisk) pointed out that the legal aid in Ireland covered expert reports from other countries.

4. Issuing and execution of the EAW

a. Legal overview

Issuing

The European Arrest Warrant Act 2003, Part 2, Chapter 2, covers the issuing of an EAW. An EAW can be issued by a court, on application made by or on behalf of the Director of Public Prosecutions (DPP).⁴⁰ Requests for the preparation of EAWs are submitted to the Office of the DPP by the Extradition Unit of the Garda Síochána [Irish police force]. The DPP then prepares the warrant, which is forwarded to a Judge of the High Court for issue.⁴¹ In 2020, Ireland issued 163 EAWs.⁴²

The Court must be satisfied that a domestic warrant was issued for the person and not executed, and that the person is not in the State.⁴³ A person must be liable for a term of imprisonment of minimum 12 months if convicted, or where the conviction has already taken place, a term of not less than four months is due to be served.⁴⁴ This is referred to as ‘minimum gravity’.

Execution

The European Arrest Warrant Act 2003, Part 3, covers circumstances in which a requested person shall not be surrendered. These include, among others, where surrender is incompatible with the European Convention on Human Rights or the Irish constitution; where there is evidence of discrimination; where offences do not meet the minimum severity; or where a person has been convicted *in absentia*.⁴⁵ Some of these grounds go beyond what was envisaged in the Framework Decision, and an amendment to the act is currently being debated to repeal or amend some of these grounds. The understanding of the Department of Justice is, however, that these changes will not affect the level of human rights protection afforded.⁴⁶

The execution of EAWs is frequently challenged in Irish courts on various grounds, including right to family life, right to a fair trial and conditions of criminal detention. While most such challenges fail, there are cases where challenges succeed, or are referred to the Court of Justice of the European Union (CJEU) for clarification.

For a large part of 2021 and 2022, surrender of most persons requested by Poland was effectively suspended, pending a CJEU ruling on **right to a fair trial**.⁴⁷ This follows on from the *LM or Celmer case*,⁴⁸ which argued that changes to the judiciary, courts and Public Prosecutor in Poland undermined the possibility of a fair trial. In *Celmer*, the CJEU set out a two-step test for Member States in assessing rule of law issues. First, the court should identify generalised and systemic deficiencies in Member

⁴⁰ Ireland, [European Arrest Warrant Act, 2003](#) (Act 45 of 2003), Part 2, Chapter 2.

⁴¹ Office of the Director of Public Prosecutions (2021), [Annual Report 2020](#), Dublin: Office of the DPP, p. 38.

⁴² Office of the Director of Public Prosecutions (2021), [Annual Report 2020](#), Dublin: Office of the DPP, p. 38.

⁴³ Ireland, [European Arrest Warrant Act, 2003](#) (Act 45 of 2003), Section 33(1) (a).

⁴⁴ Ireland, [European Arrest Warrant Act, 2003](#) (Act 45 of 2003), Section 33(1)(b)(i)-(ii).

⁴⁵ Ireland, [European Arrest Warrant Act, 2003](#) (Act 45 of 2003), Part 3.

⁴⁶ Ireland, Dáil Éireann [Lower House of Parliament], (2022), [Dáil Éireann Debate on European Arrest Warrant \(Amendment\) Bill 2022: Second Stage](#), 23 March 2022.

⁴⁷ Ireland, Dáil Éireann [Lower House of Parliament], (2022), [Dáil Éireann Debate on Extradition Arrangements, Answer to parliamentary question from Deputy Paul Murphy](#), 19 January 2022.

⁴⁸ Court of Justice of the European Union, [Case C-216/18 PPU](#), *The Minister for Justice and Equality v LM*, 25 July 2016, ECLI:EU:C:2018:586.

States that give rise to a breach of rights under the ECHR or EU Charter of Fundamental Rights. Second, the Court must identify a real risk to the respondent specifically that their rights will be breached.

According to this two-step test, the Irish High Court determined that there was no specific risk to Mr Celmer and ordered his surrender. However, in 2021, it was challenged again in *Orlowski and Lyszkiewicz*.⁴⁹ In this case, the persons requested argued that the situation in Poland has further deteriorated since *Celmer*. Specifically, they argued that the Act on the System of Common Courts (February 2020) in Poland allows for the appointment of judges in a manner which is not in accordance with the rule of law, and that the legislation explicitly outlaws the challenging of those appointments, in contravention of the right to an effective remedy. The Supreme Court referred these cases to the CJEU, highlighting difficulties in applying the two-step *Celmer* test where there is no way of knowing in advance whether the judge assigned to the case will have been appointed in accordance with the rule of law.

In 2022, the CJEU gave its decision by way of reasoned order. In essence, they upheld the *Celmer* test saying that, if there is no way of knowing in advance whether the applicants would appear before a judge who had been unlawfully appointed, then the applicants could not prove a specific risk to a fair trial and should therefore be surrendered. The case then returned to the Irish Supreme Court, who remarked that this ‘places the appellants in something of a ‘Catch 22’ position’ as until they are surrendered, they will not know the identity of the judges appointed to them, and whether those judges are appointed in accordance with the law. The Court therefore concluded that: ‘despite the concerns of this Court in relation to issues as to the rule of law in Poland, it seems that there is no alternative at this stage but to direct the surrender of the appellants to the issuing state.’⁵⁰ It follows that many persons requested by Poland, whose surrender had been suspended pending this ruling, will now be surrendered unless other circumstances dictate a stay.

b. Issuing and execution of the EAW in practice

- Factors considered when issuing the EAW

In general, lawyers were unable to comment on which factors were considered in issuing EAWs, as there is a limited role for lawyers in the issuing process.

“The short answer is, I don’t know...they are anonymised, so you don’t really know that they are being done...for obvious reasons, you don’t want to tip the person off that you’re looking for a warrant for them.” (Lawyer, Ireland)

The national authorities, however, confirmed that minimum gravity (the legal requirements around the minimum penalties for the offence) and the need to exercise proportionality are considered at all stages of the process.

⁴⁹ Supreme Court of Ireland, [\[2021\] IESC 46](#), Minister for Justice and Equality v Orlowski, Minister for Justice and Equality v Lyszkiewicz, 23 July 2021, S:AP:IE:2021:000018.

⁵⁰ Supreme Court of Ireland, [\[2022\] IESC 37](#), Minister for Justice and Equality v Orlowski, Minister for Justice and Equality v Lyszkiewicz, 4 August 2022, S:AP:IE:2021:000020.

Firstly, the Gardaí will not automatically seek an EAW once it is clear that the person is no longer in the jurisdiction - they will take into account minimum gravity, and other factors, such as whether the person is likely to re-enter the jurisdiction, in which case they will advise the DPP that they will rely on the domestic warrant. The Gardaí may also seek to speak with family members, to see if the person might agree to return voluntarily.

Secondly, the Office of the DPP will consider proportionality on a range of factors:

“For most cases, it would be serious [crime] as there is obviously a proportionality threshold...The first consideration is evidence, whether it meets the threshold, and then we would look at proportionality...the seriousness of the offence itself, whether there is a victim, the impact on the victim, is it part of a greater scheme of offending, what is the seriousness in terms of the impact on society.” (National authority, Ireland)

In general, therefore, an EAW would only be issued in Ireland for serious crimes, but some less serious crimes might be considered if they seemed to be part of a wider scheme of offending:

“In some cases, we can’t look at the effects in isolation. If you take, for example, a credit card fraud case, that might seem quite minor on its own, but there might be a background which shows that it’s part of a greater scheme of offending which is detrimental to the interests of society, and also to the European public, if we have forum shopping for credit card offences.” (National authority, Ireland)

Finally, the warrant is brought to the High Court, which is the issuing authority. Several interviewees concurred that the High Court would not hesitate to request further information from the DPP, nor to refuse to issue a warrant, where they felt proportionality or other factors did not justify it. For example, one interviewee mentioned two examples where the High Court has declined to issue the warrant, on the basis that they had been in respect of crimes that were committed when the person requested was underage at the time, and for non-violent offences.

- Challenging the issue of a warrant

“There is no set procedure but, yes, I think in Ireland, everything is capable of challenge.” (National authority, Ireland)

All interviewees concurred with the above statement that there is no set procedure in Ireland for challenging the issue of a warrant. Several, however, felt that it would be possible, should the need arise, but were not clear as to how it would be accomplished. The warrants are anonymous at the issuing stage, so the person requested would not be aware of it at the time. Then, the issuing authority is the High Court, and that is also the first court of appeal, so you would effectively be asking the High Court to consider a challenge to a ruling that a High Court judge has made.

- Factors considered when executing the EAW

Proportionality

“My concern in relation to EAWs consistently is that we do function under a trust based system, and whilst we have a double or a triple stop system in Ireland, where the warrant has to come through An Garda Síochána, and then go through the DPP [Director of Public Prosecutions]..and then go through the courts, that doesn’t exist elsewhere, and it always concerns me when there is not that level of protection.” (Lawyer, Ireland)

Many interviewees pointed out that it is very clear, in Irish case law, CJEU jurisprudence, and according to the EAW Handbook, that proportionality is not a matter for the executing State, in line with the principle of mutual recognition. However, the lack of proportionality from certain Member States was a source of frustration and concern for many interviewees.

“Certain countries seem to have a system whereby...the EAW is triggered automatically...a country will look for someone back, even where they don’t really want that person back. And your client will be extradited, go back to serve a two-year sentence, and six weeks later, they will be released. Because it was just, effectively, an administrative decision. It seems to me that the Irish authorities are much slower to issue European Arrest Warrants. They will only do so if they really want the person back. ...You see a lot of cases [other countries] which are for very minor offences, which are borderline on minimum gravity, and you’re wondering, what is the point of looking for these people back?” (Lawyer, Ireland)

The EAW Handbook does allow that, should serious concerns on the proportionality of the received EAW arise in the executing Member State, the issuing and executing judicial authorities may enter into direct communication to find a solution, for example withdrawing the EAW and using other measures provided under national law or European Union law. While there is no fixed procedure for doing so, several interviewees were aware of cases where the Irish national authorities had done this:

“Sometimes what [the Court] has done is to write to [the issuing State] and say, here are the circumstances, and just to confirm, you do want this person back? Do you really want this, this is a matter going back 20 years? And the answer is inevitably, yes.” (National authority, Ireland)

“In a recent case where I was [acting] for the respondent, the person had spent quite a bit of time in custody here and was wanted for a short enough sentence. And so, it actually looked like by the time surrender would be effected, they would only have a couple of weeks left...The Court did, at our request, send a request to the issuing State saying “Look, are you sure you want to maintain these proceedings?” and they came back and said: “Yeah we do”. And so, there was nothing that could be done.” (Lawyer, Ireland)

Another lawyer described a similar case, where the judge had questioned as to whether the issuing State really wanted a person on a very minor matter:

“In the end, he consented to the surrender...and he has probably already been released. [There are] glaring problems with warrants that meet the statutory minimum gravity threshold but are manifestly disproportionate... it’s a great waste of resources, and it can give rise to some of the greatest injustices that you can see in the Criminal Courts building, in my view.” (Lawyer, Ireland)

Nor did there seem to be any clear alternative measures to propose. As one interviewee put it, alternative measures should properly be discussed before an EAW is issued, not after:

“Once the nuclear button has been pressed by issuing an EAW...there is no real vehicle for [alternative measures].” (Lawyer, Ireland)

Serving a sentence in the executing State is sometimes raised by issuing State lawyers, according to the same interviewee, but this is not yet possible in Ireland. However, earlier this year, the CJEU found that Ireland is currently in breach of its obligation to implement Framework Directive 2008/909/JHA⁵¹ on mutual recognition with regard to custodial sentences.⁵² The Supreme Court is currently examining an EAW case (*Minister for Justice vs Kairys*) where the person requested is challenging the fact that there is no legal mechanism whereby he could seek to serve his sentence here in Ireland.⁵³ In cases where proportionality is a major concern, implementation of this Framework Directive may make a difference.

“For someone who has been living a very good life, in no trouble at all, with children who’ve grown up through primary and secondary school, in [a small rural town in Ireland] to take an actual example, and they are wanted for an old offence, minor really in all respects, to be sent forcibly on a military plane to Poland, it would be better if they were able to just transfer that sentence to Ireland, if there is no other way of effecting proportionality...Because the disproportionality really is wrenching them from their family and community in Ireland, because they’re Irish really, at that stage.” (Lawyer, Ireland)

One national authority also supported the introduction of mutual recognition of sentences:

“Mutual recognition of [custodial] sentences might be an improvement in both ways in the interests of rule of law, prosecution of crime and proportionality and rehabilitation. It might make people more likely to surrender voluntarily if they believe they can serve a sentence in their own country. But it would be administratively difficult and would require a lot of resources.” (National authority, Ireland)

Conditions of detention

Interviewees indicated that the Court considers conditions of detention quite regularly while executing warrants:

“This crops up quite a bit, and is something that the Court takes very seriously, and make every effort to...deal with any real risks or concerns that they see that have been raised by the respondents ...even when, sometimes, that impacts the timelines.” (National authority, Ireland)

Surrender has been refused on that basis on a number of occasions, in the *Angel* case in 2020, for example.⁵⁴

⁵¹ Council framework decision [2008/909/JHA](#) of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union, OJ L 327.

⁵² Court of Justice of the European Union, [Case C-125/21](#), European Commission vs Ireland, 24 March 2022, ECLI:EU:C:2022:213.

⁵³ Supreme Court of Ireland, [\[2022\] IESCDET 75](#), Minister for Justice and Equality v Kairys, 14 June 2022, S:AP:IE:2022:000019.

⁵⁴ High Court of Ireland, [\[2020\] IEHC 699](#), Minister for Justice and Equality vs Pitulan Angel, 15 December 2020.

In general, the Court will only consider conditions of detention if it is raised by the lawyer for the person requested. However, one national authority pointed out that there is also a duty for the judge to satisfy themselves that the conditions of detention are adequate. Therefore, if they have reason to believe that there is a risk (in a particular country, for example), they will consider the matter even if it is not raised by the legal team.

Similarly, the judges usually rely on the submissions put forward by the lawyers for the person requested on the one hand and the State on the other hand for information about conditions of detention for that particular case. These might include Committee for Prevention of Torture reports and other UN or watchdog reports, responses and assurances from the issuing State, and statements from experts in the issuing State. None of the interviewees had heard of the FRA database⁵⁵ on conditions of detention, but several were happy to receive it (especially since it seems to have been updated in recent weeks and therefore is considerably more useful).

Rights to a fair trial (rule of law)

Interviewees confirmed that this is an issue that the High Court will consider, but since there is currently an outstanding case referred by Ireland to the CJEU on this matter, as mentioned above, most were understandably reluctant to discuss it in detail.

Individual situation/right to family life

As one interviewee put it:

“The Court is very generous in Ireland in terms of ensuring that all those things are aired...The Court obviously also has to have regard to the case law... [in terms of] ...where the threshold lies...but there are cases where postponement is granted.” (National authority, Ireland)

This was echoed by many of the interviewees. Postponement might be granted for a variety of reasons. For example, if someone, or their partner, is getting medical treatment; or where they are the sole carer for a person with a disability; or where the person’s partner is pregnant. In this case, the Court would make the surrender order, but then the person would appear in Court again after the agreement period of postponement, to review whether the circumstances now permit the possibility of surrender.

It is much more rare for the Court to refuse surrender altogether on humanitarian grounds, but it has happened. For example, in J.A.T. No 2, the Supreme Court refused surrender due to an accumulation of factors, including delays in process and lack of explanation for the delays, and the medical condition of both the person requested and his son.⁵⁶ Generally speaking, these submissions are argued under Article 8 of the European Convention on Human Rights (Right to private and family life) and one interviewee indicated that this is one instance where proportionality might be considered, in balancing the seriousness of the offence against the impact which it might have on the person’s right to family life, for example.

⁵⁵ European Union Agency for Fundamental Rights, [Criminal Detention Database 2015-2022](#).

⁵⁶ Supreme Court of Ireland, [\[2016\] IESC 17](#), Minister for Justice and Equality vs J.A.T. no 2, 28 April 2016.

Trial in absentia

One of the most frequently cited concerns which interviewees indicated that the High Court will examine is around trials *in absentia*, and many felt that it was one of the most difficult areas to examine. There is a section in the EAW template, which is supposed to address this, but many interviewees felt that it was insufficient.

“Well, we have the table [Point (d) on the European Arrest Warrant] which is supposed to be of assistance, and it is, I suppose, compared to what had gone before. But unless it’s section 3.4 that’s ticked, which is the right to a retrial, it’s a minefield, an absolute minefield, in trying to figure out what actually happened in the domestic jurisdiction.” (National authority, Ireland)

Several interviewees mentioned the “InAbsentieAW” project,⁵⁷ in which Ireland is participating, which has made suggestions for reforming the table, and has produced a handbook⁵⁸ for filling in Table D. One interviewee felt that a narrative form would be more useful:

“Often the... [issuing judicial authorities] don’t provide sufficient information, particularly in cases decided in absentia. ... I think it would be much more helpful if Table D [of the EAW on in absentia proceedings] was redrafted to specifically include, ‘Please state in a narrative form how the defendant’s rights were protected and respected’...because often, Table D just doesn’t give enough information.” (National authority, Ireland)

Part of the difficulty, as one interviewee saw it, was that since Ireland does not permit trials in absentia in the vast majority of cases, Irish lawyers are not very knowledgeable about them.

Another felt that the CJEU ruling in *Ardic* was problematic.⁵⁹ The CJEU ruled in *Ardic* that hearings around revoking a suspended sentence and imposing a custodial sentence were not ‘a trial resulting in a decision’ where in absentia proceedings could be challenged:

“There remains a problem because of the judgment in Ardic in the CJEU, where a sentence [which had been suspended] crashes on someone, and they weren’t there, and they didn’t know about it, and it’s a really minor breach of the suspended sentence. That does give rise to some great injustices.” (Lawyer, Ireland)

c. Additional best practices or challenges

“There’s quite open communication in the courtroom, the type of communication that you wouldn’t ordinarily have. It is less formal than it has to be in those circumstances. ...There’s a lot more freedom of association between the parties and the respondents themselves...So there’s much more communication in the Court [with the person requested] ...than you’d ordinarily have in a normal list [meaning in other types of cases before the High Court].” (National authority, Ireland)

⁵⁷ The [InAbsentieAW](#) research project is a comparative legal study into EAW relating to persons who were not present in the proceedings leading to their conviction (in absentia proceedings).

⁵⁸ InAbsentieAW (2020), [Manual for Filling in and Assessing Section \(d\) of the EAW. Improving Mutual Recognition of European Arrest Warrants for the Purpose of Executing in Absentia Judgments](#), Maastricht.

⁵⁹ Court of Justice of the European Union, [C-571/17 PPU](#), *Samet Ardic*, 22 December 2017, ECLI:EU:C:2017:1026.

Both lawyers and national authorities echoed the statement above, in that all parties to the EAW proceedings worked well together and felt a duty to ensure the procedural rights of the person requested, irrespective of whether they were working for that person, the State or the judge themselves.

In terms of challenges, several interviewees mentioned the challenge of meeting the strict timelines for executing of EAWs. After the person's first appearance in the High Court, a date to hear surrender proceedings must be set for within 21 days.⁶⁰ If the person does not consent to surrender, the High Court has initially 60 days from the date of arrest to make a decision whether or not to order surrender. If, at the end of that period, it has not yet made an order, it must inform the issuing authority, and then again after another 30 days.⁶¹

Where the person has consented to surrender, the High Court must make an order for surrender. This order should not take effect (i.e. the person should not be returned) until 10 days after the order is made, and not later than 10 days after that first period, or at a later date if agreed between the issuing State and the Central Authority.⁶²

Infringement proceedings have been taken against Ireland with regard to the non-respect of the mandatory time limits for execution of EAWs, among other things,⁶³ and an amendment to address these issues is currently before the Oireachtas [Irish parliament].⁶⁴ However, at least two interviewees pointed out that too great a focus on the timelines would have a detrimental effect on the procedural rights of the person requested:

"It is quite challenging to meet the timelines [for executing an EAW] ...It is difficult to balance that with fairness to the [person requested] and often, that's where the extra time is spent, is in being more fair to the respondent." (National authority, Ireland)

"There is a real danger, if we rush things too much, that injustices will result. It will obviously suit the applicant and the State, but it won't suit the respondent." (Lawyer, Ireland)

d. Discussion of findings

Interviewees believe that proportionality is properly exercised with regard to issuing EAWs from Ireland, but that a lack of proportionality from some other issuing Member States is a major concern.

The High Court in Ireland will hear arguments on any factors which might by law delay or result in a refusal to surrender, although the threshold to succeed in such arguments is set high, in accordance with Irish and CJEU case law.

⁶⁰ Ireland, Department of Justice, Equality and Law Reform (2006), [The European Arrest Warrant. A Guide to Irish Procedures](#), Dublin.

⁶¹ Ireland, Department of Justice, Equality and Law Reform (2006), [The European Arrest Warrant. A Guide to Irish Procedures](#), Dublin.

⁶² Ireland, [European Arrest Warrant Act, 2003](#) (Act 45 of 2003), Section 15.

⁶³ European Commission (2020), [October infringements package: Key decisions](#), 30 October 2020, Part 5 Justice: "European Arrest Warrant: Commission calls Ireland to comply with the mandatory time limits".

⁶⁴ Ireland, Houses of the Oireachtas [Parliament], [European Arrest Warrant \(Amendment\) Bill, 2022](#) (Bill 30 of 2022).

5. Use of digital and technological tools in EAW proceedings

a. Legal overview

There does not appear to be much mention of digital and technological tools in national legislation in Ireland. The Civil Law and Criminal Law Act, ⁶⁵ enacted in 2020 as a response to the COVID-19 pandemic, is still in effect. This allowed for many Court hearings to be held online during the COVID-19 pandemic. However, EAW hearings were one of the exceptions, where all but the most minor matters were to be held in person. Section 24 of the 2020 law states the following must be heard in person: a requested person's first appearance in court following arrest, any hearing with regard to making a surrender where the person does not consent, or any hearing where the person is being remanded in custody. Other related matters (for example, applications for bail or for postponement of hearings) may be heard by videolink, 'where the interests for justice do not require the presence of the relevant person at the hearing' (section 24, 3(b)).⁶⁶ An application to be heard in person can be made to the court by any party to the hearing, and while the court can refuse such a request, it must state its reasons for such refusal.⁶⁷

Another recent development in terms of digital tools concerns the Schengen Information System, to which Ireland gained full access in March 2021. This has resulted in an increase in the number of EAW-related arrests made in Ireland, 52 in the six months from March to September 2021.⁶⁸ This compares to 74 European Arrest Warrant arrests for the 12 months of 2019 (latest figures available).⁶⁹

Table 7: Use of technological tools (in law)

National laws providing for:

National laws providing for:	Conducting EAW hearings (when an executing state)	Facilitating the provision of interpretation	Remote examination of witnesses or the person arrested (when an issuing state).	Communication with involved foreign authorities (both executing – issuing states).	Facilitating transmission of documents (issuing - executing)	Facilitating access to a lawyer in the issuing Member State (when	Facilitating access to a lawyer in the executing Member State

⁶⁵ Ireland, Houses of the Oireachtas [Parliament], [Civil Law and Criminal Law \(Miscellaneous Provisions\) Act, 2020](#) (Act 13 of 2020).

⁶⁶ Ireland, Houses of the Oireachtas [Parliament], [Civil Law and Criminal Law \(Miscellaneous Provisions\) Act, 2020](#) (Act 13 of 2020).

⁶⁷ Ireland, Houses of the Oireachtas [Parliament], [Civil Law and Criminal Law \(Miscellaneous Provisions\) Act, 2020](#) (Act 13 of 2020).

⁶⁸ Ireland, Department of Justice (2021), [Minister Humphreys and Garda Commissioner Harris mark six months of Ireland's connection to Schengen Information System \(SIS II\)](#), Press Release, 16 September 2021.

⁶⁹ Ireland, Department of Justice and Equality (2021), [Report On the operation of the European Arrest Warrant Act 2003 \(as amended\) for the year 2019 made to the Houses of the Oireachtas by the Central Authority in the person of the Minister for Justice and Equality pursuant to section 6\(6\) of the European Arrest Warrant Act 2003](#), Dublin.

						an executin g state)	(when an issuing state)
Country	YES/NO	YES/NO	YES/NO	YES/NO	YES/NO	YES/NO	YES/NO
Ireland	NO ⁷⁰	NO ⁷¹	NO	NO ⁷²	NO ⁷³	NO ⁷⁴	NO ⁷⁵
TOTAL							

b. Interview findings

As discussed above, **the most frequently cited digital tool is the Schengen Information System**. In the view of several interviewees, this has led to challenges which affect the right to information of the person requested and even potentially their right to liberty (since, with so little information, it is difficult to know whether the person meets the conditions for bail). Interviewees suggested various ways to improve the system (linking to the full warrant in the system) or at a minimum, indicating whether the warrant concerns a prosecution or a conviction case (since the latter represents more of a flight risk, and is less likely to be granted bail).

Interviewees pointed out that, while the majority of courts went online during the pandemic, the EAWs cases were heard in person for all substantive hearings, as per the law cited above. Interviewees said that they could not say why this was, as this was a decision for the Minister of Justice, but some speculated that it was from an abundance of caution, since this is an EU wide process, and the Directive does not make any reference to remote hearings. However, one interviewee also pointed out that perhaps that was more of an element of uncertainty for defendants from other jurisdictions, that they might have less trust in an unfamiliar system which they only saw on screen.

Two lawyers mentioned that they had not been comfortable with attending court in-person during the pandemic, either for themselves or for their clients:

“The court was full, and everybody was there... It was not something that I was particularly happy to deal with, and it was not something that we were happy to bring our current client into, as he has some health issues, but it was required, and so we did it.” (Lawyer, Ireland)

Bail hearings relating to EAW proceedings, however, continue to be held online, and one national authority highlighted that this was more efficient for the Court and for the person requested in terms of bringing someone in from custody. One lawyer commented that having the interpreter in person in Court interpreting for the person in custody on videolink wasn’t ideal, however.

⁷⁰ Except for mention, bail hearings, etc.

⁷¹ Mention made of interpreters can be used by phone in Garda legislation.

⁷² Not in legislation, but in practice by email.

⁷³ Not in legislation, but in practice by email.

⁷⁴ Not in legislation, since there is no right to dual representation.

⁷⁵ Not in legislation, since there is no right to dual representation.

Table 8: Use of digital tools, interview findings.⁷⁶

Interviewees per Country	Conducting EAW hearings (when an executing state) ⁷⁷	Facilitating the provision of interpretation ⁷⁸	Remote examination of witnesses or the person arrested (when an issuing state)	Communication with involved foreign authorities (both executing – issuing states).	Facilitating transmission of documents (issuing - executing)	Facilitating access to a lawyer in the issuing Member State (when an executing state)	Facilitating access to a lawyer in the executing Member State (when an issuing state)
L/1	N/A	NO	YES ⁷⁹	N/A	N/A	YES	N/A
L/2	NO	NO	NO	N/A	YES	N/A	N/A
L/3	NO	YES	YES ⁸⁰	N/A	N/A	YES	N/A
L/4	NO	NO	N/A	N/A	YES	YES	N/A
J/1	NO	NO	NO	NO	YES	NO	NO
J/2	NO	NO	NO	NO	Yes	N/A	N/A
J/3	N/A	N/A	N/A	N/A	Yes	N/A	N/A
J/4	NO	NO	N/A	N/A	Yes	N/a	N/A
TOTAL							

c. Discussion of findings

Interviewees in general were not particularly enthusiastic about nor interested in digital tools in EAW proceedings, although several lawyers would have preferred to have online proceedings for EAW cases during the pandemic.

⁷⁶ “N/A” in this table means that the interviewee did not comment on this point, as it was not part of the initial interview script.

⁷⁷ Some interviewees indicated that substantive hearings cannot be held online; however, minor matters such as bail applications may be heard online (highlighted in grey).

⁷⁸ When interpretation at Garda stations is not physically possible due to the distance, it must be provided by phone.

⁷⁹ Access in the limited sense that the lawyer and the client had had video calls with the client’s lawyer in the issuing state.

⁸⁰ Access in the limited sense that the lawyer and the client had had video calls with the client’s lawyer in the issuing state.

CONCLUSION

“I think we do have a very efficient system, and it’s certainly a very fair system, and there’s a lot of working together.” (National authority, Ireland)

In general, interviewees felt that the safeguards for persons requested under EAWs in Ireland were strong, both in law and in practice. They did, however, highlight a number of difficulties in the system in Ireland, in the EU system, and in other Member States.

Difficulties **arising in the Irish system** included the quality of interpretation, with many interviewees suggesting that standards and training urgently need to be put in place by Irish authorities. Another difficulty was in obtaining consultations for persons in custody for EAW proceedings, with one lawyer suggesting that priority should be given to EAW cases, given the nature and timelines of the proceedings.

Difficulties with the EU system included the Schengen Information System, which does not give sufficient information at time of arrest to properly inform the person requested or their application for bail. Two interviewees suggested that the warrant should be attached to the alert in some form, and another suggested that, at a minimum, it should be stated whether it related to an investigation or a conviction to better inform bail proceedings. Secondly, interviewees expressed concerns in balancing strict timelines for EAW proceedings against the rights of the person requested. In order to fully guarantee the person’s rights with regard to providing translations, proper consultations with lawyers, and hearing all arguments which might lead to a refusal to surrender, adequate time was essential.

Finally, many interviewees expressed concern with a lack of proportionality in EAWs **issuing from certain Member States**. Specific measures to tackle this were not suggested, but interviewees were frustrated by it, finding it often led to serious injustices for the person requested.