

INTRODUCTION

We, Europeans, are participants in the shaping of Europe as a political, cultural and constitutional community, a common home in a messy world. We, lawyers, are responsible for channelling this process and for guarding balance. The balance we have to guard is between the three identities of every European citizen: his or her European, national and individual identity. For our European identity to bloom, it is necessary that our national and individual identities also bloom.

The European Arrest Warrant is pre-eminently a project where the channelling of this process and the guarding of the three identities are essential. Under a common system, nations have to arrest and extradite individuals at the request of judicial authorities of other nations throughout the European Union, in order to make Europe an area of security and justice. For this goal to be achieved, and for this extradition system to operate correctly and smoothly, it is essential that individual human rights as well as national peculiarities are respected, not only in theory but also in practice. We can only be proud of our system if neither individual rights nor national sensitivities are crushed by it. Awareness of what unites, together with knowledge of and respect for differences, are prerequisites for a fruitful co-operation.

This book aims to be a tool in the hands of everyone involved in the task of achieving this.

T.M.C. Asser Press, the publishing house of the T.M.C. Asser Institute, in The Hague, published the *Handbook on the European Arrest Warrant* in 2005, with Judge Rob Blekxtoon as its Editor-in-Chief. That Handbook has served as a valuable source for the legislatures that had to implement the European Arrest Warrant Framework Decision of 13 June 2002.

In the meantime, the now 27 Member States of the European Union all apply the European Arrest Warrant. Various practical problems, both major and minor, were experienced in its first years, and these needed to be solved. It is important that those first experiences and solutions become available on a European Union-wide basis. For this reason we are now presenting this new book so that all practitioners can share those first experiences and solutions.

As editors we feel very fortunate to have found this impressive team of authors willing to contribute. Without negating their nationalities, the authors describe different aspects of the system from a European point of view. Instead of country reports, their chapters are integrated subject reports, each dealing with one or more practical elements of the system which are in any way problematic. This seems to be in accordance with the spirit of the new Europe, which is more than the mere sum of its Member States.

The reader will find the various elements of the EAW procedure described in a more or less chronological sequence, starting with the content of a European Arrest Warrant and continuing with, *inter alia*, the defences that are mentioned in the Framework Decision, and some that are not, such as disproportionality and hardship. The legal consequences of extradition are dealt with in the chapter on the specialty rule. Some chapters discuss related subjects: surrender of property, alternatives to the EAW procedure, and prisoner transfer. The book's interest does not stop at the frontiers of the European Union: two chapters inform us of other regional extradition systems, the one of the Nordic countries and the one of the United States. Although not directly relevant for EAW practice, these chapters serve as instructive mirrors which enable us to better understand our own system.

The authors are each responsible for their own chapter(s). They have not been asked to endorse the contents of the book as a whole. Some authors seem to embrace the mutual recognition of criminal judgments as a cornerstone of the EAW system, others hold the view that this idea runs counter to the responsibility that each Member State has for the protection of the rights of any individual within its jurisdiction, the rights contained in Articles 5 and 7 of the European Convention on Human Rights in particular. The book as a whole does not take a position on this fundamental issue; instead it concentrates on the practical aspects of the EAW system.

Although each chapter deals with a special aspect of the EAW system, it is not surprising that some issues are touched upon by more than one author. The human rights exception is a notable example. This is primarily dealt with in Chapter 9 by *Mackarel*, but it also appears in Chapters 3 and 17 by *Łazowski & Nash* and by *Jones* respectively.

The reader will notice some variance in the terminology used. Some authors use the term 'dual criminality' where others write 'double criminality'; the meaning is the same. Some authors use the vocabulary of the Framework Decision and for instance write 'executing State'; others stick to the more traditional expression 'requested State'. Again, the intended meaning is the same.

The texts have generally been finalised in March 2008. Incidentally, however, some case law of a later date has been taken in account.

Most authors have made recommendations in their chapters for the improvement of the EAW system. A summary of the most important recommendations may be found in the Epilogue.

For enhanced accessibility, the book starts with a brief summary of the contents of all chapters.