European Journal of Risk Regulation (2024), 1–20
doi:10.1017/err.2024.3

ARTICLE

Between Aims and Execution: Value Trade-Offs in the Practical Implementation of the European Arrest Warrant?

Bjorn Kleizen[1], Jay Wynen[1,2] and Veronica Junjan[3]

[1]Department of Political Sciences, Research Group Politics & Public Governance, GOVTRUST Centre of Excellence, University of Antwerp, Antwerp, Belgium, [2]Department of Management, University of Antwerp, Antwerp, Belgium and [3]Faculty of Behavioural, Management and Social Sciences, Department of Public Administration, University of Twente, Enschede, The Netherlands

Corresponding author: Bjorn Kleizen; Email: bjorn.kleizen@uantwerpen.be

Abstract

The European Union (EU) increasingly develops and implements policies infused with salient and sometimes conflicting values – for instance, in migration and criminal law cooperation. However, policy implementation studies have not frequently considered how such complex value trade-offs may affect practical implementation within Member States. This article therefore quantitatively and temporally examines the practical implementation of an EU flagship criminal law measure: the simplified extradition system known as the European Arrest Warrant (EAW). Using data on EAWs decided upon by the Dutch Amsterdam District Court, we test the impact of value trade-offs by examining whether (newly introduced) safeguards for the protection of requested persons adversely affect system efficiency (measured through case turnover times). The results suggest that the design of legal tests and adjustments made to the EAW system over time through the Court of Justice of the European Union affect the balance between fundamental rights protection and efficiency in the practical implementation of the EAW.

Keywords: European Arrest Warrant; practical implementation; value trade-offs

I. Introduction

Over recent decades, the European Union (EU) has begun developing and implementing policies with increasingly complex value trade-offs – for instance, in areas such as migration, terrorism, border control and criminal law cooperation.[1] Such value trade-offs introduce significant new practical implementation challenges, as measures taken to uphold one value (eg the protection of migrants or defendants) might adversely affect the other (eg the overall efficiency or deterrence effect of the system).[2] Although legal implementation studies have made substantial advances in examining these trade-offs and safeguarding fundamental rights in value-laden legal systems, we still lack quantitative

[1] P Popelier, G Gentile and E Van Zimmeren, "Bridging the gap between facts and norms: mutual trust, the European Arrest Warrant and the rule of law in an interdisciplinary context" (2021) 27 European Law Journal 167; L Mancano, "A theory of justice? Securing the normative foundations of EU criminal law through an integrated approach to independence" (2022) 27 European Law Journal 477.

[2] PM Collier, "Police performance measurement and human rights" (2001) 21(3) Public Money and Management 35; Mancano, supra, note 1.

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https://doi.org/10.1017/err.2024.3 Published online by Cambridge University Press

assessments that empirically demonstrate to what degree trade-offs occur in practice. Drawing on the Dutch implementation of the European Arrest Warrant (EAW) – a simplified form of extradition introduced post-9/11 aimed at efficient and swift cross-border justice within the EU[3] – this study empirically examines practical implementation in the face of complex trade-offs between two core objectives of the system: efficiency and the legal protection of requested persons. This is done through a quantitative (regression) analysis of the predictors of turnover time in over 1,000 coded EAW cases from the Netherlands.

More specifically, this study focuses on two issues. First, we quantitatively analyse how complex value trade-offs can impact the frequently competing measures of effectiveness defined by EU legislation. We examine how the aim to protect requested persons' fundamental rights can adversely affect compliance with the EAW's stated goal of speeding up extradition (although it is important to note that we do not wish to argue that speeding up extradition is always normatively desirable – here we are chiefly interested in the empirical phenomenon). It is possible that, for example, information exchange for the purposes of examining the applicability of the nationality refusal ground requires postponing EAW hearings, reducing the efficiency of the system on average. Second, we quantitatively analyse whether such value trade-offs have changed over time, increasing or decreasing the focus of the system on either fundamental rights protection or efficiency – and thereby gradually altering the value balance originally made by the EU legislator. The Court of Justice of the European Union (CJEU) has been an active "judicial policymaker" with regard to the rights of persons requested for surrender.[4] Although this jurisprudence has often been beneficial to protecting requested persons' rights, we posit that the tests introduced by new jurisprudence could also drive up administrative caseloads and surrender times, reducing the efficiency of the system – despite such efficiency being a core policy objective of the EAW.

We operationalise these trade-offs by examining the role played by a number of potential determinants of EAW turnover times (ie time until a decision on the surrender of the requested person is taken) before national courts. To investigate whether value trade-offs in the EAW Framework Decision influence turnover times, we analyse the effect of tests applied by national courts for two refusal grounds: the refusal ground for nationals of the executing Member State and the refusal ground for trials at which the defendant was absent and thus not capable of conducting their defence (trials in absentia).[5] We argue that these tests – although benefitting defendants – could increase turnover times, as their design often requires extensive communication between judicial authorities in the executing state and authorities in issuing countries, communication with other public authorities within the executing Member State and high burdens of proof on the part of the individual.[6]

Second, we explore the impact of the gradually developing CJEU case law. This case law has introduced novel tests for national courts to protect defendants' rights.[7] Specifically, we attempt to quantify the impact of the Wolzenburg jurisprudence, which requires a

[3] Popelier et al, supra, note 1.

[4] A Van den Brink and T Marguery, "Hogere evenwichtskunst in het Europees aanhoudingsbevel. Meer rechtsbescherming en ook meer Europa?" (2018) 2 SEW, Tijdschrift voor Europees en economisch recht 46; A Efrat, "Assessing mutual trust among EU members: evidence from the European Arrest Warrant" (2018) 26(5) Journal of European Public Policy 656.

[5] European Commission, "Commission Notice 2017/C 335/01 – Handbook on how to issue and execute a European arrest warrant" (2017) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2017:335:TOC> (last accessed 25 February 2019).

[6] ibid.

[7] C Janssens, "Case C-123/08, Dominic Wolzenburg, Judgment of the Court (Grand Chamber) of 6 October 2009, Not Yet Reported" (2010) 47 Common Market Law Review 831; Popelier et al, supra, note 1.

https://doi.org/10.1017/err.2024.3 Published online by Cambridge University Press

more involved test to determine whether a requested person can be considered a resident for the purposes of the nationality refusal ground than the Dutch authorities had applied up until then. In doing so, we explore the respective roles played by legislative choices and subsequent jurisprudence developments on the practical implementation of the EAW.

This contribution's theoretical relevance lies in the quantitative insight it provides on the practical implementation of complex legislation based on multiple values that are sometimes in tension within one another. The implementation of such legislation needs to find a balance between protecting individuals on the one hand and efficiency and/or effective supervision and enforcement on the other.[8] Judicial authorities implementing the EAW face strict sixty- and ninety-day time limits (an expression of the efficiency value) and are simultaneously also faced with a gradually increasing set of legal tests to apply (and obtain information on) to safeguard requested persons' fundamental rights.[9] Although these tests are commendable in that they aid in upholding suspects' rights, they also imply that judicial authorities may more frequently infringe upon current EAW time limits. Moreover, efficiency is an important value in its own right – as quicker turnover times can be important both in terms of reducing levels of uncertainty and stress associated with criminal justice proceedings and in terms of bringing justice within a reasonable timeframe.[10] Therefore, understanding whether and how trade-offs between efficiency and other values affect practical implementation by Member State judicial authorities is essential.

This is also a timely contribution, as mutual trust between Member States is under increasing pressure, straining procedures in EU migration and criminal law.[11] In the early 2000s, the EU assumed that a high amount of trust existed between Member States based on the similarity of values and the fact that each state was subject to stringent fundamental rights and rule-of-law obligations.[12] This assumption of trust is what legitimated the idea of fast-track extradition procedures in the EU in the first place.[13] Political and rule-of-law developments in Poland and Hungary, as well as political divisions over migration policies along the eastern and southern borders of the EU, have increasingly cast doubt on the validity of this assumption.[14] Examining how such developments affect the value trade-offs made during practical implementation is therefore of the utmost importance.

Section II provides an overview of the EU policy implementation literature and an introduction of the relevant aspects of the EAW legal regime. Subsequently, we delve into a number of legal aspects of the EAW that are essential in order to understand the quantitative analyses. Section III then describes our data-gathering strategy and dataset (of ~1,000 EAW cases from the Netherlands), after which Section IV presents the results of the negative binomial regressions. This large-N approach allows us to go beyond the landmark cases and also to incorporate the practice of "typical" cases. Section IV describes which factors predict turnover time in Dutch EAW cases, finding that cases applying the nationality refusal ground, cases subject to an preliminary reference and cases decided upon in later years display longer average turnover times. At the same time, cases featuring the retrial guarantee did not display a longer average turnover time – a

[8] Mancano, supra, note 1.

[9] Popelier et al, supra, note 1; Van den Brink and Marguery, supra, note 4.

[10] D Moynihan, J Gerzina and P Herd, "Kafka's bureaucracy: immigration administrative burdens in the Trump era" (2022) 5 Perspectives on Public Management and Governance 22–35; S Freeman and M Seymour, "'Just waiting': the nature and effect of uncertainty on young people in remand custody in Ireland" (2010) 10 Youth Justice 126.

[11] Popelier et al, supra, note 1.

[12] Mancano, supra, note 1.

[13] ibid; Van den Brink and Marguery, supra, note 4.

[14] Mancano, supra, note 1; Popelier et al, supra, note 1.

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surprising deviation from our expectations. Section V offers a discussion of our results, arguing that ongoing developments towards greater fundamental rights protection are to be lauded, but that the design of tests achieving said protection should perhaps not be of such a burdensome nature that they exceed national judicial authorities' operational capacities.

II. The European Arrest Warrant, its implementation in the Netherlands and challenges for turnover times

1. State of the art in the political science and legal implementation literature

The topic addressed in this article is relevant to both dimensions classically addressed by the political science and legal EU implementation literature: transposition of the EAW framework decision with its underlying efficiency goal on the one hand and the consequences of both supranational and national implementation choices on turnover time – and therefore on the "implementation in practice" – on the other. Implementation research within EU multi-level governance[15] thoroughly addresses the transition from a top-town, nation-centric approach towards investigating the variation in transposition across countries[16] and the outcomes of the implementation within countries.[17]

Within the political science literature, the goodness-of-fit approach investigates the correspondence between the legislation as originally formulated and the way it is transposed. Even with correct implementation[18] and with motivation on behalf of national legislators,[19] the outcomes of the transposition of EU legal provisions can (and usually do) vary across countries.[20] While substantial insight has thus been produced on the transposition of EU law by national legislators, the current political science literature regarding the effectiveness of practical implementation within countries remains incipient.[21] Only a small number of existing studies deal with this administrative and operational side, with the few existing articles being devoted to cases such as administrative capacity-building in the maritime sector,[22] migration,[23] safety data sheets[24] and air quality directives.[25] In this context, the EAW's position within the Area of Freedom Security and Justice (AFSJ) provides a particularly relevant setting, as it combines

[15] E Mastenbroek, "EU compliance: still a 'black hole'?" (2005) 12(6) Journal of European Public Policy 1103; E Versluis, "Even rules, uneven practices: opening the 'black box' of EU law in action" (2007) 30(1) West European Politics 50; O Treib, "Implementing and complying with EU governance outputs" (2014) 9(1) Living Reviews in European Governance 1; M Angelova, T Dannwolf and T König, "How Robust Are Compliance Findings? A Research Synthesis" (2012) 19(8) Journal of European Public Policy 1269.

[16] E Thomann, "Customizing Europe: transposition as bottom-up implementation" (2015) 22(10) Journal of European Public Policy 1368.

[17] N Dörrenbächer, "Europe at the frontline: analysing street-level motivations for the use of European Union migration law" (2017) 24(9) Journal of European Public Policy 1328.

[18] G Falkner, M Hartlapp and O Treib, "Worlds of Compliance: Why Leading Approaches to the Implementation of EU Legislation Are Only 'Sometimes-True Theories" (2017) 46(3) European Journal of Political Research 395–416.

[19] E Mastenbroek, "Guardians of EU law? Analysing roles and behaviour of Dutch legislative drafters involved in EU compliance" (2017) 24(9) Journal of European Public Policy 1289.

[20] Thomann, supra, note 16.

[21] Treib, supra, note 15.

[22] C Gulbrandsen, "The EU and the implementation of international law: the case of 'sea-level bureaucrats'" (2011) 18(7) Journal of European Public Policy 1034.

[23] Dörrenbächer, supra, note 17.

[24] Versluis, supra, note 15.

[25] JA Gollata and J Newig, "Policy implementation through multi-level governance: analysing practical implementation of EU air quality directives in Germany" (2017) 24(9) Journal of European Public Policy 1308.

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complex value trade-offs with a hard-law turnover time efficiency criterion,[26] multilateral cooperation between Member States and the ongoing influence of European institutions (in particular the CJEU).

Legal implementation studies help to fill the gap. These studies shed light on various practical implementation challenges, such as difficulties in obtaining guarantees (see Sections II.3, II.4 and II.5 on the return guarantee), ambiguous requests for further information[27] and other communication challenges.[28] More recent studies have observed that new jurisprudence (with a specific role for the seminal Aranyosi judgment on the impermissibility of surrender in the face of an imminent and specific risk that the prohibition on degrading treatment is violated) can lead to delays and reductions in executed warrants.[29] These studies implicitly or explicitly do recognize the value trade-offs that must be considered during practical implementation.[30] Despite these advances, no social studies have attempted to bridge the gap with legal studies,[31] and no attempts have been made to quantify whether there is empirical evidence for such value trade-offs – a gap this contribution aims to address.

As will be seen in Section II.2, measures in areas such as criminal law and migration are subject to complex and often conflicting values.[32] In a borderless EU, an efficient extradition system can be normatively attractive to ensure that justice is carried out in a timely manner, and this was indeed a key motivation underlying the EAW.[33] However, speeding up extradition without due regard to the requested person's rights may also bring about inadvertent consequences.[34] An excessive focus on efficiency may mean that requested persons' individual positions are not considered sufficiently. On the other hand, excessive turnover times are themselves often experienced as administrative burdens and sources of uncertainty by requested persons, making the equation even more complex.[35] Our core proposition is that turning the "fundamental rights protection dial" during practical implementation may affect performance in terms of efficiency – and vice versa. Investigating the balance between partially opposing values is therefore essential to understanding how normatively complex measures are practically implemented in the EU multi-level system. This study's main aim is to examine this mutual interdependence between the EAW's complex, value-laden aims during practical implementation.

[26] VH Glerum, *De weigeringsgronden bij uitlevering en overlevering: een vergelijking en kritische evaluatie in het licht van het beginsel van wederzijdse erkenning* (Nijmegen, Wolf Legal Publishers 2013) p 98.

[27] P Albers et al, "Final Report – Towards a common evaluation framework to assess mutual trust in the field of EU judicial cooperation in criminal matters" (2011) <https://www.government.nl/documents/reports/2013/09/27/final-report-towards-a-common-evaluation-framework-to-assess-mutual-trust-in-the-field-of-eu-judicial-cooperation-in-criminal-m> (last accessed 2 February 2024); G Vernimmen-Van Tiggelen and L Surano, "Analysis of the Future of Mutual Recognition in Criminal Matters in the European Union" (2008) p 309 <https://www.advokatsamfundet.se/globalassets/Advokatsamfundet_sv/Nyheter/Slutrapport_mutual_recognition_eng.pdf> (last accessed 2 February 2024).

[28] Vernimmen-Van Tiggelen and Surano, supra, note 27, 19.

[29] T Wahl et al, *Criminal Procedural Laws across the European Union – A Comparative Analysis of Selected Main Differences and the Impact They Have over the Development of EU Legislation* (Brussels, European Parliament 2018) p 175.

[30] Albers et al, supra, note 27, 304.

[31] Although some legal studies do employ methods more traditionally associated with the social sciences, such as interview analysis. See Vernimmen-Van Tiggelen and Surano, supra, note 27.

[32] Mancano, supra, note 1 ; Popelier et al, supra, note 1 ; Van den Brink and Marguery, supra, note 4; Collier, supra, note 2.

[33] Efrat, supra, note 4.

[34] Popelier et al, supra, note 1.

[35] Moynihan et al, supra, note 10 ; Freeman and Seymour, supra, note 10.

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2. Introducing the European Arrest Warrant

In the early 2000s, fuelled by the events of 9/11, the EU embarked on one of its most ambitious projects yet: improving EU criminal and migration law cooperation through the creation of an AFSJ.[36] One of its landmark instruments is undoubtedly the EAW, a measure simplifying and replacing older extradition procedures.[37] As a symbol of the automaticity and efficiency that would characterise the new EAW, the term "extradition" was replaced with "surrender". Being based on the principles of mutual trust and mutual recognition, the EAW requires near-automatic judicial decisions on the transfer of requested persons, taken within a strict sixty-day time limit with a narrow possibility for a thirty-day extension.[38] Today, the EAW remains a cornerstone measure in EU criminal law.[39] Not only do national authorities report an EU-wide total of over 6,500 effective surrenders in 2014 alone, the EAW has been used for suspects in prominent cases such as the 2016 terrorist attacks in Belgium and France[40] and the requested surrender of former Catalan prime minister Charles Puigdemont.[41]

While the EAW is often considered a successful and efficient instrument,[42] scholars have already identified numerous legal challenges stemming from the multi-level nature of the measure, such as a lack of mutual trust between authorities and various fundamental rights concerns.[43] These challenges include whether the principle of mutual recognition should be transplanted to a context where the state arguably has more to gain from automaticity than the citizen (as opposed to the internal market,[44] where the market operators are usually beneficiaries of mutual recognition), constitutional concerns,[45] concerns arising from abolished refusal grounds and fundamental rights issues (eg risks of degrading treatment in some executing Member States),[46] practical challenges related to, for example, information exchange and the request of guarantees[47] and concerns related to whether mutual trust may be assumed to exist between Member State authorities in the first place.[48]

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[36] S Alegre and M Leaf, "Mutual recognition in European judicial cooperation: a step too far too soon? Case study – the European Arrest Warrant" (2004) 10(2) European Law Journal 200; C Kaunert, "'Without the power of purse or sword': the European Arrest Warrant and the role of the Commission" (2007) 29(4) Journal of European Integration 387; L Marin, "'A spectre is haunting Europe': European citizenship in the area of freedom security and justice" (2011) 17(4) European Public Law 705–28.

[37] Alegre and Leaf, supra, note 36.

[38] ibid; Efrat, supra, note 4; Popelier et al, supra, note 1 ; Marin, supra, note 36.

[39] E Van Sliedregt, "The European Arrest Warrant, between trust, democracy and the rule of law" (2007) 3 European Constitutional Law Review 244; C Janssens, *The Principle of Mutual Recognition in EU Law* (Oxford, Oxford University Press 2013).

[40] De Standaard, "Rechtbank beslist donderdag over overlevering 'man met het hoedje' aan Frankrijk" (2016) <https://www.standaard.be/cnt/dmf20160622_02351989> (last accessed 25 January 2019).

[41] Efrat, supra, note 4.

[42] Van Sliedregt, supra, note 39; House of Lords, *Brexit: Judicial Oversight of the European Arrest Warrant* (London, Authority of the House of Lords 2017) p 25; R Colson, "Domesticating the European Arrest Warrant: European Criminal Law between Fragmentation and Acculturation" in *EU Criminal Justice and the Challenges of Diversity: Legal Cultures in the Area of Freedom, Security and Justice* (Cambridge, Cambridge University Press 2016) pp 199–220.

[43] AP Van der Mei, "The European Arrest Warrant system: recent developments in the case law of the Court of Justice" (2017) 24(6) Maastricht Journal of European and Comparative Law 882; Van Sliedregt, supra, note 39; Popelier et al, supra, note 1.

[44] S Peers, "Mutual recognition and criminal law in the European Union: has the Council got it wrong" (2004) 41 Common Market Law Review 5.

[45] V Mitsilegas, "Constitutional Implications of Mutual Recognition in Criminal Matters in the EU" (2006) 43 Common Market Law Review 1277; Janssens, supra, note 39.

[46] J Öberg, "Trust in the law? Mutual recognition as a justification to domestic criminal procedure" (2020) 16(1) European Constitutional Law Review 33–62; Wahl et al, supra, note 29.

[47] Albers et al, supra, note 27; Vernimmen-Van Tiggelen and Surano, supra, note 27, 304.

[48] Vernimmen-Van Tiggelen and Surano, supra, note 27, 20.

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3. Innovations introduced by the European Arrest Warrant

As was mentioned earlier, the Framework Decision on the EAW replaces earlier extradition treaties between the EU Member States (eg the European Convention on Extradition) with a new system of "surrender", based on the principle of mutual recognition.[49] To that end, Member State judicial authorities are required to execute EAWs issued by other EU Member States' judicial authorities, subject to several exceptions provided by a limited set of refusal grounds and the gradually developed EAW case law of the CJEU.[50] The surrender system established by the Framework Decision incorporates several innovations distinguishing it from earlier extradition treaties under public international law.[51] Although a full discussion of the details of the EAW system is not possible here, several innovations are worth highlighting.

First, the EAW attempts to accelerate the surrender procedure and to emphasise efficiency as a value by incorporating strict time limits.[52] Authorities are in principle obliged to decide on surrender requests within sixty days of a person's arrest, with the possibility for a thirty-day extension – which is markedly faster than under traditional extradition systems. The importance of swift surrender proceedings as a policy goal is underpinned by its inclusion in the first preamble to the EAW Framework Decision, which states that "extradition procedures should be speeded up in respect of persons suspected of having committed an offence". This is further reinforced by preamble 5, stating that the simplified procedure offered by the EAW should "remove the complexity and potential for delay inherent in present extradition procedures", as well as jurisprudence by the CJEU.[53]

Second, the EAW reduces the amount of available refusal grounds on which a surrender request may be rejected.[54] The normative goal of protecting the position of individuals meant that some refusal grounds were retained, however, leading to the necessity of applying rigorous legal tests where these refusal grounds may be relevant.[55] Our research focuses on the two refusal grounds with the most elaborate communication procedures with either issuing authorities or other public authorities in the executing Member State (ie the nationality and the trials in absentia refusal grounds).

Given that efficiency was the primary aim underlying both the EAW's time limits and the choice to reduce the amount of available refusal grounds, it is remarkable that subsequent jurisprudence by the CJEU has gradually expanded the amount of possible derogations again[56] – even if they remain carefully controlled exceptions to the general rule of automaticity.[57] The 2008 Wolzenburg jurisprudence in particular introduced a more complex test to establish whether a requested person was a resident of the Netherlands (ie a person with a long-term stay in the Netherlands, which may constitute a reason to refuse surrender or request a guarantee that the person will be returned after conviction). More recently, similar developments have occurred in the area of fundamental rights protection: while a refusal ground for breaches of fundamental rights was initially excluded from the EAW, the CJEU reintroduced it (limitedly) in 2018, requiring executing

[49] Alegre and Leaf, supra, note 36; Marin, supra, note 36; N Rozemond, "De geldigheid van het Kaderbesluit betreffende het Europees aanhoudingsbevel en de legaliteit van de regeling van de 'lijstfeiten'" (2008) 10 Nederlands Tijdschrift voor Europees Recht 285.

[50] E Herlin-Karnell, "European Arrest Warrant cases and the principles of non-discrimination and EU citizenship" (2010) 73(5) Modern Law Review 824; Efrat, supra, note 4.

[51] Rozemond, supra, note 49.

[52] Van der Mei, supra, note 43.

[53] Case C-303/05 Advocaten voor de Wereld (2007) ECR I-3633, para 31.

[54] Van Sliedregt, supra, note 39.

[55] Alegre and Leaf, supra, note 36.

[56] Van den Brink and Marguery, supra, note 4,

[57] E Xanthopoulou, "Mutual trust and rights in EU criminal and asylum law: three phases of evolution and the uncharted territory beyond blind trust" (2008) 55 Common Market Law Review 55.

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Member State judicial authorities to test whether the situation in the issuing Member State is sufficiently safe for surrender towards that state.[58] Through its jurisprudence, the CJEU is thus gradually rebalancing the importance of the goals underlying the EAW, introducing a shift from an emphasis on efficiency to a greater emphasis on fundamental rights protection. We expect that the elaborate procedures implied by the greater emphasis on the latter goal may have served to reduce the degree to which the efficiency goal is attained.

Finally, it is notable that the EAW Framework Decision takes extradition out of the political and diplomatic context that characterized previous extradition treaties, instead requiring that both the competence to issue and the competence to execute EAWs are attributed to judicial actors.[59] This shift to judicial actors has been seen as a major benefit, as it prevents the cumbersome and drawn-out diplomatic disputes that characterise extradition under international law.[60] However, it also introduces an administrative and judicial apparatus in every Member State (for details on the Dutch apparatus, see Appendix 2) that has to cooperate with its counterparts in other Member States within strict time limits, resulting in new challenges for the practical implementation of EU law.[61]

4. The impact of legislative value trade-offs on practical implementation

As discussed above, the EAW and similar mutual legal assistance measures deal with complex value trade-offs. In their daily practice, judicial authorities must thus attempt to balance the legal protection of requested individuals and efficiency. Without arguing that efficiency should prevail over the legal protection of requested persons, we are interested in whether there is empirical evidence that measures and tests aimed at attaining legal protection as a policy goal may adversely affect compliance in terms of efficiency (ie the EAW's time limits) *in practice*.

We therefore now turn to a more specific discussion of potential determinants. We examine several factors that may increase turnover time and see these as practical implementation challenges. As mentioned in Section II.3, a first potential challenge to adhering to the sixty- and ninety-day turnover time requirements is provided by the system of refusal grounds retained to protect individuals' positions, despite the EAW's aim of increasing efficiency on the basis of the principles of mutual trust and mutual recognition.[62] Thus, refusal grounds form manifestations of the goal of protecting individuals, whose accurate and consistent implementation is in potential conflict with the EAW's efficiency goal.

Two refusal grounds expected to be particularly relevant are tested, as they (1) often require supplementary information from issuing authorities and (2) require unambiguous guarantees specific to the requested person in Dutch or English (the two languages officially accepted by the Amsterdam District Court (ADC)[63]). As will be elaborated on below, this requires both executing and issuing authorities to communicate, coordinate and understand each other's requests, national legal terminology and limitations.[64] Moreover, it requires well-drafted warrants and supplementary information in Dutch or English in order for the ADC to be able to unambiguously interpret the consequences of surrender to another Member State.[65] Given the involved nature of complying with these criteria, the nationality

[58] Van den Brink and Marguery, supra, note 4.
[59] Kaunert, supra, note 36; Van Sliedregt, supra, note 39.
[60] House of Lords, supra, note 42, 25.
[61] Efrat, supra, note 4.
[62] Glerum, supra, note 26, 122.
[63] European Commission, supra, note 5, 74.
[64] Van Sliedregt, supra, note 39.
[65] Van den Brink and Marguery, supra, note 4.

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and trial in absentia refusal grounds may be particularly prone to additional information requests to the issuing authorities from the Dutch public prosecutor, postponements of cases already at the court stage, delays in the response from the issuing authority, unsatisfactory additional information due to misunderstandings or linguistic errors, etc. Thus, cases in which these refusal grounds are relevant should be particularly likely to result in higher turnover times. By contrast, other refusal grounds often allow for an assessment during a hearing on the basis of readily available information supplied in all EAWs (eg determining whether the facts took place on the territory of the executing Member State) and are thus less likely predictors of turnover time.

The nationality refusal ground laid down in Article 4(6) of the Framework Decision allows Member States to refuse surrender for their nationals, provided the issuing authority cannot guarantee the requested person's return to the executing state to serve the sentence imposed.[66] The Dutch implementation of this refusal ground requires mandatory refusal of the EAW barring the provision of a return guarantee by the issuing authorities. Such a guarantee should specify that, should the requested person be sentenced in the issuing state, they will be returned to the Netherlands, and that their sentence will be transformed to meet Dutch standards.[67] Thus, should this refusal ground be triggered, additional communication in the form of a written guarantee from the issuing authorities is necessary. Sometimes, such a guarantee is immediately attached to the original warrant, but at other times, the Dutch prosecutor has to specifically request one from the issuing authorities. Moreover, guarantees not fully compliant with the ADC's standards or with ambiguities in them may require additional follow-up information. Accordingly, we argue that postponements and delays may result from triggering the nationality refusal ground. If correct, this argument would imply that a combination of the European legislator's and the Dutch legislator's choices aimed at the goal of protecting an individual's position is adversely affecting the EAW's efficiency goal, suggesting that a trade-off exists between both goals in the practical implementation of criminal law and enforcement. This is captured in the following hypothesis:

H1: Cases concerning requests for nationals will have a higher average turnover time than cases *not* concerning either nationals or individuals that claim residency (irrespective of whether this claim is considered founded).

The trial in absentia refusal ground concerns cases in which the individual has been tried in the issuing Member State without having had an opportunity to be present or represented by legal counsel at the trial *and* without being personally summoned or informed of the proceedings against them in such a manner that they may effectively be able to conduct their defence.[68] In this context, it is important to note that EAWs may be issued either for the prosecution of individuals (ie cases in which a sentence has not yet been imposed) or for the execution of a previously imposed sentence, with the trial in absentia refusal ground only being relevant for the latter category of cases. Thus, once EAWs concerning the execution of a previously imposed sentence reach the court stage, the Dutch prosecutor and court determine whether the individual concerned has had the opportunity to conduct a defence pursuant to the conditions outlined above. At this stage, the Dutch authorities may have to gather additional information from the issuing authorities. Should it be determined that the individual was indeed tried in absentia, the court will request a retrial guarantee from the issuing authorities before allowing surrender.[69] Such a guarantee should unequivocally establish the right of the requested

[66] Marin, supra, note 36.
[67] Rozemond, supra, note 49.
[68] Art 5(1) EAW Framework Decision.
[69] Glerum, supra, note 26, 81.

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person to new proceedings in which the facts of the case are reconsidered and in which the defendant may enter new arguments.[70] As with the return guarantee pursuant to the nationality refusal ground, the retrial guarantee may be prone to misunderstandings and/ or linguistic errors, delays due to the process being held up in communication between the authorities of both Member States, etc. We therefore formulate the following hypothesis:

H2: EAWs requesting the surrender of a requested person for the purposes of the execution of a custodial sentence on average have a higher average turnover time than EAW cases requesting surrender for prosecution purposes.

Similar to the nationality refusal ground, the labour-intensive and misunderstanding-prone test for trials in absentia laid down in hard law is a manifestation of the EAW instrument's goal of appropriately protecting requested individuals, in this case against potential violations of the principle of effective judicial protection in issuing Member States.[71] If our argument for Hypothesis 2 is correct, this institutionalised distrust may impede other goals underpinning the EAW, including achieving efficiency in turn-over times.

5. Court of Justice of the European Union jurisprudence and its temporal effect on the goals prioritised in the European Arrest Warrant system

Originally, the nationality refusal ground applied to all Dutch nationals and residents with a permanent residence permit and having lawfully resided in the Netherlands for at least five years.[72] However, in the seminal 2008 Wolzenburg case the CJEU established that, although a Member State may apply various objective criteria in determining which individuals constitute residents with a strong connection to Dutch society, such a determination may not be made conditional on the fulfilment of a single administrative requirement such as the possession of a permanent residence permit.[73] Pursuant to the CJEU's jurisprudence, the current regime requires the requested person to demonstrate having an uninterrupted stay in the Netherlands for at least five years to be considered a resident for the purposes of this refusal ground.[74] This development marked a shift towards greater protection of citizens at the cost of some degree of automaticity of surrender, with potential consequences for the efficiency of the EAW system.

Thus, in addition to issues in the communication with the issuing Member State regarding guarantees, determining the applicability of this refusal ground to potential residents of the Netherlands may result in delays due to the ADC waiting for information from the requested person and various Dutch services regarding the person's stay in the Netherlands. Therefore, in addition to a hypothesis measuring the effect on efficiency of EU and national legislators protecting nationals, we are also able to construct a hypothesis regarding the influence of new tests designed by the CJEU. Such a finding would imply a trade-off between values when implementing a criminal law measure in a multilateral setting. Only this time, it would suggest a temporal shift in the balance of the EAW in favour of the protection of fundamental rights, at the cost of efficiency. To analyse these propositions, we formulate the following hypothesis:

[70] ibid, 254.

[71] Alegre and Leaf, supra, note 36.

[72] Marin, supra, note 36; Rozemond, supra, note 49.

[73] Marin, supra, note 36.

[74] Herlin-Karnell, supra, note 50.

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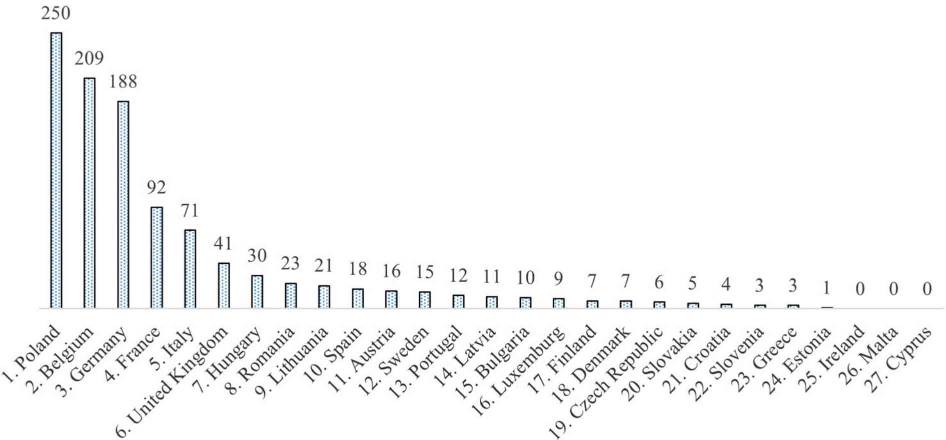

Figure 1. Number of European Arrest Warrant cases per Member State in the dataset.

H3: Cases concerning requests for individuals that claim residency (irrespective of whether this claim is considered founded) will have a higher average turnover time than cases concerning other types of individuals.

III. Data

The dataset used comprises 1,052 manually coded cases brought before the ADC, comprising all publicly available EAW cases that reached a final court decision on surrender in the period 2004–November 2018. ADC online case records[75] were checked for EAW cases by searching for the name of the issuing Member State in the categories criminal law, international criminal law and European criminal law (the categories that could include an EAW case). See Figure 1 for an overview of the number of EAW cases per issuing Member State.

The nationality refusal ground was measured as applicable or not applicable. Combined with the origin of a requested person (Dutch or non-Dutch), it was possible to further discern in each case whether this refusal ground applied to Dutch nationals or residents under the Wolzenburg jurisprudence (necessary for Hypothesis 3). Ascertaining whether the court tests for a trial in absentia (required to answer Hypothesis 2) was done by coding EAWs as 1 if the EAW concerns a request for the execution of a previously imposed custodial sentence (at which point the court applies the test). Furthermore, as EAW cases in which prejudicial questions arose that were addressed to the CJEU may cause heightened turnover times, we include this variable as a control. Similarly, we code which Member State issued the EAW to be able to account for possible differences in turnover times between them. Finally, surrenders that were allowed were entered as 1 in a dummy variable, as such cases could have a high probability of being non-exceptional, causing lowered turnover times.

For the dependent variable we utilize the publicly available turnover times of ADC cases, with the starting point being the date when the case was brought before the ADC.[76]

[75] <https://uitspraken.rechtspraak.nl/> (last accessed 26 January 2024).

[76] Calculated by subtracting the date when the case was first brought before the ADC from the date when the case was decided by the court.

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This yields a slightly conservative indicator of turnover time, as pursuant to the Dutch Surrender Act (DSA) time limits start running on the day of the arrest (arrest dates were not publicly available). However, as a case should be brought before the ADC at most three days after receiving the EAW, the dates we observe form a reasonable approximation of turnover times pursuant to the EAW.[77] Moreover, these turnover times offer the benefit that they more directly observe the case characteristics included in our hypotheses, instead of issues relating to, for example, the transfer of the requested person to the Amsterdam prosecutor immediately following apprehension. See Table 1 for the descriptive statistics of our variables and Table 2 for the correlation matrix.

Representativeness checks were also performed, which have been included in Appendix 1.

IV. Analyses and results

Since our dependent variable is a count variable, we employ a count regression model – more specifically, negative binomial regression – to test our hypotheses.[78] Issuing Member States with fewer than ten cases were excluded from the analysis to retain a sufficient amount of observations per country dummy. Furthermore, as 2004 is an atypical start-up year for the ADC and turnover times were affected by EAWs already transmitted before the entry into force of the Surrender Act (and could thus not immediately be acted upon), we considered that cases from 2004 were difficult to compare to later cases and removed them from the dataset. These choices resulted in a final sample of 950 EAW cases being entered into our models.

The results are shown in Table 3. Model 1 shows the results for all country and year dummies. France was chosen as the reference category for the country dummies as it is a sizable source of EAWs but is not adjacent to the Netherlands, does not adhere to the common law system and has no exceptional history in the implementation of the EAW (eg such as Greek detention condition issues). The χ^2 tests for the joint significance of the country dummies and the year dummies are significant at the 0.01 level, indicating that annual differences and country-level differences are both relevant for explaining the variance in turnover times of cases brought before the ADC. Thus, we see evidence of a difference in average turnover times between issuing Member States. With regard to individual country dummies, the significant results for Hungary and Portugal are notable, although it must be added that Portugal, with twelve cases, was one of the countries with the smallest number of cases included in the analysis, warranting caution regarding this interpretation.

Plotting average turnover rates over time provides more insights into our results for the year dummies, with the plot revealing a gradual upward slope (see Figure 2). Our measure suggests, especially in recent years, an increasing number of cases have approached or exceeded the ninety-day extended time limit included in the EAW Framework Decision.

Model 2 adds the regressors describing case-specific characteristics, with a likelihood ratio test indicating an improvement of model fit over Model 1 – implying that case-specific characteristics explain a relevant part of the variation in turnover times. The nationality refusal ground is strongly significant, providing support for Hypothesis 1 (ie that legislative choices designed to protection the position of individuals may indeed detrimentally affect turnover times). Simultaneously, whether a case was transmitted for the purposes of prosecution or the execution of a sentence does not produce significant

[77] Art 23(2) Dutch Surrender Act.

[78] As the equidispersion assumption is violated ($\mu = 0.66$, $p < 0.01$), we opt for negative binomial regression instead of Poisson models, as the former allows us to deal with overdispersion.

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Table 1. Descriptive statistics.

Variable	Mean	Standard deviation	Minimum	Maximum
Turnover time	102.62	101.83	8	883
Surrender allowed/refused (allowed = 1/refused = 0)	0.79	0.36	0	1
Preliminary question (yes = 1/no = 0)	0.03	0.16	0	1
Goal of EAW (prosecution = 0/execution of detention measure = 1)	0.46	0.50	0	1
Nationality refusal ground (yes = 1/no = 0)	0.30	0.46	0	1
Country issuing EAW			0	1
Belgium	0.20	0.40		
Bulgaria	0.01	0.10		
Germany	0.18	0.39		
Hungary	0.09	0.29		
France	0.03	0.17		
Italy	0.07	0.26		
Latvia	0.01	0.10		
Lithuania	0.02	0.14		
Austria	0.01	0.12		
Poland	0.26	0.44		
Portugal	0.01	0.11		
Romania	0.02	0.15		
Spain	0.02	0.14		
UK	0.04	0.19		
Sweden	0.01	0.11		
Year of case			0	1
2005	0.06	0.25		
2006	0.08	0.27		
2007	0.06	0.23		
2008	0.05	0.21		
2009	0.05	0.21		
2010	0.07	0.26		
2011	0.08	0.26		
2012	0.10	0.30		
2013	0.06	0.25		
2014	0.07	0.25		
2015	0.04	0.20		
2016	0.04	0.19		
2017	0.10	0.30		
2018	0.15	0.36		

Member State dummies with fewer than ten observations and 2004 dummy excluded, as these variables were not included in the regression analysis.
EAW = European Arrest Warrant.

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Table 2. Correlation matrix.

Variable	Time	Surrender	Preliminary question	Goal of EAW	Nationality refusal ground
Turnover time	1.0000				
Surrender allowed/ refused	–0.0494	1.0000			
Preliminary question	0.3018	–0.0434	1.0000		
Goal of EAW	0.0306	–0.2488	0.0922	1.0000	
Nationality refusal ground	0.0449	0.0704	–0.0688	–0.4135	1.0000

Mean variance inflation factor equals 1.16, with a highest value of 1.29, indicating that multicollinearity is not an issue.
EAW = European Arrest Warrant.

results, providing no support for Hypothesis 2. The control variable measuring whether preliminary questions posed to the CJEU caused the postponement of a case is also strongly significant and yields a sizeable coefficient. This is unsurprising given that even fast-tracked preliminary reference questions take an average of 2.7 months to complete,[79] after which national-level proceedings continue.[80]

While Model 2 combined Dutch nationals and foreigners submitting that they are a resident of the Netherlands in one group, a more fine-grained analysis is needed to provide an appropriate answer to Hypothesis 3 (ie that foreigners arguing to be a resident will exhibit a higher turnover time than both Dutch nationals and other foreigners due to the CJEU's jurisprudence). Thus, Model 3 incorporates a factor variable distinguishing between both groups. A likelihood ratio test again indicates significant improvement of model fit, and both the coefficient for Dutch nationals and the coefficient for foreigners arguing to be a resident are positive and significant. This suggests that Dutch nationals and foreigners requesting to be considered a resident should indeed be considered different groups for the purposes of analysing their effects on turnover time. Moreover, the coefficient for foreigners arguing to be a resident is higher than the coefficient for Dutch nationals, suggesting that establishing residency status under the Wolzenburg jurisprudence is a factor that causes higher turnover times on average.

V. Discussion and conclusion

Hypothesis 1 receives strong support from both Model 2 and Model 3, suggesting that value trade-offs made in the context of the nationality refusal ground have a sizeable and significant impact on turnover times before the ADC. Hypothesis 1 specifically expects Dutch individuals to have a higher average turnover time than requested persons without Dutch nationality and not claiming residency in the Netherlands. Finding support for this hypothesis suggests that the added complexities of communicating with issuing authorities on the return guarantee increases turnover time. On a deeper level, it provides empirical support for the notion that legislative design choices protecting one objective (legal protection of requested individuals) may adversely affect attainment of the efficiency goals underlying a criminal law or administrative enforcement measures – sometimes to the degree that practical implementation cannot adhere to the sixty- and ninety-day time limits set out by formal EU-level requirements. This is relevant for future

[79] S Bartolini, "The Urgent Preliminary Ruling Procedure: Ten Years On" (2018) 24(2) European Public Law 213.
[80] ibid.

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Table 3. Negative binomial regression results.

Variables	(1) Turnover time	(2) Turnover time	(3) Turnover time
Nationality refusal ground (dummy)		0.38***	
		(0.04)	
Nationality refusal ground (factor variable)			$\chi^2(2) = 98.37$***
Nationality is Dutch			0.39***
			(0.05)
Test for residency status applied			0.57***
			(0.08)
Goal of EAW (1 = execution of sentence)		0.01	0.02
		(0.05)	(0.05)
Surrender allowed/refused (1 = allowed)		–0.11*	–0.08
		(0.06)	(0.05)
Preliminary questions (1 = yes)		0.89***	0.84***
		(0.12)	(0.12)
Country issuing EAW (France = reference category)	$\chi^2(14) = 42.98$***	$\chi^2(14) = 59.10$***	$\chi^2(14) = 58.59$***
Belgium	–0.06	–0.09	–0.09
	(0.08)	(0.08)	(0.07)
Bulgaria	–0.16	0.09	0.12
	(0.21)	(0.19)	(0.19)
Germany	–0.02	0.02	0.02
	(0.08)	0.08	0.08
Hungary	0.46***	0.53***	0.54***
	(0.14)	(0.13)	(0.13)
Italy	–0.16	–0.02	0.02
	(0.10)	(0.09)	(0.09)
Latvia	–0.08	0.27	0.31
	(0.21)	(0.20)	(0.19)
Lithuania	0.20	0.20	0.20
	(0.15)	(0.14)	(0.14)
Austria	–0.04	–0.00	0.01
	(0.18)	(0.16)	(0.16)
Poland	0.05	0.16**	0.17**
	(0.08)	(0.08)	(0.08)
Portugal	0.68***	0.83***	0.82***
	(0.20)	(0.18)	(0.18)
Romania	–0.21	0.04	0.00
	(0.15)	(0.14)	(0.14)

(Continued)

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Table 3. (*Continued*)

Variables	(1) Turnover time	(2) Turnover time	(3) Turnover time
Spain	0.02	–0.09	–0.09
	(0.16)	(0.15)	(0.15)
UK	0.06	0.14	0.17
	(0.12)	(0.11)	(0.11)
Sweden	–0.10	–0.05	–0.04
	(0.20)	(0.18)	(0.18)
Year of case (2005 = reference category)	$\chi^2(13) = 169.48$***	$\chi^2(13) = 171.75$***	$\chi^2(13) = 178.94$***
2006	0.16	0.13	0.10
	(0.11)	(0.10)	(0.10)
2007	0.56***	0.51***	0.49***
	(0.12)	(0.11)	(0.11)
2008	0.45***	0.37***	0.38***
	(0.12)	(0.11)	(0.11)
2009	0.56***	0.53***	0.46***
	(0.12)	(0.12)	(0.11)
2010	0.34***	0.04	0.00
	(0.11)	(0.11)	(0.10)
2011	0.18	0.14	0.13
	(0.11)	(0.10)	(0.10)
2012	0.14	0.16	0.15
	(0.10)	(0.10)	(0.10)
2013	0.35***	0.32***	0.29***
	(0.11)	(0.11)	(0.11)
2014	0.53***	0.45***	0.40***
	(0.11)	(0.11)	(0.10)
2015	0.48***	0.36***	0.29**
	(0.13)	(0.12)	(0.12)
2016	0.30**	0.22*	0.21*
	(0.13)	(0.12)	(0.12)
2017	0.54***	0.49***	0.49***
	(0.10)	(0.10)	(0.10)
2018	0.90***	0.79***	0.79***
	(0.10)	(0.09)	(0.09)
Constant	4.16***	4.05***	4.02***
	(0.10)	(0.10)	(0.11)
LR test (1 vs 2)/(2 vs 3)	$\chi^2(4) = 157.01$***/$\chi^2(1) = 26.11$***		
Cragg–Uhler/Nagelkerke	0.207	0.328	0.346
Observations		950	

Standard errors in parentheses: ***$p < 0.01$, **$p < 0.05$, *$p < 0.1$.
EAW = European Arrest Warrant; LR = likelihood ratio.

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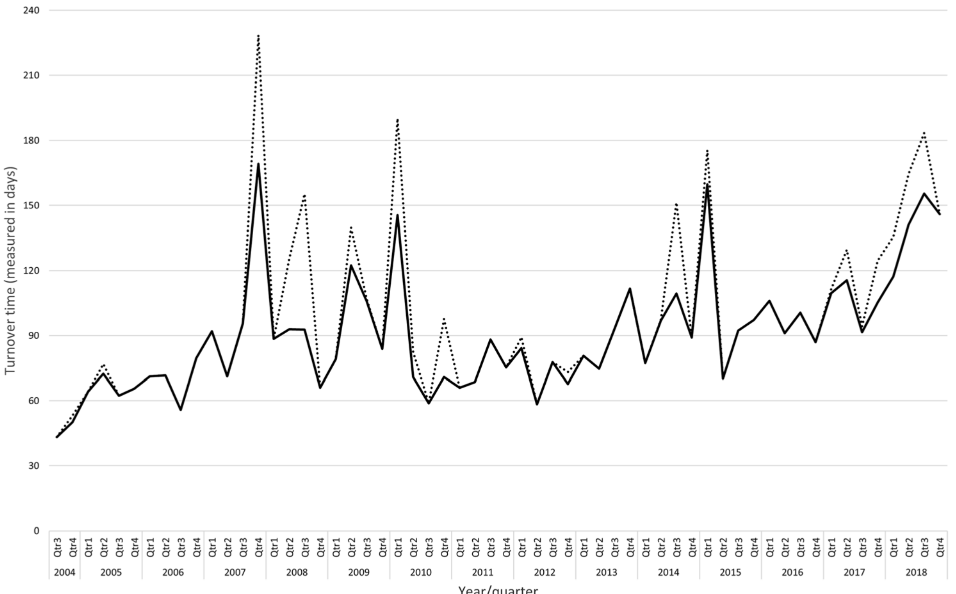

Figure 2. Quarterly evolution of average European Arrest Warrant turnover times (days) of cases brought before the Amsterdam District Court. Solid line represents the winsorised variable that accounts for the disproportionate influence of outliers on averages ($p = 0.05$). Dotted line represents the uncorrected variable.

studies addressing the implementation of measures in areas such as supranational criminal and migration law, as these often incorporate multiple goals (in this case, efficiency and the protection of individual rights) that may be in tension with one another.[81] In such instances, policy recommendations or measures aimed at improving one of these goals should take into account whether and to what degree another goal is sacrificed.

Hypothesis 2, which expects EAWs issued for the execution of sentence cases to exhibit higher average turnover times than EAWs issued for cases in the prosecution stage, did not receive support. This is a surprising result given the similarity of the retrial guarantee to the return guarantee. We speculate that potential issues in trial in absentia cases are easier to predict and prevent by the authorities involved. Alternatively, it may be that the coding choice to examine all cases in which Dutch judicial authorities check whether a trial in absentia occurred was too broad, and that a more narrow focus on cases in which, for example, additional information needed to be requested would produce a different result.

We do find support for Hypothesis 3, which expects requested persons that claim residency in the Netherlands to have a higher turnover time than both requested persons with Dutch nationality and other foreigners that do not claim residency. Similar to the results for Hypothesis 1, our findings in the context of Hypothesis 3 suggest that the more complex test devised by the CJEU[82] shifted the balance of goals underpinning the EAW slightly towards the protection of individuals[83] and had a detrimental effect on turnover rates in EAW cases that apply this jurisprudence. The key difference is that Hypothesis 3 reflects a temporal development in which values are emphasised in the EAW system, as it is based on a new test devised by the CJEU six years after the EAW Framework Decision

[81] Van Glerum, supra, note 26; Mancano, supra. note 1.

[82] Janssens, supra, note 7.

[83] Van den Brink and Marguery, supra, note 4.

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originally entered into force. Thus, developments in jurisprudence safeguarding the position of requested persons – while beneficial to ensuring the instrument's adherence to fundamental and/or citizenship rights – may have an adverse effect on the overall efficiency of the EAW system, in particular when relatively complex tests are introduced. Similar to our findings for Hypothesis 1, a first implication is that a trade-off exists between jurisprudence introducing tests aimed at the protection of individuals' positions on the one hand and the smooth and efficient mutual recognition of decisions from issuing Member States on the other.[84] A second implication is that EU-level developments may affect the practical implementation of EU instruments already implemented in Member States, potentially causing reductions in national formal compliance levels through causes at the supranational level. Although lawyers extensively study the legal consequences of CJEU decisions, the impact of landmark jurisprudence on policy implementation and public management issues (eg efficiency and throughput times) remains severely underexplored. Our study represents a first step in addressing this gap.

Moreover, with the Polish and Hungarian rule-of-law crises, the balance between efficiency and fundamental rights protection is likely to keep on shifting.[85] Several recent CJEU cases illustrate this point. In the Aranyosi & Căldăraru, LM and L and P cases, the CJEU developed and introduced cumbersome and involved two-step tests to evaluate whether flagrant breaches of fundamental rights occur in the context of detention circumstances and effective judicial protection.[86] First, it is necessary to collect reliable, specific and properly updated material indicating a systemic and generalised risk to fundamental rights,[87] which may require entering into dialogue with the issuing authorities.[88] Second, judicial authorities must be able to use this material to determine specifically and precisely whether there are substantial grounds that the requested person *in concreto* runs the risk of such a fundamental rights breach after surrender,[89] which places the onerous task on issuing authorities of assessing local situations on the ground in a different country. The high-cost design of these tests – in particular when they pertain to, for example, detention conditions in very specific prisons on the other side of the EU – could well have similar delaying effects to the Wolzenburg jurisprudence studied here. Thus, while the protection of individual rights is certainly important, care must be taken in jurisprudence to appropriately balance an improvement to individual positions with other goals underpinning the EAW and the AFSJ – for instance, by designing novel legal tests to be easily manageable by national authorities.

This is especially true as turnover times are not just technical matters but are likely to impose severe uncertainty and psychological costs on requested persons.[90] Previous contributions have shown that uncertainty is a characteristic feature of individual experiences of the pre-trial period. Uncertainty can, for instance, exist over the various outcomes that the procedure may have (will I be surrendered to undergo trial in another country?), disruptions

[84] Glerum, supra, note 26.

[85] Popelier et al, supra, note 1; Xanthopoulou, supra, note 57.

[86] Popelier et al, supra, note 1; Van den Brink and Marguery, supra, note 4; A Martufi and D Gigengack, "Exploring mutual trust through the lens of an executing judicial authority: the practice of the Court of Amsterdam in EAW proceedings" (2020) 11(3) New Journal of European Criminal Law 282; Case C-216/18-PPU, LM, EU:C:2018:586.

[87] A Stirone and G Mumolo, "Is the two-step test set out in LM and L and P English Supreme Court's best option in post-Brexit Britain for EAW requests made by States with structural deficiencies?" (2022) 13(4) New Journal of European Criminal Law 391–97; Joined cases C-404/15 and 659/15, Aranyosi-Caldararu, EU:C:2016:198.

[88] C Peristeridou, "A Bottom-Up Look at Mutual Trust and the Legal Practice of the Aranyosi Test" (2023) 54(3) Review of European and Comparative Law 51–72.

[89] Stirone and Mumolo, supra, note 87; K Bovend'Eerdt, "The joined cases Aranyosi and Caldararu: a new limit to the mutual trust presumption in the area of freedom, security, and justice" (2016) 32 Utrecht Journal of International and European Law 112.

[90] Moynihan et al, supra, note 10; Freeman and Seymour, supra, note 10.

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to daily life and navigating the court case.[91] Longer waiting times in the justice system can begin to feel like a situation of limbo (ie being stuck in a stressful, unresolvable situation without having a idea as to its duration).[92] Because the EAW decision may only be the start of longer proceedings in the issuing state, as many requested persons have not (yet) been sentenced and as many EAWs are issued for relatively minor infractions when compared to other extradition instruments, minimising such psychological costs should be an important consideration. This is not an argument to lower fundamental rights protection standards, but it is an argument to design tests aimed at upholding these standards to be relatively unlikely to introduce severe delays during national-level proceedings.

Reasoning further, one may wonder where the optimal balance between fundamental rights protection and efficiency lies. Although a definitive answer is beyond the scope of this contribution, there is a strong argument to be made that the EAW in its inception phase (before the additional protection developed over time by EAW case law and through several supporting directives) provided insufficient protection for individuals and made overoptimistic assumptions on the degree to which mutual trust exists between Member States.[93] Case law developments such as, first, Wolzenburg and, later, Aranyosi and LM and L and P have gradually rectified a number of shortcomings in the system.[94] Even with case law developments up until now, the system arguably still requires additional safeguards. Amongst other issues, the bar for serious risk of degrading treatment under the Aranyosi standard remains incredibly high. For now, the CJEU seems to be sticking to the Aranyosi approach, not only applying it to the right to a fair trial in LM and L and P[95] but perhaps extending it more broadly in the near future. At the same time, the European legislator remains clear through an unrevised Article 17 EAW Framework Decision that sixty- and ninety-day time limits should be the norm for turnover times. Formally, any deviation from them must be exceptional, even if our analysis suggests that they may increasingly become normal.

Considering this discussion, two further implications follow from our findings. First, in a context in which the trend is moving towards more sophisticated tests aimed at the legal protection of requested persons,[96] the sixty- and ninety-day time limits may no longer be realistic. In even somewhat complicated cases that have to be resolved under the Wolzenburg and Aranyosi case law lines, it is likely that some executing states will breach these time limits due to the (rightfully) increasingly complex design of the legal protection system. Efforts must be undertaken to ensure that both prosecutors and judges are not under pressure from the sixty- to ninety-day time limits in more complicated cases (eg by not seeing compliance with the sixty- and/or ninety-day time limit as an indicator of good performance). In the long term, if the trend towards greater legal protection continues and is considered desirable, a looser interpretation of the efficiency goal than high automaticity accompanied by the sixty- and ninety-day time limits may have to be incorporated in the revision of the Framework Decision.

Although not included in the hypotheses, it is notable that Portugal and Hungary in particular stood out as countries with a higher average turnover time than the reference category (France). This finding contributes to a longer line of literature that questions the unqualified assumption that all European legal orders are equal in their functioning.[97] In

[91] H Pelvin, *Doing uncertain time: Understanding the experiences of punishment in pre-trial custody*. PhD thesis. University of Toronto (2017).

[92] Freeman and Seymour, supra, note 10; Moynihan et al, supra, note 10; E Euvrard and C Leclerc, "Pre-trial detention and guilty pleas: inducement or coercion?" (2017) 19(5) Punishment & Society 525–42.

[93] Eg Mitsilegas, supra, note 45.

[94] Van den Brink and Marguery, supra, note 4.

[95] Stirone and Mumolo, supra, note 87.

[96] ibid; Van Den Brink and Marguery, supra, note 4.

[97] Alegre and Leaf, supra, note 36; Van den Brink and Marguery, supra, note 4.

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this context, it is important to recall that the European Commission initially promoted the idea that Member States' relationships were sufficiently robust to apply strict mutual recognition instruments. This suggests that cases that breach the EAW's time limits, thereby resulting in a degree of non-compliance during the implementation in practice phase, are perhaps in part a function of the EU institutions and legislation underestimating the enduring differences between Member States' legal orders.

Finally, it is worth devoting some attention to the temporal development of turnover times of cases brought before the ADC. Our findings suggest a gradual and sizeable increase in turnover times over the years and that a striking amount of cases exceed both the sixty-day and the extended ninety-day time limits provided for in the EAW Framework Decision. What is perhaps most striking is that this upward trend is not an EU-wide phenomenon. The European Commission's and Council of the European Union's annual EAW reports suggest that average turnover times in most Member States are stable, whereas those of the Netherlands, Ireland, the Czech Republic and Denmark are rising (see Appendix 3 for the EU's average turnover rates per Member State).

We tentatively speculate that an explanation lies in the centralised system used for the execution of EAWs by the Netherlands. The Netherlands opted to centralise the execution of incoming EAWs in the International Legal Aid Chamber of the ADC and the International Legal Aid Centre of the Amsterdam Public Prosecutor (see Appendix 2), whereas most other Member States have opted for a decentralised system.[98] While this centralised implementation may offer benefits in terms of learning and expertise,[99] we speculate that focusing workloads in one court and one prosecutor creates issues that a decentralised system would otherwise be able to dispense with. This would be consistent with other contributions in the practical implementation literature, which have emphasised the importance of sufficient administrative capacity and resources to achieve compliance with enforcement norms in EU law.[100]

A number of limitations of this study should be mentioned. First, although we possess a sizeable sample size of publicly available EAW cases, not all EAW cases in the Netherlands are openly available. Although we tested whether our turnover times align with overarching trends seen across all EAW cases, an ideal examination would contain all EAWs decided on in a given time period. Second, future studies should examine similar phenomena for other Member States, particularly to determine whether our results hold in more decentralised EAW systems. Finally, a qualitative examination of the exact underlying mechanism through which turnover times were higher for cases incorporating the nationality refusal ground (including the impact of the Wolzenburg jurisprudence) was beyond the scope of this paper – a follow-up interview analysis therefore seems desirable.

Supplementary material. To view supplementary material for this article, please visit https://doi.org/10.1017/err.2024.3.

Data availability. Data are available on request from the authors.

Financial support. This project was supported by Research Foundation – Flanders (FWO; grant number FN 7028).

Competing interests. The authors declare none.

[98] Glerum, supra, note 26, 98.

[99] ibid, 98.

[100] Treib, supra, note 15; Gollata and Newig, supra, note 25, 30; M Hartlapp, "Enforcing social Europe through labour inspectorates, changes in capacity and cooperation across Europe" (2014) 37(4) West European Politics 805.

Cite this article: B Kleizen, J Wynen, and V Junjan, "Between Aims and Execution: Value Trade-Offs in the Practical Implementation of the European Arrest Warrant?" *European Journal of Risk Regulation*. https://doi.org/10.1017/err.2024.3

https://doi.org/10.1017/err.2024.3 Published online by Cambridge University Press