



## Briefing #2

# The European Arrest Warrant

*Briefing prepared by James Marsh*

---

On 17 August, an Italian court granted Britain's request for the alleged Shepherd's Bush bomber, Osman Hussain, to be extradited back to this country under a European Arrest Warrant (EAW). Following the rejection of his final appeal against extradition, Hussain will now be returned to Britain by 23 September. The case is the most high-profile use of the EAW since its introduction in 2004.

### ***What is the EAW for?***

Its purpose is to replace the previously lengthy extradition procedures applicable between EU countries with a more efficient and less bureaucratic system. The EAW may be used against suspected criminals who have absconded abroad, or for people already convicted of a serious crime who have fled the country, in order to forcibly transfer them from one Member State to another. The country to which they are returned may then prosecute the suspect, or, in the case of those who have been convicted in absentia, execute a standing custodial sentence or detention order.

For the first time, under the EAW, other countries will not be able to refuse to surrender a fugitive simply because there are one of their own nationals. Previously, Austria, Denmark, France, Germany, Greece and Luxembourg would not extradite their own nationals under any circumstances whilst Belgium, Finland, the Netherlands, Portugal, the Republic of Ireland and Sweden all attached conditions to doing so.

The EAW is based on the principle of mutual recognition of judicial decisions. This means that a decision by an EU member state to require the arrest and return of a person should be recognised and executed as quickly and as easily as possible in another member

state. Its effectiveness relies on all EU member states trusting each other's judicial systems.

***Where did the idea for an EAW originate?***

The need to speed up extradition procedures within the EU was first recognised at the European Council meeting in Tampere, Finland, in 1999, where a number of EU-wide initiatives were agreed in the field of Justice and Home Affairs. At this seminal meeting, the governments of all 15 EU countries (now 25) took a decision to improve judicial co-operation within the EU to ensure criminals are not able to escape justice simply by fleeing to another EU country.

After the 11 September terrorist attacks, the European Commission – which shares the right to initiate EU laws in the field of justice and home affairs with Member States – proposed the idea of an actual EU wide arrest warrant on 19 September 2001. A political agreement between EU governments was reached on 11 December 2001, and a formal decision to implement the EAW was made in June 2002.

(Council Framework Decision 2002/584/JHA).

***When was it introduced?***

The official deadline to introduce legislation to bring the EAW into force was 1 January 2004, although Italy only adopted its domestic implementing legislation on 14 May 2005.

The EAW was put on the UK statute books as part of the Extradition Act 2003.

***When can it be used?***

A national court may issue an EAW if the person whose return is sought is accused of an offence for which the penalty is at least over a year in prison or if he or she has been sentenced to a prison term of at least four months.

If they are punishable in the issuing Member State by a custodial sentence of at least three years, the following offences, among others, may give rise to extradition without verification of the double criminality of the act (the principle in which the crime has to be a crime both in the requesting and the requested state): terrorism, trafficking in human beings, corruption, participation in a criminal organisation, counterfeiting currency, murder, racism and xenophobia, rape, trafficking in stolen vehicles, fraud including that affecting the financial interests of the EU.

For criminal acts other than those mentioned above, extradition may be subject to the condition that the act for which the individual's

return is requested constitutes an offence under the law of the executing Member State.

### ***How does it work in practice?***

The country seeking extradition can send an EAW electronically to the authorities of the other EU country concerned. Local police may then make an arrest immediately on the basis of this request.

After the warrant has been implemented, the suspect must then appear before a judge within 48 hours.

The warrant requires the country in receipt to hand over the suspect within a maximum of 90 days unless he or she chooses not to fight extradition, in which case they must be returned within ten. The 35-day delay granted before Mr Osman's extradition is to allow Italian police the opportunity to complete their own investigations into his activities.

### ***How was its introduction greeted in Britain?***

During the passage through parliament of the domestic legislation implementing the EAW into UK law, a number of issues were raised about the viability and potential dangers of the new scheme. Much of these centred around whether British citizens could be guaranteed as high a level of judicial protection when extradited abroad as they enjoy in this country.

A letter jointly signed by the human rights group, Liberty, and the Conservative Party was sent to Downing Street on 6 December 2002. John Wadham, Director of Liberty said of the Bill:

"Speeding up the bureaucracy of the extradition process needn't be a problem - but we need safeguards to ensure you aren't sent to a foreign prison, under foreign laws, without good reason. This Bill, and the EU arrest warrant, seek to cut away those basic protections. Foreign authorities should need to show they have a substantive case against the person to be extradited. We must have adequate protections against improper extradition".

This view was supported by Oliver Letwin MP, the then shadow home secretary, who said:

"The European Arrest Warrant will allow British citizens to be extradited for crimes – some of them vague and undefined – that are not crimes in the UK.

This is a gross infringement of our civil liberties and would lead to our citizens facing trial in other countries, some of whose legal systems operate on the presumption of guilt."

Mr Letwin also included the EAW in a list of measures he believed were “threats to our liberties” in a speech given on 11 April 2003.

These concerns were dismissed by Bob Ainsworth MP, the then Home Office Parliamentary Under-Secretary, who said upon commending the Bill to the house on 25 March 2003:

“The Bill contains extensive safeguards. Why should we allow a person to evade justice simply because he or she has managed to cross a border before being arrested by the police? The Bill is a much-needed reform of our outdated and antiquated extradition laws. It is in the interests of us all, including our international partners, that criminals are not able to string out our extradition proceedings for years on end. The old maxim “justice delayed is justice denied” applies in extradition as it applies in other fields of criminal justice. This Bill will finally enable us to have an extradition system that is capable of coping with a world of free movement and cheap travel.”

***When was it first used?***

In January 2004, Sweden used the EAW to bring about the arrest of Swedish man, wanted for alleged drink-driving and drugs offences, who had absconded to Spain. He was arrested in Alicante after a Spanish magistrate granted a request for the EAW to be used.

***Has an EAW been used in or by the UK?***

The Labour peer, Lord Bassam, gave the following information to a meeting of a Grand Committee of the House of Lords on 19 July 2005:

As of 30 June 2005, 110 people were arrested in the UK on EAWs issued by other member states. In other member states, 58 people were arrested on EAWs issued by the UK. The UK has returned 59 requested persons to other member states, and 42 people have been returned to the UK under the new arrangements and procedures. The average time between arrest and extradition in these cases has been three to four weeks.

In the same meeting, Lord Bassam sought to allay fears that the EAW was being used indiscriminately against UK citizens:

“I point out that our courts are not simply rubber-stamping warrants issued by other member states and surrendering individuals to those states without offering them proper safeguards. To date, eight European arrest warrants have been refused by the courts. The reasons for refusal have varied and include the view that insufficient information was contained in the warrant or that conduct listed in the warrant did not meet the definition of an extradition offence under

the [Extradition] Act [2003]; the passage of time; and reasons of double jeopardy.”

Before the case of Hussain, perhaps the most high-profile use of an EAW by Britain was to secure the extradition from Latvia a suspect wanted for the rape and murder of a schoolgirl. Jeshma Raithatha, 17, was stabbed to death on 16 May, by a footpath near her home in Sudbury Hill, west London. UK authorities first used the EAW to have the man detained in the Latvian capital, Riga, in June. He was then extradited to Britain under the EAW the following month, and has now been charged with both offences.

### ***Is the EAW working?***

Since its introduction a year and a half ago 2,603 warrants have been issued, 653 persons arrested, and 104 people extradited, according to a Commission report. The return of nationals, a major innovation under the EAW, is now a fact, though most Member States have chosen to apply the condition that in the case of their nationals the sentence should be executed on their territory.

Since the Framework Decision came into operation, the average time taken to execute a warrant is provisionally estimated to have fallen from more than nine months to 43 days. This does not include these frequent cases where the person consents to extradition, for which the average time taken is 13 days.

The improvements due to the arrest warrant also benefit the persons concerned, who in practice now consent to their return in more than half the cases reported. The EAW is also more precise than previous provisions, as regards, for instance, the double jeopardy rule (whereby someone may not be prosecuted twice for the same offence), the right to the assistance of a lawyer, and the right to the deduction from the term of the sentence of the period of detention served.

---