



## Gerard Batten MEP

*With contributions from Torquil Dick-Erikson and Fabian Olins*

### *The European Arrest Warrant*

The British government passed the European Arrest Warrant into law on 1st January 2005. The EAW replaced the existing arrangements between European Union member states. The EAW was another important step in the dismantling of British freedoms and liberties by successive British Governments.

#### **The safeguards in place prior to 1989.**

Prior to 1989, when another European Union country wished to extradite a British subject to face charges in that country three vital rules had to be applied in the UK to protect British citizens from injustice. These were:

1. The accuser had to demonstrate that there was a proper case to answer.
2. The criminality alleged abroad had to be recognised as such in UK. British subjects could not be extradited to face charges in a foreign country for something that was not a criminal act in the UK.
3. The Home Secretary had to be satisfied that the accuser would have a fair trial in the country requesting the extradition under a proper system of law.

These provisions were seriously undermined by the Conservative Government with the Extradition Act of 1989 which implemented the UK's obligations under the European Convention on Extradition. Centuries-old safeguards were removed; for example, European states requesting extradition of a British subject no longer had to provide prima facie evidence of the alleged offence, some limited discretion was retained by the Home Secretary, i.e. if he judged the request to be 'oppressive or unjust' but even that remaining safeguard was swept away under the provision of the new European Arrest Warrant agreed by the European Union at a conference in Tampere, Finland in October 1999.

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## How does the European Arrest Warrant work?

The following rules apply.

- Any person in any EU member country (not protected by immunity) may be subject to an EU arrest warrant.
- A court official in any EU member state may issue an arrest warrant to the courts within the member state in which the accused person happens to be, and the warrant must be executed within one month.
- The warrant does not have to provide prima facie evidence of the crime concerned but merely has to claim that the suspected person is required for investigation for any one of the 32 named categories of offences covered by the warrant.
- The warrant does not need to detail the substance of the case against the accused.
- There is no need for a hearing in an English or Scottish court to test even the prima facie evidence of the case.
- All that is required is that the extraditing magistrate should tick one of the 32 alleged offences and state time of offence, degree of participation, and other details.
- The warrant can also require the "confiscation and handing over of property that may be required as evidence", and, "the seizure and handing over of property acquired by the requested person as a result of the offence, if known".

- Provided that the correct information has been filled in and the relevant boxes have been ticked on the extradition form, then the British legal authorities will be obliged to hand over the accused person for extradition.
- The British Home Secretary may appoint "appropriate persons" to execute the arrest warrant. In the future these might possibly be members of Europol, the new European police force. Europol members have immunity from prosecution for, "words spoken or written, and acts performed by them in the exercise of their official functions". They are above prosecution for anything they might say or do. These are privileges not enjoyed by the NKVD or KGB in the Soviet Union at the height of Stalin's terror and the repressions of subsequent regimes. Europol will effectively be above the law.

## What happens next?

Once arrested the accused person will be sent to the country that issued the arrest warrant and will be subject to the judicial procedures of that country. The full details of how the accused person will be treated in each EU country are unknown by anyone in Britain. However, no member of the European Union has Habeas Corpus or trial by Jury in the same form as the UK and Ireland.

## What are the 32 named 'offences' on the European Arrest Warrant?

They are:

1. Participating in a criminal organisation.
2. Terrorism.

3. Trafficking in human beings.
4. The sexual exploitation of children and child pornography.
5. Illicit trafficking in narcotic drugs and psychotropic substances.
6. Illicit trafficking in weapons, munitions and explosives.
7. Corruption.
8. Fraud (including against the European Union's financial interests).
9. Laundering of the proceeds of crime.
10. Counterfeiting currency, including the euro.
11. Computer related crime.
12. Environmental crime.
13. Facilitation of unauthorised entry and residence.
14. Murder, grievous bodily harm.
15. Illicit trade in human organs and tissue.
16. Kidnapping, illegal restraint and hostage taking.
17. Racism and xenophobia.
18. Organised armed robbery.
19. Illicit trafficking in cultural goods, including antiques and works of art.
20. Swindling.
21. Racketeering and extortion.
22. Counterfeiting and piracy of products.
23. Forgery of administrative documents and trafficking therein.
24. Forgery of means of payment.
25. Illicit trafficking in hormonal substances and other growth promoters.
26. Illicit trafficking of nuclear or radioactive materials.
27. Trafficking in stolen vehicles.
28. Rape.
29. Arson.
30. Crimes within the jurisdiction of the International Criminal Tribunal.
31. Unlawful seizure of aircraft/ships.
32. Sabotage.

## **Do these crimes pose any problems under English and Scottish law?**

Some offences such as murder, robbery, arson and kidnapping are obviously understood as offences in any country but many of the 32 crimes listed above do not correspond to defined offences under UK law. UK definitions for all of the 32 offences have not yet been established. For example, the offence of 'swindling' is not a crime in the UK. In British usage the word defines a general description of a disreputable activity but lacks the precision necessary for a definition of a criminal offence. Some people may reasonably hold the view that many British politicians sitting in both Houses of Parliament are 'corrupt swindlers', but producing evidence of criminal acts is another matter.

Consider also "racism" and "xenophobia". Britain has laws that prohibit specific manifestations of racism, e.g. incitement to racial hatred or violence; but is that the same as racism and xenophobia? Xenophobia has no legal definition in English law; a specific offence would have to be defined. In fact one definition of xenophobia is a morbid fear of foreigners, and therefore is a symptom of mental aberration. It would then seem that under the European Arrest Warrant someone could be arrested, extradited and tried on the basis of displaying the symptom of a mental disorder.

In effect it does not matter if the offence is real or not because it will only be for the country requiring extradition to decide whether it is appropriate to put someone on trial for these alleged offences. The UK legal authorities will not have the power to stop extradition provided that the extradition form has been correctly filled in.

## **Are there grounds for being concerned about the potential misuse of the arrest warrant?**

Obviously there are. There are a number of practical concerns. Continental European legal systems often lack the clear distinction between the investigation and prosecution of crime. A judicial figure, the investigating magistrate, has charge of the investigation. He may also be the person who issues the arrest warrant as part of the investigation, and the person who interrogates, or causes to be interrogated, the accused person. He may also be responsible for deciding how long the accused is held in custody awaiting trial. It is well known that many of those accused of crimes on the continent are held in detention for considerable periods of time before any charges are laid.

The biggest cause for concern is that when the EU has developed into a political state with a centralized government, as it intends to do, the EAW could be used as an instrument of oppression against dissidents. The combination of police immunity from the law and the power to arrest and hold suspects at will are key requirements in any dictatorship. These two requirements have clearly been put in place with the creation of Europol and the European Arrest Warrant.

## **Was there widespread concern at the introduction of the EAW?**

Yes there was. The arrest warrant was subject to strong criticism by UK human rights groups, the UK legal profession, and by other EU countries. The UK Independence Party opposed its introduction and its MEPs voted against it in the European Parliament.

## **What are the EU's intentions?**

Also proposed at the Tampere conference was the introduction of a 'European Penal Code' (Corpus Juris) to apply in all member states. Key to this is the EAW which would be supported by a European Public Prosecutor with representatives in all member states.

There is no requirement for trial by jury, or Habeas Corpus whereby an accused person must be brought to trial within a limited, specified time. The EU has created the mechanism for the arrest and imprisonment of British citizens on suspicion alone, their transference across borders, and the ability for them to be held in custody for unspecified times.

The introduction of the European Public Prosecutor was contained in the draft European Constitution which was rejected by the Dutch and French voters in their referenda of 2005. The draft Constitution should now be dead; however the European Union intends to carry on regardless implementing large sections of the Constitution. One such provision to be implemented will be the European Public Prosecutor.

## **What was the British Government's position?**

The EAW was so-called 'European Union legislation' that automatically over-rides English and Scottish law. The EAW was an instruction produced by the European Council. The European Council consists of the Heads of State/Government of EU member nations who meet within the Council at least twice a year. The President of the EU Commission also attends the meetings, as do various foreign ministers. Details of what is discussed in the council are secret and are not published. Prime Minister Tony Blair was party to the

instruction, and the then Home Secretary Mr David Blunkett, signed up to the EAW supposedly committing Britain to it and ignoring a 'Scrutiny Reserve' placed on it by House of Lords that would have given time for debate. Under the British constitution the government is answerable to Parliament and they should not have committed Britain without Parliamentary approval. Parliament still had the power to reject the legislation enforcing the EAW in Britain, but did not do so.

### What was the UK Independence Party's position?

UKIP totally opposed this legislation and demanded that Parliament reject the EAW. UKIP members of the European Parliament voted against this legislation in the European Parliament in protest. UKIP wants the EAW repealed and replaced with extradition safeguards for British citizens such as existed prior to 1989.

### Summary

- The British Labour government unconstitutionally committed

itself to driving the European Arrest Warrant legislation through Parliament without proper debate. Because the EU Justice & Home Affairs Council formally adopted the EAW then Parliament was told to pass it into English law (and likewise Scottish law) or be in contravention of EU Treaty.

- This principle stands the British Constitution on its head. It means that when representatives of the British government agree with their fellows in the EU then Parliament must enact those measures they have decided on even if Parliament is against them. Under our constitution it is Parliament, elected by the people, that ultimately tells the Government what to do, and not the other way around.
- When the EAW became law the the safeguards established centuries ago to protect the ordinary citizen against arbitrary arrest and detention were effectively circumvented.

- The system is open to obvious abuse and manipulation in that it could be used for political purposes. Someone on trumped-up charges could be sent to another part of the European Union and a British magistrate would be powerless to prevent it. The loosely worded provisions of some of the criminal offences listed means that the arrest warrant could in the future be used as an instrument of oppression by the EU against political dissidents.
- The EAW is another example of the British government's commitment to abolish the traditional freedoms and liberties of the British people in favour of rule by the undemocratic institutions of the European Union.

## Help set Britain Free from the European Union

Only by leaving the European Union can Britain re-establish itself as an independent, self-governing, democracy. The UK Independence Party is the only moderate, democratic political party that campaigns for British withdrawal from the European Union.

If you are not already a member of the UK Independence Party then you can request a membership form from the contact details shown below.

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