Assessing the performance of the Netherlands in European Arrest Warrant matters

A study on the output of the Amsterdam District Court and the coordination performed by Eurojust

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Management summary

This report provides a public administration perspective on the classically legal topic of the European Arrest Warrant (EAW), a measure that replaces conventional extradition law with a new system of surrender between EU Member States. By focusing the analysis on the performance of the Amsterdam district court under the EAW Framework Decision, more light is shed on the dynamics of inter-organizational cooperation of Dutch judicial authorities with nine other Member States, the influence of culture, corruption and centralization on these dynamics, changes in surrender patterns in the period 2006-2014, recurring issues in the practical execution of the Dutch EAW implementation and the influence of the coordination by Eurojust and the EJN. The research questions on the performance of the Amsterdam district court are answered with a multi-method case study approach. Member State scores for corruption and culture are based on indices from existing data-sets. Centralization is measured through a classification of the institutional aspects of implementing EAW acts in several Member States on the basis of a legal literature study. This leads to a purposive selection of nine Member States which vary on these three independent factors. The independent variable network coordination by Eurojust and the EJN was measured with an interview approach, but did not play a role in the country selection, as this factor was considered equal for all Member States.

Subsequently, a sample of 116 cases was drawn from the Amsterdam court's EAW output, which are both analyzed qualitatively and coded for subsequent quantitative analysis of the Amsterdam court's output. The three independent variables centralization, corruption and culture together were found to be associated with differences in turnover speed, ratio of case postponements, ratio of additional information requests and the type of EAW requests (execution vs prosecution warrants). While the Amsterdam district court's output for the more different Member States shows higher turnover times, more postponements and more additional information requests than for more similar Member States, the eventual ratio of surrenders vs. refusals was not significantly associated with the grouped independent variables. Furthermore, the qualitative analysis suggests that causes for additional information requests, postponements and refusals are often external to the Amsterdam district court. Thus, while the surrender relationship can be said to perform slightly less well, the results often cannot be attributed to the performance of the Amsterdam court. Only turnover time seemed a problem mostly caused by internal issues, with the Amsterdam court's limited capacity leading to a high amount of EAW time limit breaches. In addition to results relevant for the implementation of the EAW, the study of the Amsterdam district court's application of the EAW instrument has provided new insights into the functioning of output indicators in the heavily legalized policy area of extradition systems. It was for instance illustrated that the inclusion of qualitative data can provide a more appropriate context for the analysis quantitative result. It was furthermore argued that input and throughput data would also complement and nuance output data. Finally, while the positive impact of Eurojust and the EJN was emphasized, the conclusion lists some ways in which EAW network coordination may be improved.

The research also had its limitations, however. Its explorative design made it difficult to isolate the impact of culture, corruption and centralization. Furthermore, accession dates of counterpart Member States could form a spurious factor to the impact of these variables on Amsterdam court performance. Finally, as this research only focused on the executing role of Dutch authorities in EAW matters, more research is needed to also gain insight on the issuing roles of Member State authorities.

Preface

As a public administration project on a topic which is classically studied by legal scholars, this Master's thesis has proven both interesting but also challenging to compile. Illustrative of the challenging nature of the project is that it actually started out with a somewhat different topic at its core. In the initial phases of the thesis, the emphasis was placed on a social science perspective on mutual trust between EAW judicial authorities rather than organizational performance. Difficulties with the execution of the research methodology, in particular a set of expert interviews which proved more difficult to obtain than expected, forced the repositioning of the thesis into the document that it is today.

With a new focus on performance and a few fascinating new data sources – for instance a dataset of coded EAW case law – the thesis has become an interesting project despite its repositioning. Its combination of the public administration and legal disciplines has resulted insights relevant for both spheres. The project for example illustrates the relevance of insights from the social sciences for classically legal topics such as extradition and surrender law, as well as the performance of judicial actors. Conversely, insights from legal analyses were shown to be vital to provide an appropriate context for the utilized performance indicator method. Finally, it has shown how judicial actors in the EU have cooperated surprisingly well for an area which is not only normatively challenging, but which was dominated by national laws and boundaries until only recently. These fascinating results made the project more than worthwhile for me, despite its early challenges.

For her continued support as main supervisor and advice on the main public administration element of the project I would first of all like to thank dr. Veronica Junjan. I would also like to thank dr. Luisa Marin, for providing insight into the EAW system as second supervisor during the early stages of the thesis. Her new position at another university means that dr. Marc Harmsen has stepped in to function as second supervisor in the later stages of the project, and thanks are also due to him for his advice on the legal portions of the thesis and his willingness to join the supervision team. Finally, I would like to thank my parents, brother and girlfriend for the support (and the admirable amount of patience) that was required to see me through two master's degrees.

Bjorn Kleizen
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Abbreviations

AFSJ	Area of Freedom Security and Justice
CFSP	Common Foreign and Security Policy
CISA	Convention Implementing the Schengen Agreement
CJEU	Court of Justice of the European Union
Df	Degrees of freedom
EAW	European Arrest Warrant
EC	European Community
ECE	European Convention on Extradition
ECJ	European Court of Justice
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EEC	European Economic Community
EJN	European Judicial Network
FD	Framework Decision
HR	Hoge Raad (Supreme Court of the Netherlands)
IDV	Individualism/collectivism index
EU	European Union
JHA	Justice and Home Affairs
MAS	Masculinity/femininity index
NAO	Network Administrative Organization
NBI	National Bureau of Investigation
PDI	Power Distance Index
SIS	Schengen Information System
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UAV	Uncertainty Avoidance Index
UK	United Kingdom

1. Introduction

1.1 Introduction to the research topic: mutual recognition, mutual trust, the European Arrest Warrant and network theory

This introductory chapter will discuss the goals, research design, methodology and relevance of the research project. The thesis aims to ascertain the performance of the Dutch Amsterdam District Court and Eurojust with regard to the implementation of the European Arrest Warrant (EAW), the legal framework replacing the extradition system of the European Convention on Extradition (ECE). Since the Cassis de Dijon case[1] mutual recognition has been a staple of European integration. Especially in the internal market it has provided a less intrusive regulatory instrument than harmonization. In the Tampere Council the mutual recognition technique was transplanted to the Area of Freedom Security and Justice (AFSJ), allegedly under influence of the United Kingdom. The idea was that, as with the internal market, mutual recognition would provide an instrument capable of attaining a common Area of Freedom Security and Justice, without the need for extensive harmonization of national criminal law (Albers, Beauvais, Bohnert, Langbroek, Renier & Wahl, 2013, p.15-16; Marin 2008).

With the introduction of the EAW Framework Decision several innovations have changed the relationship between the different actors involved in the process now called surrender (traditionally known as extradition). First of all, the requirement of double-criminality has been removed for 32 categories of offences, meaning that if an offence falls within one of these (rather broadly defined) categories and is illegal in Member State A, Member State B may not refuse surrender due to the act not being punishable under its own criminal laws. This is rather different from the older European Convention on Extradition, which provided for the double-criminality requirement in article 2(1) without making exceptions for categories of crimes. Moreover, several traditional refusal grounds found in the European Convention on Extradition have been removed and others have been made optional. These optional refusal grounds remain subject to national decisions on whether or not to include them in implementing legislation.[2] This is in stark contrast to the former international system, in which refusal for extradition on almost all of these grounds was mandatory. This means that the EAW framework is somewhat more intrusive than its predecessor convention (on the intrusiveness of mutual recognition in criminal law see also Klip, 2012, p.392-395). On the other hand, the system is set up in such a way that, while the main principle remains automatic surrender, there is no absolute obligation to execute warrants (Herlin-Karnell, 2013; Marin, 2008).[3] Thus, while Member States are committed to allowing surrender as often as possible, there remains room for considerations on the basis of for instance reintegration of nationals and residents or whether or not to refuse on the basis of the executing Member State having jurisdiction to prosecute the crime itself.

[1] C-120/78, *Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein* [1979] ECR-649 (also known as Cassis de Dijon)

[2] Mitsilegas (2006) notes that many states have implemented the EAW in such a way that most optional refusal grounds listed in the framework decision are mandatory refusal grounds under national law, hinting at a lack of mutual trust on the part of the legislator and national government. As regards this research proposal it should be added that the Dutch Overleveringswet is an example of this. Mitsilegas also notes that other countries have even included refusal grounds not found in the EAW framework decision, such as refusal grounds based on other international obligations like the European Convention of Human Rights (ECHR).

[3] The Court also admits this in C-42/11 *Da Silva Jorge* [2012] not yet published, p.30

A peculiarity of the mutual recognition instrument has always been that it is based on a high level of mutual trust between the Member States of the Union. While the regulatory regimes operating in other Member States are different, they must be accepted as equivalent in order for mutual recognition to function. A good illustration of this idea is provided by the aforementioned origin of the mutual recognition principle, the Cassis de Dijon case (see also Craig & de Búrca, p.647-649). In this case, a German rule provided that an alcoholic liquor called Cassis de Dijon could only marketed if it was produced with a minimum amount of alcohol. The ECJ, however, ruled that such limitations provided an obstacle for the free movement of goods even though they were indistinctly applicable, and that if the product requirements of the producing country had been complied with, Germany would have to acknowledge those requirements as providing equivalent protection to its own laws.[4] This requires a high amount of trust from the German legislator that French laws actually provide equal protection.[5] Similarly, under the EAW, Member States and the judicial actors implementing the EAW framework must now be prepared to accept warrants emanating from other judicial actors and – barring exceptional cases – to not question *inter alia* the proportionality, legal protection, suspicions underlying the warrant and the adequacy of (pre)detention in other Member States. Conversely, when an exceptional circumstance does occur, the executing judicial actors of the Netherlands must also not display any blind mutual trust, as this could lead to extraditions which infringe the rights of the requested person. Finding this fine balance between automatic surrender and appropriate protection of the rights of the defendant is even more problematic due to the differences in not only the legal systems of the Member States, but also the cultural and linguistic differences that affect inter-organizational communication and decision-making. For instance, Dutch judicial actors require strict and unambiguous guarantees before authorizing the surrender of a national or a person requiring a retrial, which can be difficult for some issuing authorities to provide due to their employees not being native in either Dutch or English.

Recognizing the complicated nature of mutual recognition, mutual trust and the differences between the Member States, the European legislator has established both the European Judicial Network and Eurojust as coordinators of the EAW network. The European Judicial Network can be seen as a network of specialized judicial actors within the broader network of EAW judicial actors. It functions both as a first contact point for foreign authorities and as a mediator for practical problems arising between judicial authorities of the Member States. Eurojust also functions as a coordinator for a network, but specializes in the mediation between authorities in more complicated cases.

Thus, a complicated system of international cooperation exists with factors which can be hypothesized to decrease the performance of the actors in the network as well as factors which could be hypothesized to increase network outcome. Currently, the literature on the EAW has not investigated which of these factors are of particular importance to the eventual level of performance of EAW judicial actors. This research project will therefore aim to ascertain the impact of several of these issues on the performance of one judicial actor through a multi-method case study. The study will consider the decisions of the Amsterdam district court on three aspects of external organizational performance: external effectiveness,

[4] C-120/78, *Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein* [1979] ECR-649, p.8-14

[5] As shown in particular by paragraph 12 of the Cassis de Dijon case. That important reasons may exist to provide obstacles to free movement was also acknowledged by the Court in paragraph 8 by providing the possibility for Member States to invoke so-called mandatory requirements (for instance public health) to justify infringements of the free movement provisions.

external efficiency and external fairness. These factors correspond to three goals also visible in the EAW Framework Decision, which respectively concern establishing a system of fast surrender, a system of automatic surrender based on mutual trust, and maintaining an appropriate amount of judicial protection for requested persons.

The first factor which will be considered is the cultural difference between the Netherlands and other Member States. In organizational psychology, the work of Hofstede has been influential in explaining the issues between intercultural organizational cooperation. His original IBM study measures national cultural differences on four dimensions: power distance, masculinity/femininity, individuality/ and uncertainty avoidance. As will be elaborated on in chapter three, these differences can be explain how communication differs between national cultures, and how this may generate culture shocks and misunderstandings when different cultures come in contact with one another.

Earlier reports on the factors influencing the implementation of the EAW on the level of judicial actors have found indications that corruption and centralization of the judicial system may also play a role in determining the performance of the network and its actors. Firstly, the amount of perceived corruption of other Member States has been found to be a factor shaping the trust in those legal systems. Secondly, the extent to which the system of a Member State employs a centralized system of actors may aid or be detrimental to its communication with other actors. Centralized EAW actors would allow for a more specialized team, with greater experience in the communication with their foreign counterparts, thus smoothening cooperation. Determining the extent to which a Member State employs a centralized system for either its issuing or executing activities will require a short legal analysis incorporating both the presence or absence of a centralized authority competent to issue warrants instead of decentralized prosecutors/judges, and the presence of a central authority which coordinates EAW requests from and to that Member State.

As the report is mainly explorative in nature, any other factors which notably seem to influence the performance of the Amsterdam court in the data collected will also be reported after data analysis. This will add to the understanding of whether the model presented in chapter three is indeed a comprehensive set of factors that enables an understanding of the dynamics of the EAW network. Adjustments to the causal model, if necessary, will therefore be presented in the conclusions.

1.2 Structure of the report

This study is based on a number of research questions, divided into a main research question and several sub-questions. The sub-questions have been divided into theoretical and empirical questions, in order to emphasize the difference between the literature study and the phase in which my predictions will be tested with the empirical data gathered in the in-depth interviews. The main questions is as follows:

- How does the Amsterdam District Court perform with regard to its decisions on the surrender of requested persons from the Netherlands to the judicial authorities of other Member States in the European Union under the EAW Framework Decision?

Sub-questions:

1. What is the current legal regime under which the studied actors operate?
2. What predictions does the literature make on factors that could influence the performance of the external EAW relations of the Amsterdam District Court?
3. How do these factors influence the difference in performance in surrender towards specific Member States?
4. How has the performance of the Amsterdam District Court in EAW matters evolved over the years?
5. What is the influence of Eurojust on the functioning of the EAW network, in particular with regard to the Netherlands?

The research will start with an analysis on the current state affairs of the European Arrest Warrant and the relevant European and national legislation. The technical, regulated nature of cooperation within the sphere of the EAW demands a thorough analysis of the system to be able to grasp the dynamics of the cooperation between actors and the range of choices they can make.

Subsequently, a review of the ideas that exist in the literature on the structural factors which influence the performance of relationships between the judicial authorities of specific Member States will be presented in chapter 3. Specific attention will be devoted how these factors may result in differences between Member States with regard to the surrenders refused and authorized (and differences in the process before a surrender decision is made) by the Amsterdam District Court. The purpose will be to select or construct a model or theory which might be able to explain the relationship between cultural factors, corruption, institutional implementation of the EAW, Network Administrative Organization's (NAO's), and the resulting performance of the studied relationships. Furthermore, attention needs to be devoted to the conceptualization of external organizational performance in the context of the European Arrest Warrant. Finally, chapter 3 will present an overview of the literature on performance measurement in the public sector, as this body of work generates useful insight in the strengths, weaknesses and attention points for the development of performance measurement indicators in chapter 4.

Chapter 4 will continue by operationalizing the concepts presented in chapter 3. The way in which this research will measure the various independent variables and the dependent performance variable will presented first. For this purpose a combination of quantitative indicators and qualitative analysis will be utilized. This double methodology is aimed at gathering comparable data for a broad and longitudinal analysis of the Amsterdam court's performance, while also ensuring that the insight into the dynamics of individual court cases is not completely lost. The latter aspect is especially relevant given the normative elements inherent in criminal law court cases, which may become lost in a purely quantitative analysis. Thus, the qualitative analyses performed in the context of this research will both support the interpretation of the quantitative data gathered and be utilized to analyze elements difficult to measure through quantitative indicators. The final element of the multi-method design which will be discussed in chapter 4 is an in-depth interview with Eurojust employee's, which will add to the data on the influence of a supranational coordinating agency (or in network terms, a NAO) on the performance of the Dutch actors. Such an in-depth interview design is adequate for several reasons. First, the current research is explorative in nature to a large extent. It is designed to give a first insight into the dynamics and organizational performance of the Amsterdam court in the heavily legalized EAW network. The usage of for instance a survey method with its rigid questionnaire structure will therefore be harmful to the validity of the research, considering it is not entirely clear up front which questions should be asked. A second

point is that the amount of two respondents is too low for a proper quantitative interview approach (Babbie, 2007, p. 305-308).

Chapter 4 will then continue with a description of the case selection process. As will be recalled from the previous paragraph, the report will analyze the performance of the EAW instrument from the perspective of the Amsterdam District Court and its relationships with other judicial actors in the European Union. It will also be recalled from the research questions introduced earlier in this paragraph that the aim of the research is to make a comparison of the surrender relationships of the Amsterdam District Court on the basis of factors which may influence such relationships. Specifically, the research will look into the effects of the factors culture, corruption, network coordination and centralization/decentralization of EAW judicial actors. While network coordination can be considered constant between the various Member States, a case selection must be made of those surrender relationships toward Member States which provide an adequate reflection of the range of variation in differences on culture, corruption and centralization/decentralization.

It is furthermore helpful to note that while the research treats the Amsterdam District Court as the unit of observation, the units of analysis are in fact the surrender relationships between the Amsterdam court and judicial actors in other Member States. This is due to the fact that judicial actors in the field of surrender and/or extradition law do not operate in a vacuum. Instead, a network of mutual interdependencies exist between the issuing Member States' judicial authorities, the executing Member States' judicial authorities, and the actors that coordinate the case-flow in the network. Thus, performance of the Amsterdam court as an executing judicial must be seen in the light of the requests made by foreign issuing counterparts. As will be elaborated on in chapter 4, three groups of issuing Member States will be selected for the purposes of data collection and analysis. The first group will be selected on the basis of being similar to the Netherlands in terms of culture, level of corruption and level of decentralization/centralization. The second group will be selected due to being dissimilar on the same factors. Finally, an intermediate group will be selected to add to the variation of the case study.

2. The European Arrest Warrant and its implementation

2.1 Introduction

The Framework Decision on the European Arrest Warrant is one of the flagship measures of the Area of Freedom Security and Justice, and the first of several EU measures designed to use the principle of mutual recognition to achieve an area of free movement of judicial decisions (Smith, 2013). The measure replaces the old system of extradition which existed between member states before 2002, which was based on the European Convention on Extradition (ECE) of the Council of Europe.[6] The usage of the term surrender instead of the earlier used extradition already hints at the fact that the European legislator sought to alter the multilateral transfer of indicted persons considerably (Mitsilegas, 2012). Understanding why it sought to do so requires investigating the history of the EAW, which will be the focus of the first paragraph of this chapter. Such an analysis is relevant especially because it adds to the understanding why the concept of mutual recognition was used and why a rather controversial act such as the EAW was drawn up in the first place. It will also serve as an introduction to the problems of mutual recognition in an area other than the internal market. Subsequently an analysis of the EAW Framework Decision itself will be provided. These analyses will provide the basis for the subsequent chapters on the Amsterdam district court's surrender procedures and the coordination provided by Eurojust.

2.2 European integration, mutual recognition and the history of European cooperation in criminal matters

European integration has always been a rather incremental process, in which alignment of the divergent interests of the different Member States was often only possible by for instance legislating with norms which are the lowest possible denominator. As Hix (2008, p.40-47) contends, European legislation in the area of the internal market was possible in the early years of the European Economic Community and the later Union especially because every Member State agreed that some European legislation beats the alternative of no harmonized standards at all. However, once that certain floor level of legislation on which all Member States can agree has been reached, the different states often start to disagree on the amount of additional legislation which is ultimately desirable. The incremental pace of European integration and the obstacles often facing complete harmonization also meant that the ECJ, tasked with adjudicating on *inter alia* the free movement provisions, was often confronted with differing Member State legislation, ranging from rather instrumental product standard legislation to more sensitive legislation on matters such as public health, social policy, environmental protection, criminal law etc. Faced with the problem of diverging standards complemented by the problem of an unfinished European legal order, the Court was forced to provide practical answers to achieve the EC goal of an internal market with free movement of goods, services, capital and persons. One of these seminal cases is the famous Cassis de Dijon judgment. In this case, a German rule provided that an alcoholic liquor called Cassis de Dijon could only marketed if it was produced with a minimum amount of alcohol (see also Craig & de Búrca, 2011, p.647-649). The ECJ, however, ruled that such limitations provided an obstacle for the free movement of goods even though they were indistinctly applicable, and that if the product requirements of the producing country had been complied with, Germany would have to acknowledge those

[6] This Convention is still the relevant acquis for any extradition procedure in which one of the two Member States is not part of the European Union.

requirements as providing equivalent protection to its own laws.[7] The acceptance of a foreign standard as equivalent does, however, require a high amount of trust from the German legislator that French laws actually provide equal protection.[8] This issue of trust would later remain important as a prerequisite of effective cooperation in criminal law transplants of the mutual recognition instrument, most notably the EAW.[9]

During the same period as when the Cassis de Dijon judgment was delivered – that is to say about 1975-1985 – the first foundations of cooperation in criminal matters were also created in the form of the TREVI Group. Originally founded in the face of terrorist threats such as the Italian Red Brigade and the German Red Army Faction, the TREVI group met at the ministerial level to discuss judicial cooperation and mutual assistance among customs authorities (Council of the European Union, 2005, p.7; Kostakopoulou, 2006, p.232-233). Subsequently, the perceived need of Member States to abolish internal borders resulted in the signing of the Schengen Agreement in 1985 and the adoption of the Convention Implementing the Schengen Agreement (CISA) in 1990. The Schengen agreement was adopted outside of the framework of the European Community (EC) by six Western European states, and cooperation concerned external frontier policies, asylum and migration issues and the creation of a Schengen Information System (SIS) which allowed law enforcement authorities to share information (Kostakopoulou, 2006, p.233-234).

Subsequently, the Maastricht Treaty of 1992 formed the famous pillar structure of the newly created European Union, distinguishing between the Internal Market as the first pillar, the Common Foreign and Security Policy (CFSP) as the second, and Judicial and Home Affairs as the third. Each pillar was governed by a different set of rules, and both the CFSP and Justice and Home Affairs (JHA) pillars were notably intergovernmental in nature (Craig & de Búrca, 2011, p.924-925). The Amsterdam Treaty, entering into force in 1999, maintains the pillar structure introduced by Maastricht in 1992 but did provide several new legislative instruments to replace the older conventions and joint positions. A third pillar analogue of the directive instrument was created in the form of the framework decision. Like directives, framework decisions create transposition obligations for Member States, and thus function as a result commitment. The framework decision does have several features distinguishing it from its first pillar counterpart, however. First and foremost is the lack of direct effect. While sufficiently clear, precise and unconditional provisions of directives are capable of being invoked before the EU courts, the doctrine of direct effect was explicitly ruled out by the Treaty drafters for framework decisions. The result sought by the drafters was a situation in which Member States have more freedom whether and how to implement framework decisions, without having to worry for instance about provisions being invoked in cases arguing for non-implementation after the transposition deadline has passed. This position can be explained due to the controversial nature of European criminal law and the traditionally intergovernmental nature of legislation under the JHA (Kostakopoulou, 2006, p.240-241). Despite the fact that direct effect was ruled

[7] C-120/78, *Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein* [1979] ECR-649, p.8-14 (also known as Cassis de Dijon)

[8] As shown in particular by paragraph 12 of the Cassis de Dijon case. That important reasons may exist to provide obstacles to free movement was also acknowledged by the Court in paragraph 8 by providing the possibility for Member States to invoke so-called mandatory requirements (for instance public health) to justify infringements of the free movement provisions.

[9] To name a few notable examples of cases in which the principle was used: Joined cases C-187/01 and C-385/01 *Hüseyin Gözütok and Klaus Brügge* [2003] ECR I-01345, p.33; C-399/11, *Melloni* [2013] ECR I-0000, p.63 or C-303/05 *Advocaten voor de Wereld VZW* [2007] ECR I-3633, p.45

out explicitly, the Court was willing to extend the related doctrine of indirect effect in its landmark Pupino judgment from its earlier case law on directives to the new framework decisions. This second doctrine, also referred to as consistent interpretation, means essentially that provisions of national must be interpreted in a manner consistent with the EU acquis, and any provisions that cannot be interpreted in such a way – and are thus conflicting with the EU provision – must be set aside.[10]

Another defining moment for the future of EU JHA and the AFSJ was the Tampere Council of 1999, which provided the basis for the usage of mutual recognition as the main integration instrument of European criminal law (Alegre & Leaf, 2004; Herlin-Karnell, 2010). At the Tampere Council it was decided that mutual recognition would be the cornerstone of judicial cooperation in criminal matters and the Member States planned no less than 24 measures that were to be based upon the principle (Mitsilegas, 2006). Due to the 9/11 tragedy in 2001 the process of criminal law integration in the EU was significantly sped up. The attitude of the western nations changed rapidly in the face of the perceived terrorist threat and there was a sense that current international cooperation was lacking behind on more globalized risks such as terrorism. The European Union responded surprisingly swift: a Commission proposal for the EAW was drawn up on 19 September 2001. The legislative procedure also moved unusually quickly, with the framework decision being adopted in 2002 (Kostakopoulou, 2006, p.243; Alegre & Leaf, 2004).

The Treaty of Lisbon introduced another set of innovations relevant to the development of the AFSJ. By far the most important change is that the pillar structure, introduced by the Maastricht Treaty, has been abolished. The resulting integration of the internal market and the AFSJ has produced some interesting consequences. The first is that internal market legislative instruments (directives, regulations and decisions) are now used for the integration of criminal law, replacing of the formerly utilized framework decisions and conventions. The already existing third pillar legislation will however not be abolished, however, and the legal effects of measures – and the instruments they are based on – will remain the same unless the measures are amended or replaced, in which case the 'new' internal market instruments will have to be used. The transitional provisions of Protocol 36 attached to the Treaties are furthermore relevant: the Court retained its limited jurisdiction with regard to instruments adopted in the JHA area before Lisbon until December 2013. Likewise, the Commission was not able to utilize article 258 TFEU (providing for the power to give opinions and bring infringement proceedings before the CJEU if it considers that a Member State is not fulfilling its obligations under EU law) until that same date. After the transitional period both the Court and the Commission were no longer be limited in their power by these provisions, adding to the further communitarization of EU criminal law.

2.3 The EAW Framework Decision

Turning the discussion to the Framework Decision on the EAW instrument[11] itself several aspects are worth considering in-depth. First of all, several interesting statements by the European legislator are contained in the preambles to the Framework Decision, which provide an appropriate starting point for this analysis. Subsequently, attention will be devoted to the provisions of the EAW that provide

[10] C-105/03, *Pupino* [2005] ECR I-05285, p.43

[11] Council Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States

innovations to the traditional extradition schemes interesting for our aims. Finally, I will discuss a few issues associated with the usage of mutual recognition by the EAW Framework Decision.

According to preambles 1-5, Council Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States seeks to introduce a system of surrender between Member States in order to speed up the extradition procedures existing up until then, with the goal of attaining a free movement of judicial decisions in criminal matters in the Area of Freedom Security and Justice. This is an expression of the objective included in Article 3(2) TEU, which states that the Union will offer its citizens an area without internal frontiers to freedom, security and justice. Preamble 10 goes on to mention that the system is based on a high mutual confidence between the legal orders of the Member States. However, according to preamble 8 some controls remain necessary despite this confidence, requiring '*that a judicial authority of the Member State where the requested person has been arrested will have to take the decision on his or her surrender'.* These two preambles immediately show some of the tensions underlying the usage of mutual recognition in criminal matters. While mutual recognition is the cornerstone of integration in criminal matters, the risk of breaches of for instance the right to effective judicial protection or the right to a fair trial is apparently conceived as too great by the drafters of the Framework Decision to abolish all protection in the executing state. These issues have been related to a journey into the unknown by Mitsilegas (2006), who argued that the unpredictable effects of mutual recognition were an important facet in including refusal grounds in mutual recognition instruments for cooperation in criminal matters.

Article 1 of the Framework Decision starts by defining the European Arrest Warrant, stating that the measure is based on the principle of mutual recognition, and reaffirming adherence to the fundamental rights enshrined in article 6 TEU. It will be recalled, furthermore, that the European Arrest Warrant replaces the traditional terminology of extradition acts. The word extradition itself is replaced by the word surrender. The state requesting the extradition of a person should now be called an issuing state, while the requested state is known as the executing state. As mentioned in the first paragraph of this chapter, these words in themselves already signify that the EAW measure is to be seen as a departure from traditional intergovernmental forms of extradition to a new, more supranational and integrated system between the EU Member States that is based on the mutual trust between them.

Article 2 is the provision dealing with the scope of application of the European Arrest Warrant. Article 2(1) limits the usage of the EAW to '*acts punishable by the law of the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months.'* This means that the EAW is only meant for relatively serious offences, although it is left up to the Member States to determine which offences should be punishable by such a sentence. Arguably the most noticeable provision of the Framework Decision is article 2(2), which abolishes the double criminality requirement for 32 categories of offences if they are punishable in the issuing Member State with a maximum custodial sentence of at least 3 years. The double criminality requirement essentially means that a person is only extraditable for an offence if both the requested and the requesting state consider the act punishable by law. The existence of this requirement in the more traditional international law agreements on extradition unsurprising when considering the sovereignty of equal states in the international system in relation with the principle of legality in criminal law (also described by the phrase *nullum crimen sine lege*, which

translates in English to: no crime without law). If a sovereign regulator were to extradite a person for something which is not considered an offence in that state, the result would be a violation of the principle of legality. The downside is that such a principle can constitute a substantial barrier to the enforcement of judicial decisions. Thus, the abolition of double criminality must be seen as a method to improve the EAW's contribution to the free movement of judicial decisions in the AFSJ. For the 32 offences listed in article 2(2) it is therefore sufficient that the committed act is considered an offence in the issuing Member State, and surrender may not be refused on the ground that the executing Member State does not consider the act punishable under criminal law. While the double criminality requirement was abolished in order to speed up extradition procedures, such a system does create problems of its own. For example, nations which employ the principle of mandatory prosecution will have to issue arrest warrants for even very minor crimes, for which surrender might seem rather disproportionate. The effect of the abolishment of the double criminality requirement then means that the executing Member State is obliged to act upon these requests, paradoxically creating a higher workload (Mitsilegas, 2012; Van den Brink, Langbroek, Marguery, 2013, p.182-183). All other situations governed by the EAW, but falling outside of the scope of article 2(2), are still subject to the requirement of double criminality, as explicitly stated in article 2(4).

Another controversial choice of article 2(2) is the usage of broad categories of crimes without substantively defining their constituent components. For instance, it is rather difficult to objectively and definitively determine what the exact constituent elements of the list offence of terrorism are. By abolishing double criminality for the category 'terrorism', the concern is that the door might be opened for opportunistic tagging of offences as for instance constituting terrorism. Perhaps even more problematic than terrorism is the list offence 'organized crime', a category so broad it can potentially be used for a multitude of offences, dependent on the national definitions of organized crime. These legality concerns were raised in the landmark Advocaten voor de Wereld case. However, in its judgment the ECJ confirmed the validity of the EAW Framework Decision by ruling that the 32 categories of crimes do not infringe the principle of legality.[12] While the Court acknowledges the importance of the principle of legality in criminal matters, it assumes that even though the EAW itself does not substantively define the 32 categories of crimes, the definitions provided by national laws mean that surrender under the EAW does not infringe this principle.[13] In its argument, the Court reiterates the ECtHR criteria to meet principle of legality. In paragraph 49-50, referring to the ECtHR, the court states: '*this principle* [ed: of legality in criminal offences] *implies that legislation must define clearly offences and penalties which they attract. That condition is met in the case where the individual concerned is in a position, on the basis of the wording of the relevant position and with the help of the interpretative assistance given by the courts, to know which acts will make him criminally liable'.* However, as mentioned before, the vagueness of the 32 categories of crimes makes it somewhat difficult for individuals to recognize whether they are in fact committing extraditable crimes or not. This ruling has attracted some criticism, since the position taken by the Advocaten van de Wereld NGO has some merit. The core of their argument is that these 32 categories of crime are formulated so vaguely and imprecise, that indicted persons may not effectively be able to know beforehand whether they are committing an extraditable crime or not, as Member States criminal laws may not have sufficient precision, predictability and clarity, as ECHR safeguards are not always effectively implemented by the Member States. There is something to be said for this argument, since for instance the ECHR, mentioned by the Court as an important safeguard, has not always proven

[12] C-303/05 *Advocaten voor de Wereld VZW* [2007] ECR I-3633
[13] C-303/05 *Advocaten voor de Wereld VZW* [2007] ECR I-3633, p.52-54

itself a failsafe preventative mechanism for protecting human rights, as the ongoing workload before that Court shows (see also Guild & Marin, 2009, p.1, 7). The same logic applies to fundamental rights protection provided by the Treaties and the Charter of the EU (Herlin-Karnell, 2007). While the Court's answer to the double criminality question in relation with the requirement of legality therefore does make sense from a substantive sense, it is questionable whether the more procedural requirements of the principle of legality have been met by the drafters of the Framework Decision (Herlin-Karnell, 2007).

The different mandatory and optional refusal grounds included in the EAW system are laid down in Articles 3 and 4. Mandatory refusal grounds must be transposed into national law when implementing the Framework Decision. Perhaps the most important of these mandatory refusal grounds is the principle of *ne bis in idem*, expressed in article 3(2) of the EAW Framework Decision. The other two mandatory refusal grounds, laid down in Article 3(1) and Article 3(3), respectively concern cases in which a requested person is covered by amnesty in the executing Member State and situations in which the requested person is underage. In contrast to the mandatory grounds for refusal, Member States are left free to decide whether they want to implement the optional refusal grounds listed in article 4, although in practice most Member States have opted to transpose most or all of the listed refusal grounds.[14] Examples include the possibility to refuse surrender in the event that the executing Member State is prosecuting a person for the same offences, cases in which the person is a national, resident, or staying in the executing Member State[15] and the principle of territoriality. It is worth noting that these optional refusal grounds are in fact one of the main innovations of the EAW Framework decision as opposed to its ECE predecessor. The ECE provided for a broad range of mandatory refusal grounds while the EAW recasts many refusal grounds as optional, or removes these grounds altogether. This lower amount of mandatory refusal grounds is considered possible due to the high level of trust that the drafters of the Framework Decision assume exists between the Member States (Herlin-Karnell, 2010).

While Articles 2-4 make up the core of the EAW system, the later provisions deal with the competent judicial authorities, the procedures to be used and pay some attention to the rights of persons against which a warrant has been issued. In its entirety, the EAW clearly attempts to accelerate[16] the surrender procedure as much as possible. In addition to the earlier mentioned limitation of optional refusal grounds and the partial abolishment of double criminality, several other methods seek to ensure a swift surrender procedure. For instance, the Framework Decision prescribes that national legislation allows for persons to give consent to their surrender which is, in principle, irrevocable. Another notable way in which the EAW framework decision seeks to speed up the surrender procedure is by using strict time limits of 60 days, which can be extended by another 30 days. Article 17(3) for example provides that '*the final decision on the execution of the European arrest warrant should be taken within a period of 60 days after the arrest of the requested person'.* Should the indicted person consent to his surrender, the final decision should

[14] Mitsilegas (2006) notes that many states have implemented the EAW in such a way that most optional refusal grounds listed in the Framework Decision are mandatory refusal grounds under national law, hinting at a lack of mutual trust on the part of the legislator and national government. As regards this research proposal it should be added that the Dutch Overleveringswet is an example of this. Mitsilegas also notes that other countries have even included refusal grounds not found in the EAW Framework Decision, such as refusal grounds based on other international obligations like the European Convention of Human Rights (ECHR).

[15] This particular refusal ground has sparked a number of interesting landmark cases.

[16] Which is also stated as a goal of the EAW Framework Decision in recital 5 of the preamble, and is repeated by the Court in for instance C-399/11, *Melloni* [2013] ECR I-0000, p.36-37.

be taken after only 10 days.[17] Such requirements prevent Member States from drawing out the surrender of persons against whom an EAW has been issued and prevent Member States from creating lengthy procedures when transposing the Framework Decision. The procedural acceleration which the EAW sought to introduce is another factor that makes the EAW Framework Decision somewhat more controversial than classic extradition under international law.

2.4 The implementation of article 4(6) EAW and mutual trust

One area in which many EU national legislators have shown a doubtful amount of mutual trust is in the implementation of the optional refusal ground included in article 4(6) EAW. This refusal ground allows for non-execution of a European Arrest Warrant for the purposes of sound reintegration in the Member State where the indicted person is apprehended.[18] The Framework Decision provides for three categories of persons for which such a refusal may be made: nationals of the executing Member State, residents of the executing Member State, or persons staying in that Member State. Problematic, first, are the categories of residents and persons staying in a Member State. The ECJ has ruled on these categories in two seminal judgments: the Kozlowski and Wolzenburg cases.[19] The Kozlowski preliminary reference[20] case is important due to the definitions it provides of the aforementioned categories.[21] The ECJ rules that those the concepts of resident and staying in must be defined as autonomous concepts of EU law for the benefit of the uniform application of those concepts and the principle of equality,[22] before providing the following definitions in paragraph 46:

'Accordingly, the terms 'resident' and 'staying' cover, respectively, the situations in which the person who is the subject of a European arrest warrant has either established his actual place of residence in the executing Member State or has acquired, following a stable period of presence in that State, certain connections with that State which are of a similar degree to those resulting from residence.'

In assessing the connections established with the host-state, no single factor should be conclusive, but account should be taken of *inter alia 'the length, nature and conditions of his presence and the family and economic connections*'.[23] Notable in this regard is that the ECJ additionally ruled that while criminal activities in the executing state may not be of influence to the question whether a person is 'staying in' that state, but they may subsequently be of relevance to the decision whether to actually refuse surrender of the person that is staying in the executing state.[24] However, the Court does not rule on the other question posed by the referring Stuttgart Court, which deals with the issue of the possible non-discrimination between nationals and other EU citizens in legislation where surrender for nationals is always refused, and the refusal of surrender for other EU citizens is left to the discretion of the competent judicial authorities (Marin, 2011). This is somewhat unfortunate, since the discrimination of residents solely on the basis of a formal nationality condition can be argued to run counter to the principle of non-

[17] Article 17(2) EAW Framework Decision
[18] C-66/08 – *Kozłowski* [2008] ECR I-06041, p.45
[19] C-66/08 – *Kozłowski* [2008] ECR I-06041
[20] Article 267 TFEU provides for a dialogue system between EU-level and national level courts, with the ECJ giving binding interpretations of EU law to preliminary reference questions raised by national courts.
[21] C-66/08 – *Kozłowski* [2008] ECR I-06041, p.28
[22] C-66/08 – *Kozłowski* [2008] ECR I-06041, p.42-43
[23] C-66/08 – *Kozłowski* [2008] ECR I-06041, p.48-49
[24] C-66/08 – *Kozłowski* [2008] ECR I-06041, p.51

discrimination, laid down both as an EU commitment and as a prohibition in several articles of the Treaties[25] and the Charter on Fundamental Rights.[26]

The Wolzenburg case elaborated further on the concept of resident, its relationship with the aforementioned principle of non-discrimination and the discretion Member States have to consider specific categories of persons as resident or not (Marin, 2011). At issue was the validity of a set of Dutch rules implementing article 4(6)EAW and regulating the issuing of residence permits, which provide that after a person has been resident in the Netherlands for at least 5 years, surrender must be refused and that the Netherlands will declare itself willing to take over the execution of the custodial sentence (Marin 2011).[27] In the Court's analysis regarding whether this is concurrent with the principle of non-discrimination, at the time enshrined in article 12 EC (now article 18 TFEU), it notes that Netherlands sought to introduce objective criteria to determine whether the resident had an actual connection with the Netherlands society.[28] It continues by applying a proportionality test on the Dutch rules in question, noting that refusal of surrender of nationals with the purpose of facilitating reintegration in the society of the country of origin does not appear excessive. It furthermore notes that a rule requiring a period of residence for 5 years for other EU citizens cannot be considered excessive[29] and that such a rule does not go beyond what is necessary to attain the objective of reintegration.[30] The Court, however, also notes that the status of being resident within the scope of article 4(6) EAW cannot be conditional on owning a domestically issued residence permit.

While the ECJ thus considered national legislation which provides for the mandatory non-execution on the basis of nationality, while providing additional criteria when it concerns other Member State nationals as objectively justified due its legitimate aim and proportionate (at least in the Dutch case), it is still possible to criticize such legislation from the viewpoint of the mutual confidence legislators should have in each other's legal orders. Marin (2011) for instance notes that the extradition or surrender of nationals is a sign of trust. Conversely, the execution of a sentence for the purposes of reintegration of a non-national which is a resident in the executing Member State can also be considered as trustful, due to the fact that the executing Member State de facto declares itself willing to pay the bill. From this viewpoint, the Dutch legislation analyzed by the Court in for example the Wolzenburg case, but also Italian legislation, the latter of which used to provide for mandatory refusal in the case of nationals and mandatory extradition in the case of non-nationals, can be considered a sign of distrust between Member States. With regards to the Dutch legislation, it is noteworthy that while article 4(6) is an optional refusal ground aimed at reintegration, the Dutch transposition of this refusal ground for nationals seems broader, giving the Amsterdam district court no discretion whether to refuse or allow implementation of an EAW, instead of providing for a case by case analysis of whether reintegration would be preferable given the factual circumstances of the national in question (Marin, 2011).

The 2011 Da Silva Jorge judgment continued the Kozlowski-Wolzenburg line of case law. At issue in this preliminary reference procedure was a French measure which implemented article 4(6) in such a way that surrender of persons with French nationality may be refused when France undertakes to enforce the

[25] Most prominently in Articles 2 and 3 TEU
[26] Article 21 Charter of Fundamental Rights of the EU
[27] C-123/08 – *Wolzenburg* [2009] ECR I-09621, p.19-25
[28] C-123/08 – *Wolzenburg* [2009] ECR I-09621, p.63-68
[29] C-123/08 – *Wolzenburg* [2009] ECR I-09621 p.70
[30] C-123/08 – *Wolzenburg* [2009] ECR I-09621,p.73

judgment itself, while such protection is not extended to nationals of other Member States that are residents or staying in France.[31] The questions referred deal mainly with the issue to what extent the Member States have the discretion to implement article 4(6) in such a way that only persons 'with a certain degree of integration' are afforded its protection. This should be seen in the light of the Court allowing the Dutch criterion of a 5 year period of residence in Wolzenburg case discussed above.[32] Referring to the Kozlowski judgment and article 18 TFEU, the Court rules that an absolute exclusion of the possibility to refuse the surrender of persons staying in or who are a resident in the executing Member State cannot be accepted.[33] The argument that France considered itself as incompetent to execute the judgment due to the facts that its domestic law only provided for the enforcement of sentences where that person is a French national, and that the deadline for transposition of the provision of Framework Decision 2008/909,[34] which would allow for the enforcement of judgments for residents and persons staying in France, was not accepted by the Court.[35] In this judgment the Court has therefore shown itself willing to protect the position of individuals faced with discriminatory national law implementing the EAW Framework Decision, a decision which should be welcomed in light of the concerns expressed by for instance Marin (2011). Interesting is furthermore the application of the Pupino case,[36] which as may be recalled extended the principle of consistent interpretation to Framework Decisions. While this principle cannot result into *contra legem* interpretations of national law, the Court takes the view that the national courts should interpret the transposing legislation in a way consistent with the EAW Framework Decision and the principle of non-discrimination as much as possible (Herlin-Karnell, 2013).[37] Once again it must be emphasized that the lack of willingness of France to legislate in such a way that it will be able to execute custodial judgments regarding residents or persons staying in that Member State is a sign of continuing mistrust (Marin, 2011), although the Court has made it clear that this form of implementation is not reconcilable with either the EAW or the broader principles of EU law.

2.5 The relevance of the Charter of Fundamental Rights of the European Union and other general principles of EU law

As mentioned in the brief history of the AFSJ and the European Union in paragraph 2.2, the Lisbon Treaty has incorporated the EU's version of the Bill of Rights as a binding document. It is accorded the same status as EU primary law (meaning it has the same legal effects as both the TEU and the TFEU).[38] While the Charter confirms existing general principles of the ECJ and jurisprudence of the European Court of Human Rights (ECtHR) in many areas, it also includes provisions which add a new dynamic to both EU law and, more narrowly, the AFSJ and the EAW Framework Decision.

An especially relevant judgment in this regard is the recent Melloni judgment. In this preliminary reference procedure under article 267 TFEU, the Spanish constitutional court asks *inter alia* whether the executing state is precluded from refusing surrender if the issuing state cannot guarantee a retrial when a trial in the latter state was carried out *in absentia* (meaning that the indicted person was not present at trial

[31] C-42/11 – *Da Silva Jorge* [2012] ECR I-0000, p.27
[32] C-42/11 – *Da Silva Jorge* [2012] ECR I-0000, p. 32-35
[33] C-42/11 – *Da Silva Jorge* [2012] ECR I-0000, p. 39, 41, 50-51
[34] Framework Decision 2008/909 on the transfer of
[35] C-42/11 – *Da Silva Jorge* [2012] ECR I-0000, p.44-50
[36] C-105/03, *Pupino* [2005] ECR I-05285, p.33-34
[37] C-42/11 – *Da Silva Jorge* [2012] ECR I-0000, p.53-58
[38] Article 6(1) TEU

himself). This guarantee was in fact necessary under Spanish constitutional law. The Spanish Court bases its question on article 53 of the Charter, which states: *Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.*

The Spanish court wonders whether this provision would allow for a reading in which it could state that the application of the Charters right to a fair trial and right to effective judicial protection would adversely affect the higher extent of protection of fundamental rights provided by the Spanish constitution. The ECJ, however, ruled that while it is true that article 53 would allow for a higher level of protection granted by national laws, this is subject to the requirement that such higher protection does not infringe the classic principles of supremacy, unity and effectiveness of EU law. The Court continues to state that a constitutional provision which seeks to introduce a refusal ground not included in the original EAW Framework Decision or the amendments made by Framework Decision 2009/299, which were the result of a consensus reached by the Member States and harmonized procedural rights for the surrender of persons, cannot be allowed under article 53 since such a national provision would infringe the principles of mutual recognition and mutual trust.[39] It is understandable (from an EU law point of view) that the ECJ would not allow national provisions to hinder the effective application of a harmonized EAW system of its independent legal order, especially considering its existing Simmenthal case law. The effect on the national level, however, is that some fundamental rights provisions, even if included in constitutional laws, may be called into question. Recently, the ECJ has confirmed its *Melloni* ruling through its opinion on the accession of the EU to the ECHR. In this judgment the Court reiterated its position that Article 53 of the Charter does not accord Member States the right to compromise the effectiveness, unity and primacy of EU law.[40] The main element to take away from this jurisprudence for the purposes of this research is that Dutch legislation and court decisions may thus not compromise the fundamental system established by the EAW Framework Decision, in particular with regard to rights accorded on the national level that reintroduce facets the EAW system has abolished due to the latter's aim of improving the free movement of judicial systems based on the mutual confidence of Member States in each other's legal systems.

2.6 Conclusions

This chapter has presented an overview and history of the EAW Framework Decision, its implementation in the Member States, and several issues that have risen up from a legal perspective. While simplifying extradition significantly, the innovations presented by the EAW have also produced several issues of their own. While the abolition of double criminality introduced severe issues of legal certainty, the lack of provision in the EAW Framework Decision refusal ground for severe human rights infringements in the issuing state provided problems both in terms of national implementing laws and infringements of the ECHR. Furthermore the EAW Framework Decision has encountered numerous problems with the optional refusal ground for nationals, residents or persons staying in the executing state, as addressed in the seminal Kozlowski, Wolzenburg and Da Silva Jorge cases. While the next chapter will continue by elaborating on the independent variables which may influence the Dutch authorities general attitudes

[39] C-399/11, *Melloni* [2013] ECR I-0000, p.55-64
[40] Opinion 2/13 of the Court [2014], ECR I-0000, p.187-189

towards judicial authorities of other States, it is helpful to keep such underlying legal issues in mind as well. In chapter 6, several of the legal issues described in this chapter will be highlighted once more from the Dutch perspective.

3. Performance in the EAW network and the factors culture, corruption and coordination.

3.1 Introduction

In this chapter the dynamics of network participation in a heavily legalized context and the effects of culture, corruption, centralization and trust on network outputs will be explored. The first aim of the chapter is to provide an argumentation of why network analysis of the EAW situation is an appropriate paradigm. The second aim is to present a model at the end of the chapter which aims to predict the role of trust in cooperation under the EAW Framework Decision. This second aim will require a literature study of several important works and literature lines, including work on inter-organizational trust, corruption, centralization of EAW institutions, performance indicators and network coordination.

A proper starting point for a discussion of network performance and the influence of trust, is the introductory article written by Provan and Lemaire (2012), which outlines the basic principles of network theory in public administration and public management. Provan and Lemaire begin by outlining the importance of social capital for the establishment of a network. Social capital is a concept, introduced first by Robert Putnam, which underlines the importance of social ties between members of society. In a network with a high amount of social capital, individuals have many ties with others in society, due to a significant amount of inclusion in civil society. This line of thought has indeed been the basis of a large body of literature since, ranging from transaction cost economics to the network theory I am discussing here. Here, it suffices to say that social capital contributes as a lubricant of sorts for social ties, which also adds to the formation and cooperation in networks.

Provan and Lemaire (2012), moreover, distinguish between a more business oriented perspective, where the study focuses on the benefits of network cooperation for a single organization, and what they call a 'whole network' approach. This latter approach pays attention to, as the name suggests, the entire network and the collective action most public networks seek to achieve. For the purposes of this research it is beneficial to this distinction keep in mind, since the dependent variable, network effectiveness, indeed presupposes a whole network approach. Other characteristics of whole networks are that they are formally and purposefully established (as opposed to a more serendipitous process occurring in some cases with businesses), and that actors normally cooperate in a horizontal manner and often have a large amount of autonomy.

Mutual recognition systems actually fit rather neatly into this conceptualization of a network. The EAW Framework Decision (formally establishing and institutionalizing cooperation between the actors) and the cooperating actors are indeed seeking to achieve a common objective through collaboration, namely the attainment of 'an area in which judicial decisions move freely'. Mutual recognition in criminal matters presupposes an equivalence of legal orders and mutual trust (regardless of whether this is true or not), and the system thereby, at least in theory, fulfills the horizontal cooperation element of Provans' conceptualization.

This leaves the idea of a large amount of autonomy, which is the most difficult element of the conceptualization by Provan and Lemaire (2012) to reconcile with the EAW system. As has been mentioned in the legal analysis, the autonomy of judicial actors is limited to a large extent due to the obligation to follow up on a request for surrender, and that the amount of refusal grounds is in fact rather limited. It has also been mentioned, however, that judicial actors still have some leeway to refuse

surrender in some cases, for instance for the purpose of reintegration.[41] As an issuing state actors retains nearly full discretion, subject only to for instance some form aspects included in the EAW Framework Decision and national procedural laws. In countries with the principle of opportunity[42] in place, such as the Netherlands, prosecutors will have the discretion to not issue an arrest warrant for an individual, should the crime be considered too menial for surrender and subsequent prosecution. They are therefore authorized to apply a proportionality test to any given case.

3.2 Hofstede's cultural dimensions

One major issue in any international collaboration, be it public or private in nature, is the difference in culture that exists. A lack of mutual understanding may hinder cooperation and promote distrust. Such a lack of understanding does not emerge solely due to differences in for instance language or traditions. It also consists of internalized behavioral patterns which the social studies have been able to partially map. Hofstede's IBM research has analyzed the different inclinations of national cultures along first four, and later six dimensions (Hofstede, 2001). Such a conceptualization of culture allows for explanations why different cultures rely on different forms of trust to a different extent (Cannon, Doney, Mullen, 1998). The original four dimensions will be used in this research as an independent variable which may help explain the cognitive processes of different actors involved in the EAW cooperation procedure. These dimensions are the power distance index (PDI), the individualism – collectivism index (IDV), the masculinity – femininity index (MAS) and the uncertainty avoidance index (UAV).[43] The different dimensions will be explained shortly in the remainder of this paragraph.

1. *Power distance index*

The first of Hofstede's cultural dimensions which may prove a useful explanatory variable for this study is the Power distance index, or PDI for short. According to Hofstede (2001, p.79-80, 83, 85) this dimension deals with the (in)equality of humans, and how cultures perceive social hierarchy. It pertains to how rigid or equal social relations are, and to what extent for instance disagreement is tolerated or a authoritarian decision-making style is used. In cultures with a high PDI, hierarchical, dominance based social structures prevail. On the opposite extent of the index are cultures which have an equal, non-hierarchical social structure, in which for instance disagreement is tolerated more easily. Hofstede (2001, p.83) describes the power distance concept as: '*a measure of the interpersonal power or influence between B and S as perceived by the less powerful of the two, S'.* A high amount of power distance interestingly enough has been found to imply more rules and laws, political centralization, a lack of cooperation between citizens and authority and more political violence (Hofstede, 2001, p.431).

Cultures with a low power index place more emphasis on power-sharing and consultative processes in decision-making, which should reduce the amount of opportunism, adding to the possibilities for building trust. Conversely, cultures with a high power distance imply the use of coercion and power, and opportunistic behavior on part of those holding power, and actors from such cultures may not be aware of the high costs of such behavior when cooperating with other cultures. On the other hand, the horizontal structures of low power distance societies have the effect of making predictions on future actions rather difficult. This is due to the relatively high independence individuals have in egalitarian cultures, which

[41] The optional refusal ground of EAW Framework Decision article 4(6), see paragraph 2.4

[42] Giving discretion to prosecutors to decide whether to prosecute or not

[43] The choice to utilize only the original four dimensions was made due to the other two dimensions not being measured for several EU Member States

hinders the possibility for another to effectively predict organizational behavior (Cannon, Doney & Mullen, 1998).

2. *Individualism – collectivism*

The second dimension emerging from Hofstede's IBM project is the individualism – collectivism juxtaposition. This dimension aims to capture how some cultures are self-oriented, while others are more group-oriented (Cannon, Doney & Mullen, 1998). In a collectivist society, great emphasis lies on the dependence of the individual on other group members, and the responsibility the group has towards that individual. This reflexive relationship of individuals with the group results in a high amount of socialization and thus value-internalization (Hofstede, 2001, p.209-213). Hofstede points out that this strongly corresponds with Tönnies' ideal-type of the Gemeinschaft, denoting a society with strong community bonds such as families and involvement with religious organizations. The opposing Gesellschaft ideal-type of society corresponds with an individualist culture in Hofstede's terms. Such societies are concerned with the self, and dependency has been divided across far more distant relationships than primary family-bonds, which reduces the amount of internalization of community values through primary relationships (Ossewaarde, 2009, p.149-150). Therefore, values underlying individualist countries are concerned with self-reliance, privacy, personal goals, and the perception of the individual as the locus of social phenomena (Azevedo, Drost & Mullen, 2002).

It is therefore likely that actors from a collectivist culture are more inclined to build trustworthy relationships based on mutual informal control, while individualist cultures are more pragmatic and opportunistic in their interactions (Cannon, Doney & Mullen, 1998). The extrapolation to international cooperation being that cultures which are highly individualistic will be more inclined to act in a self-serving manner, which might be problematic when the other party attaches more value to a trustworthy relationship from its collectivist background.

3. *Masculinity – Femininity*

The third dimension distinguished by the IBM research performed by Hofstede is masculinity-femininity. It has been pointed out that masculine and feminine countries perform differently in negotiations (Hofstede, 2001, p.140, 147). This is due to the differences in values that underlie either a masculine or a feminine worldview. In a masculine worldview, value is attached to for instance competition, results, dominance, independence and the self. Negotiators with such a world view are inclined to take a hard approach to negotiations, attempting to get the most out of any given situation. The role of trust is low, since losing after being cheated upon is considered a fault of the losing person (Hofstede, 2001, p.147). Individuals with such a culture will rarely provide concessions, and are mainly self-interested. Therefore, the ideal-type of the masculine culture in negotiations is one of rational decision making processes dependent on wealth-maximizing considerations. Cannon, Doney and Mullen (1998) also note that organizations from a highly masculine national culture are inclined to act opportunistically. On the other hand feminine cultures attach far more value to dialogue, building relationships and the other. In these cultures, it is the cheater that is frowned upon instead of the cheated, reinforcing the argument that such countries should experience relatively lower amounts of opportunistic behavior. This leads to the hypothesis that feminine cultures will be more inclined to build and depend on trustworthy relations, while their masculine counterparts may take a less compromising and more hardline stance towards international cooperation. Indeed, Hofstede has noted that in the European situation, more cases brought before the CJEU for a failure to implement EU law stem from masculine countries than from feminine Member States. Extrapolating this to the EAW situation, it is possible that the same countries that

negligently implement EU law on a more regular basis may also have more difficulties with international cooperation under the EAW framework.

4. Uncertainty avoidance index

Another interesting dimension of Hofstede's work is the Uncertainty Avoidance Index. Countries scoring relatively high on this dimension are not fond of substantial changes. They like their relationships consistent, and place a rather high emphasis on law, religion, rituals, symbols, processes and other human artifacts that might reduce uncertainty about the future and its accompanying anxiety (Cannon, Doney & Mullen, 1998). These artifacts can result in internalized behavior that other cultures might find irrational. Organizations also cope with uncertainty, and do so by focusing both on short-run feedback processes. Furthermore, they minimize future uncertainty by creating contracts, standard operating procedures, adhering to industry traditions etc. (Hofstede, 2001, p.145-147). Countries with a high level of uncertainty avoidance may therefore consider European criminal legislation as infringing their national autonomy relatively sooner than countries with a lower score on this index.

By contrast, low uncertainty avoidance societies are less reluctant to deal with change and experience less anxiety when confronted with potential future changes. They therefore feel less pressed for uncertainty minimizing behavior and are more keen on taking risks. In organizations from such cultures, employees may for instance break rules if this is in the company's best interest and employees may switch jobs more often (Hofstede, 2001, p.149). Lower amounts of uncertainty avoidance may also induce more opportunistic behavior, since the perceived costs of such behavior are considered relatively low (Cannon, Doney & Mullen, 1998).

3.3 Corruption

Previous legal research into the functioning of mutual trust in the area of the European Arrest Warrant provides support for the idea that (perceived) corruption in the judiciary is an important facet in determining the amount of mutual trust between Member States and the judicial actors operating in the different Member States. The argument is that corruption in the judiciary will alter the amount of trust foreign actors have in the quality of the legal system and hence in the quality of both the issuing and executing aspects of EAW tasks (Beauvais & Giannoulis, 2013, p.150; Albers, 2013, p.314). A 2013 report on the mutual trust of actors in the EAW network provides substantial support for this argument. This report included a survey held at the national contact points which considered several elements which may be of influence in determining amount of mutual trust existing between judicial actors. Especially corruption was found to be perceived as problematic in garnering trust by the national contact points. Although other elements such as the length of pre-trial detention were found somewhat problematic, corruption was the only variable which stood out in particular (Albers, 2013, p.314). Defense lawyers, considered in a separate survey in the same study, also found corruption to be an important factor in determining the amount of trust they had in EAW's executed or issued abroad (Wahl, 2013, p.330). One defense lawyer for instance indicated that a client had been the victim of a bribed judge, which, if true or perceived to be true by other Member States, could be severely problematic for trust between the different actors in play (Böse, 2013, p.358). A peer review between judges noted that they considered the high amount of corruption in Bulgaria problematic for mutual trust as well (Böse, 2013, p.357). Considering the rather consistent findings of this research across its different operationalizations, including corruption as an explanatory variable of the performance of different surrender relationships existing between different actors the judicial actors studied seems appropriate.

3.4 Centralization/Decentralization

The third factor that will be investigated with regard to its potential influence on the performance of the Amsterdam district court is the centralization and/or decentralization of judicial authorities in an issuing Member State. It will be seen in chapter 5 that the Netherlands as an executing authority is relatively centralized compared to its counterparts. After arrest, a requested person must be transferred to the Amsterdam district's prosecutors, which are exclusively competent to request authorization of the surrender at the Amsterdam court.[44] This choice was made firstly due to the Amsterdam court's substantial previous experience in extradition cases and the existence of a pre-existing specialized chamber on international legal aid – the 'Internationale Rechtshulpkamer' (Donner, 2003, p.2-3, 5, 8-9). The argument that a centralized judicial authority would quickly be able to gain and maintain knowledge on surrender procedures has also been put forward to justify this centralized approach (Donner, 2004, p.2-3). In complement to these arguments it has been mentioned that a decentralized implementation would be severely taxing for courts that do not often have to deal with specialized extradition or surrender proceedings (Donner, p.8-9). Thus, expertise was an important motive for the Dutch legislature to centralize the executing elements of the EAW Framework Decision. Later commentators on the implementation of the EAW in the Netherlands have additionally argued that the choice for centralized executing actors has led to a high degree of internalization of the principle of mutual trust in Dutch judges, leading to relatively trustful reviews of issued warrants (Van den Brink, Langbroek & Marguery, 2013, p.195-196).

Both the argument that a centralized actor may be able to gather more experience and the argument that such an actor may have higher degrees of trust will be extrapolated in this study to issuing authorities. It is proposed that centralized issuing authorities may cooperate smoother due to their higher levels of experience with EAW authorities in general and Dutch EAW actors in particular. If correct, this means that, on average, surrender relationships between the centralized Dutch authorities and centralized foreign issuing authorities should perform better than surrender relationships between centralized Dutch authorities and decentralized issuing authorities.

3.5 Eurojust and the EJN as coordinating actors

As has been mentioned in the legal analysis, Eurojust intends to fulfill a function in fostering additional trust between Member States, in order to increase the efficiency and effectiveness of mutual recognition in criminal matters. The role a coordinating agency may play in a public network has been described by Isett & Provan (2005), who point out that Network Administrative Organizations, or NAO's for short, can provide facilitating and intermediating functions for a network that would otherwise be too broad to manage effectively. They also note that NAO's may provide a role allocating function, defining for other organizations in the network which tasks to pursue. Therefore, especially large networks with many actors cooperating on the basis of relatively loose ties may benefit from NAO's, which are able to decrease the transaction costs (Milward & Provan, 2001). This seems highly relevant in the EAW setting, where Eurojust is capable of requesting states to cooperate and is to play a coordinating function, for instance facilitating requests for extradition and information.[45]

[44] If the requested person consents to his/her surrender, the court stage is not necessary

[45] See especially articles 3(1) and 6(1) of Council Decision 5347/3/09 as regards the coordinating tasks and competences of Eurojust

Kenis and Provan (2008) discuss the role that NAO's may play in improving network legitimacy amongst its Members. By reducing complexity and advocating network norms and rules, it is proposed here that Eurojust may indeed also contribute to the amount of trust in the EAW network. As has been noted, distrust stems *inter alia* from fear of opportunistic behavior, from lack of belief in good intentions, from a lack of belief in the competency of others, and from experience (or a lack thereof). Eurojust may be to partially take away these issues by, first, fostering the dissemination of information, which makes cooperation far more predictable and results in added informal control between network members. Second, it may pose as an advocate of the network goals and as an assigner of roles for other actors, perhaps reducing the perceived chance of opportunistic behavior by other network members. Kenis and Provan (2008) note that such legitimizing NAO's often have a board structure which consists of representatives from different network actors. Indeed, the College of Eurojust consists of 28 prosecutors, police officers or judges which retain their national competences. This fact alone may improve the way the capabilities of Eurojust are perceived by network members, which may in turn provide an additional measure of competence based trust for other actors.

The function of providing network legitimacy by handling unique and complex tasks at the network level may be observed in the tasks and operations of Eurojust. Article 3(1)(b) of the Eurojust Decision is aimed at reducing misunderstandings and practical difficulties arising in mostly bilateral cases. Such cases may arise in the case of conflicts of jurisdiction between Member States, with both the executing and the issuing country seeking to prosecute an indicted person. In these cases Eurojust seeks to foster the dissemination of information between the different actors in the two (or more, in some instances) Member States, in order to for instance appropriately understand legislation under which the executing Member State will undertake to execute the sentence itself.[46] Another practical way in which Eurojust could assist bilateral or multilateral EAW cases is by aiding in translation issues, to ensure the appropriate understanding of legal terminology in different Member States. Furthermore, one of the long term goals of Eurojust is to heighten the overall mutual trust and mutual understanding between the Member States (Eurojust, 2012a, p.4), with cases coordinated by it hopefully having a spill-over learning effect for later cases. The remainder of the attention this study devotes to Eurojust will thus be based on the proposal that its broader role should not be considered confined to purely enhancing trust and cooperation in one case. As such, the coordination performed by Eurojust in the context of its position as a potential NAO for the EAW network will be included as one of the independent variables explaining the performance of the Amsterdam district court. With culture, corruption, centralization and coordination being defined as the main independent variables, the next paragraph will turn to the conceptualization of the dependent variable: the organizational performance of the Amsterdam district court.

3.6 Conceptualizing organizational performance

Following Kim's (2004) and Brewer and Selden's (2000) discussion of organizational performance, this study will consider a given level of performance effective if an organization '*does well in discharging the administrative and operational functions pursuant to the mission and whether the agency actually produces the actions and outputs pursuant to the mission or the institutional mandate'* (Kim, 2004). The approach of this research will incorporate the view of Brewer and Selden (2002) that organizational performance is a heterogeneous concept that may require several emphases. What is more, it is important

[46] Which is often the case when the optional refusal ground of article 4(6) of the EAW Framework Decision is involved).

to recognize that different performance values may be at odds with one another at times, which hinders an accurate portrayal of an organization's performance (de Bruijn, 2002; Brewer and Selden, 2002). In Kim's conceptualization of organizational performance, a well-functioning public organization operates and produces outputs in line with the mission and institutional mandate of an organization. Kim (2004) and Brewer and Selden (2002) state that public organizational performance can be divided in three sub-concepts: effectiveness, efficiency and fairness. These three elements represent different aspects of the mission of the organization and several good governance principles. Kim (2004) and Brewer and Selden (2002) also note that a further distinction can be made between internal effectiveness, efficiency on the one hand and fairness and external effectiveness, efficiency and fairness on the other.

It has been noted in the literature that ascertaining performance in network situations is difficult, not in the least since organizational goals may differ between actors (Milward & Provan, 2001; Provan & Lemaire, 2012). However, in this case, it is possible to measure a policy oriented conceptualization of performance due to two factors. Firstly, the EU legislator itself has stated several goals that provide the essentials of a mission statement for all judicial actors operating under the EAW framework. Thus, performance can in large part be measured according to the goals that have been stated by the EU legislator itself and that were subsequently attributed to the Amsterdam court by the Dutch legislator (Milward & Provan, 2001).[47] Secondly, the focus of this study on the performance Amsterdam district court reduces the complexity of defining organizational performance as no account needs to be taken of values held by other public actors in the network. To discern the mandate of the Amsterdam court within the context of the EAW Framework Decision, it is of primary importance to have regard to the policy goals listed by that document. As has been noted in the legal analysis, the policy goals of the EAW are listed in preambles of the Framework Decision itself. Three main goals can be extracted:

1. *Speed*: According to preamble 1 of the Framework Decision the formal extradition procedure should be abolished among the Member States in respect of persons who are fleeing from justice after having been finally sentenced and extradition procedures should be speeded up in respect of persons suspected of having committed an offence;
2. *Automatic surrender*: To further the creation of an Area of Freedom Security and Justice, an area of free movement of judicial decisions should be introduced, implying a simplified process of surrender based on the principle of mutual recognition (resulting in the obligation to surrender).[48] This *inter alia* implies reducing the amount of options for non-implementation of a request from another state. Non-implementation of a warrant should be limited to cases where article 6(1) of the Treaty of Maastricht,[49] the principle of non-discrimination is infringed,[50] risk to degrading treatment is substantial,[51] or cases in which the EAW Framework Decision provides for a refusal ground;

[47] It is important to remember in this regard, however, that different conceptualizations of performance can be made. While this study chooses an approach which largely equates organizational performance with EU policy goals, one can also focus more extensively on for instance national values, defendant's interests, human rights interests, cost-effectiveness of the judiciary, etc. In this regard, the phrase 'effectiveness from who's perspective' has been coined (Brewer and Selden, 2000).

[48] Preambles 5-6 of Framework Decision 2002/584/JHA

[49] This article reflects the fundamental principles and rights on which the Union is founded in both the Maastricht and the Lisbon version of the Treaty.

[50] Preamble 12

[51] Preamble 12

3. *Appropriate judicial control for the protection of individuals:* The obligation to surrender should, however, be subject to an appropriate amount of control, requiring the decision of a judicial authority from the executing Member State.[52] This is where the discretion of cooperating actors partially arises.

Relating these goals to the organizational performance framework developed by Kim (2004) shows that the three European policy goals relate mainly to external aspects of the concepts effectiveness, efficiency and fairness. The first goal (speed) heavily relates to improving the promptness of the public good provided by the Amsterdam court. It is only related to internal aspects of efficiency in so far as these contribute to the promptness of public good delivery. This means that internal elements such as cost-efficiency and human resource aspects should largely be excluded from the analysis in this study. Instead, the focus should lie on the ability of the court to generate a good turnaround time for the EAW cases it handles. Similarly, for policy goal 2 (automatic surrender), the focus lies on the occurrence of external goal attainment: the output of the Amsterdam court should be that it in principle allows surrender for all cases for which no EAW refusal grounds or concrete concerns on other important legal principles are present. This also includes that the court does not reintroduce refusal grounds which the EAW has sought to abolish. Finally, the focus of appropriate judicial control is to achieve external fairness towards requested persons.

The relationship with goals 1-2 and goal 3 is somewhat strained, however. For instance, in an example where a court overemphasizes quick and automatic surrenders to the detriment of an appropriate analysis of the received warrant, appropriate judicial protection could be marginalized and the judge could be considered to engage in 'blind trust' in the other legal order. The reason for this is that blind trust may result in cases in which it would have been appropriate for the executing judge to either refuse surrender or postpone a case for additional information on part of the issuing authorities. Thus, such cases would strain the attainment of goal 3, since there is no appropriate respect for the rights of the individual. In turn this would lessen the effectiveness of the implementation of the EAW as a whole. Similarly, the Amsterdam court may have good reasons from the viewpoint of fairness to reintroduce aspects which were abolished by the EAW, such as marginal proportionality, innocence or human rights checks. Such checks decrease the extent to which automatic surrender occurs, but increase the fairness of the system. As both are equal policy goals of the EAW system, good organizational performance would require a good balancing between the two, which is an especially difficult normative exercise. In doing so the Amsterdam court has to take heed of the limits imposed on it by European and national legislation, further complicating the situation.[53]

With the addition of organizational performance as the dependent variable it is now possible to represent the theoretical model underlying the data collection and analysis. It will be recalled that cultural differences were suggested to be negatively associated with network performance, meaning that organizations with greatly differing national cultures would have more difficulty establishing a well-performing relationship than organizations operating under more similar cultures. Furthermore, the amount of corruption present in a given Member State was also suggested to influence the performance

[50] Preamble 13

[53] See for instance the discussion in the previous chapter on the Melloni case, in which a constitutionally enshrined ground for refusal was considered impermissible by the ECJ since it would compromise the primacy, unity and effectiveness of EU law, in particular the EAW regime.

of a relationship, with greater amounts of corruption in a Member State being detrimental to the performance of the Amsterdam court's relationship with that state. Thirdly, the presence of centralized authorities competent to issue warrants was suggested to positively influence the performance of the Amsterdam court's relations with another Member State. Finally, network coordination by Eurojust was considered to be an independent factor that could positively influence performance. The causal model is represented in figure 3.2, which shows the independent variables culture, corruption, centralization and network coordination on the left hand and the dependent variable performance with its sub-elements on the right:

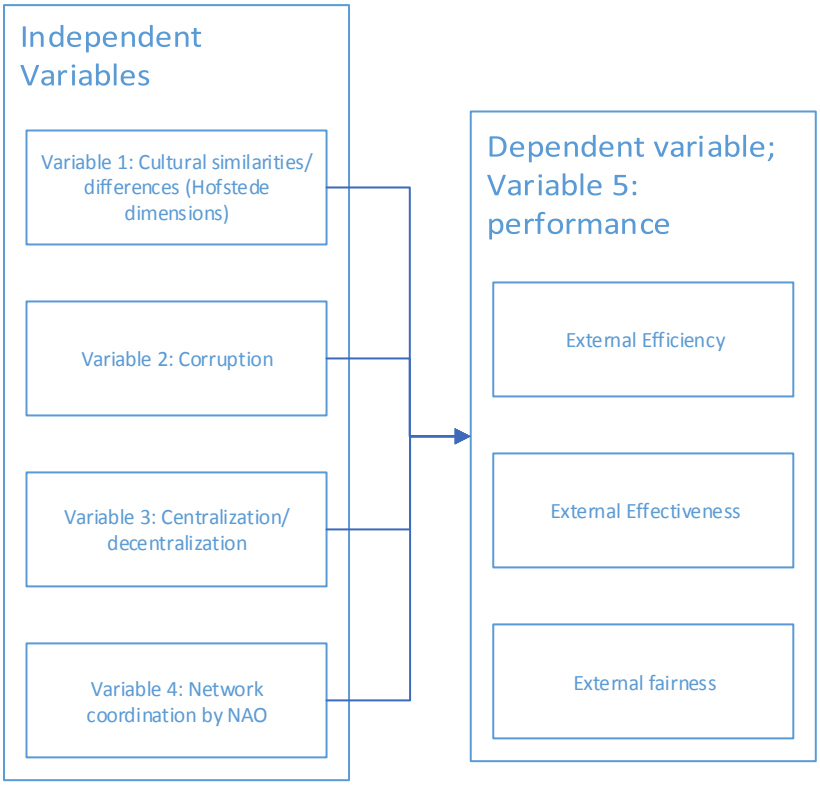

Figure 3.2: Network interaction under article 16(2) of the EAW Framework Decision

3.7 Performance measurement in the European Arrest Warrant judicial network – pitfalls, limitations and design considerations for the purposes of this study

Much has been written on the assessment of output generated by public organizations through performance measurement. The view that performance measurement would improve the functioning and accountability of public organizations was strongly advocated during the New Public Management developments in the 80's, a period which is characterized by privatization policy and the establishment of large numbers of independent agencies. For many public organizations, in particular – but not limited to – those organizations that were placed at a distance from primary political accountability systems, a set of performance indicators was developed in order to generate an insight into their functioning (Schauffler, 2007). The resulting performance measurement literature grants some insight not only in the design of the indicators that will be established for the purposes of this research, but also in the pitfalls that exist when interpreting performance data.

Performance measurement indicators can pertain to either the outcome or the output of the organization, with the latter type of indicators often being easier to establish (de Bruijn, 2002). This is due to the outcome of many public organizations being harder to quantify than its output. Certainly, the outcome of a surrender network of judicial actors operating within the sphere of criminal law is hard to assess on the basis of its quantitative outcome merits. The outcome would pertain to the extent to which the overarching goal of a contribution to the Area of Freedom Security and Justice is achieved by the contributions of the actors, which is a particularly difficult link to directly make from indicator data, not in the least due to the AFSJ being made up out of several competing values such as judicial protection and effective law enforcement. The output, on the other hand, is easier to analyse through both quantitative and qualitative data. It is for instance possible to measure the amount of surrenders and refusals that took place through national court cases. What is more, these court cases will also provide valuable qualitative data to provide more context to the results gathered through quantitative indicators.

Performance measurement methods can fulfil several functions. In a broad introduction to performance indicators, de Bruijn (2007, p.8) lists four frequently mentioned functions, of which three are of particular interest to this project.[54] First of all, performance indicators may improve the transparency of a given organizations results. Secondly, quantified output or outcome may be utilized for learning purposes. Thirdly, the transparency generated by output indicators can be used in order to perform an appraisal of the organizations' performance. These functions are apparent in the different phases of the report. The data collection on the case law generated by the Amsterdam district court will generate a dataset which aims to make the courts performance insightful from a quantitative perspective. Subsequently, this quantitative data will be used alongside a qualitative analysis to generate an appraisal of the courts performance in the context of specific relationships with foreign judicial authorities. Finally, suggestions for improvements and learning may be made in the concluding chapters of this research.

However, the literature on performance measurement in the public sector also explains elaborately how performance indicators can be used in ways that generate perverse results. Some of these perverse effects relate to how professionals cope with the requirements imposed by performance indicators. For example, de Bruijn (2002) states that professionals may pervert the system due to feelings that the performance measurement system is poor, unjustified and too static. Other perverse effects as described by de Bruijn result from managers attempting to steer organizations by utilizing public performance indicators to form judgements and reward-sanction structures. De Bruijn (2002) argues that in such cases professionals may step up creative compliance efforts or/and focus overly much on achieving output instead of an adequate trade-off between all values involved. Especially the latter effect is informative for the purposes of this study. While strategic behaviour is not a serious risk for an external research, it must be kept in mind during the establishment, measurement, analysis and interpretation of the indicators and their data in this project that they approximate only a portion of the values inherent in an extradition/surrender criminal law system. In this context, it is also relevant to consider de Bruijn's (2007, p.43-44) discussion of the law of collective blindness. As figures established by performance indicators cannot capture the entirety of organizational dynamics, there is a risk that too much reliance on performance data may blind evaluators from the context behind the indicators.

[54] The fourth function is irrelevant for the purposes of this report, as it involves the sanctioning of an organization when performance is insufficient.

Apart from interpretation problems, performance indicators may also suffer from design problems. One problem in designing indicators is that they will be interpreted in different ways by users and/or researchers. With regard to this study, this problem is particularly apparent in several of the indicators that utilize coding of content of court cases. As different researchers may understand the core criteria of a coding system differently, their perception of the data may differ. A first problem is that another researcher may have difficulty replicating the exact same data when coding, as his interpretation of the case may differ slightly. This reduces the reliability of the indicator (Perrin, 1998). Secondly, readers perceiving the criteria as definitive, but who themselves hold a more narrow or more broad definition of the criteria, may misinterpret the data. As such, a short elaboration on how the literature approaches the design of quantitative indicators will be included in the next subsection. Moreover, the fourth chapter of the report will devote substantial attention to defining the criteria and coding mechanism used for content analysis indicators.

Another risk is that performance indicators may not be measuring what they have been intended to measure. As a limited set of quantitative indicators inherently generate a model of outcomes and/or outputs that is simplified from reality, their validity may also have restrictions. Furthermore, the selection of the indicators will be always be at least somewhat skewed from the perspective of the people who have established them (Perrin, 1998). As such, the methodology chapter will elaborate on the validity concerns inherent in the adopted indicators and this chapter will devote attention to the definition of effectiveness utilized for the purposes of this research, thereby shedding some light on the research perspective. Furthermore, the qualitative and quantitative indicators utilized will supplement each other, with the former being able to elaborate somewhat on the meaning of the latter. Finally, a reflection on the performance of the different indicators at the end of the report will provide some insight as to what weight must be given to the different indicators in this report.

A risk important in particular for the quantitative indicators is what Perrin (1998, p.373) describes as critical subgroup differences disguised by misleading aggregate indicators. This implies that any statement on the effectiveness of a particular element of the EAW on the basis of quantitative indicators will be difficult to generalize to the smaller subgroups. As a hypothetical example: a high average amount of days before surrender cannot per definition be attributed to Dutch authorities. While they certainly play a role in this, the actions of foreign authorities (such as whether they provide swift replies to Dutch questions, provide adequate guarantees, etc.) and the arguments of the defence also play a large role in determining the duration of a surrender procedure. Again, supplementing data from the qualitative analysis will need to be used to properly understand results from quantitative data.

Alongside the perverse effects of performance indicators, there are several disadvantages to the utilization of performance measurement that stem from the fact that the current project is an external research. These have to do with the fact that an external audit is limited to a long-distance, results based appraisal of the organization. Such an evaluation often runs the risk of losing valuable throughput and dialogue information. In his discussion of this issue, de Bruijn (2007, p.87-88) notes that an external researcher may have difficulty in analysing the richness of a court environment, as an external researcher is not well placed to engage in dialogue with professionals and may have difficulty in trading off potentially conflicting criteria, such as justice and turnaround times.

Perspectives on the proper design of quantitative public performance indicators

De Bruijn (2007, p.55-57) introduces several design principles to increase the positive effects of performance indicators while limiting their perverse effects. Two of these are important for the purposes of this research project. The first of these concerns the usage of a variety of criteria and attributing content to them. De Bruijn stresses that public services are multiple-value activities, and as such a suitable variety of criteria should be utilized to measure the different aspects of the public service. This will be included in the research through the usage of several output indicators measuring whether there were problems in specific cases or not. For instance, the indicators will not only review whether surrender took place on short notice, but also the quality of guarantees, three types of content analysis by the court, whether cases had to be postponed, etc. Utilizing several of these indicators in conjunction may also reduce the risk of missing critical subgroup differences. For instance, if it is found that the a specific case took substantially longer for the court to decide, it may be reviewed whether court was forced to postpone a case due to reasons beyond its own sphere of competence. Thus, the risk of the perverse effect of attributing insufficient performance to the court while this organization was not the root cause of the insufficiency may be lessened.

De Bruijn (2007, p.73) goes on to note that after measurement, a meaning must be given to the variety of indicators established. Without a proper interpretation of the data collected, the figures will be unable to support any conclusions. A failure to do so introduces increased risk of the implications of the law of collective blindness discussed above occurring. A potential example within the context of this research would be the observation that an executing relationship towards a given Member State is characterized by a large amount of cases where the Amsterdam court failed to meet the time limits established in the Framework Decision on the European Arrest Warrant. While at face value this may suggest that the relationship functions sub-optimally, there may be explanations which shed a different light on the data. For example, if a reference for a prejudicial question is made to the ECJ, national courts will usually temporarily postpone cases with similar facts until the answer to this question is available, a process which may take considerable time.[55] In such cases, the court's task to provide appropriate judicial protection to the requested person will outweigh the importance of a quick surrender. Thus, by postponing the cases, instead of performing insufficiently, the court fulfilled its tasks well given the circumstances and the options available to it. Incorporating this recommendation into the project, chapter 6 will focus on interpreting the data gathered from the various analysed cases per country and explaining cases with notable characteristics, in particular if these characteristics concern a recurring issue. Such an interpretation is also necessary to, as much as possible, counter the aforementioned risk of an external researcher not achieving full insight into the dynamics of a court case. Content interpretations and qualitative analyses generates at least some insight into the throughput dimension of a court case and the balancing of values utilized by the court. While this external research will remain inherently limited in researching the internal dynamics of the Amsterdam court's International Legal Aid Chamber, it is beneficial to the validity of the results to counteract this problem as much as possible.

3.8 Conclusions

In this chapter a number of concepts were presented which have been incorporated in the causal model of the report. Thoroughly discussed were the dynamics of national cultures, within the framework provided by Hofstede's cultural dimensions. It was argued that differences in culture may undermine the extent to which communication between authorities functions properly and may be detrimental to the

[55] As will be seen in chapter 6, this for instance explains an exceptionally long surrender towards Poland.

amount of mutual trust existing between these actors. Furthermore, findings of previous studies noted that corruption in states is an important condition that can result in a lower amount of trust in the authorities of that state. The third factor suggested to influence the performance of the Amsterdam district court was the centralization of a country's EAW system, as a higher degree of centralization may allow a Member State's judicial authority to specialize and gain more experience with the instrument. In addition, these actors would interact with judicial authorities from other Member States more frequently, potentially fostering mutual understanding and mutual trust Finally it was noted that Eurojust, as a coordinating actor known as an NAO, may be capable of positively influencing both bi-lateral and multi-lateral cooperation within the network by fostering the dissemination of knowledge and providing coordination for the different decentralized actors involved. Finally, centralization was considered as the fourth factor that could be conducive to the cooperation between actors in the EAW network. These four independent variables will be taken into account in the case selection elaborated upon in the next chapter.

Subsequently, the chapter focused on conceptualizing performance measurement in the context of the Amsterdam district court. Three aspects of external organizational performance – external efficiency, external effectiveness and external fairness – were presented. These respectively relate to three EAW policy goals, namely surrender speed, automatic surrender and appropriate judicial protection. It was noted that performance indicators applied to the Amsterdam court's output could be used to measure the extent to which the Amsterdam court performs well in light of the aforementioned three EAW policy goals. The various pitfalls of performance indicators were also discussed, however. It was argued that the lack of context and background information provided by a research based purely on quantitative output indicators would not appropriately measure the Amsterdam court's performance and that additional qualitative data would be necessary as well. Having these considerations in mind, the next chapter will also present the operationalization of the dependent performance variable.

4. Research methodology and case selection

4.1 Introduction

At this point of the research it is necessary to describe the methodology used to investigate the constructs that have been presented in the previous chapter. This chapter will therefore provide the basis for the empirical part of this report, and as such highlights several factors of the research which will return in the discussion of the research results. Attention will be devoted to the interviews and the operationalization of the explanatory and dependent variables in particular. The operationalization of the variables will be the main subject of paragraph 4.2, while the interview design will receive special attention in paragraph 4.4. As will recalled from the previous chapters, the study will research the cooperation of prosecutors and judges with their foreign counterparts in nine different EU Member States. The amount of nine Member States has been chosen due to limitations in time and means that the research is faced with. Therefore, to cover as much variation in the presented research variables as possible, it is necessary to use a purposive sampling scheme. While such a scheme is admittedly somewhat arbitrary as regards validity and reliability, it is still the most proper way to conduct a probative set of case studies considering the present limitations. Considerations on case selection and the resultant set of cases will be discussed in paragraph 4.3.

The methodology presented in this chapter is designed as a multi-method case study. The nine selected Member States will be studied through three methods: a quantitative analysis of performance indicators measuring court case output, a qualitative legal analysis of the court cases and an interview with two respondents to include additional data on the functioning of Eurojust as an NAO. The quantitative and qualitative data will mainly be used to answer research questions three and four, which are respectively concerned with the difference in performance of Dutch surrender towards specific Member States and the progression of surrender performance over the years. The interview with Eurojust is specifically aimed at an answer to question 5, on the effects of network coordination.

4.2 Operationalization of the variables

As mentioned earlier, this research into the EAW cooperation network includes four explanatory variables (corruption, cultural dimensions of Hofstede, network coordination and centralization) and organizational performance as the dependent variable. A multi-method case study design will be utilized in order to study these variables. The research will analyze the relationships between several Member States in the EAW system and Eurojust. As such the units of analysis can be defined as the relationships between judicial actors. This paragraph is devoted to the way in which these variables will be measured and analyzed in the remainder of this research. A schematic representation of the different variables and how they are measured is included in Annex 1 of the report.

1. *Cultural Dimensions of Hofstede*

While a new measurement of the cultural dimensions of Hofstede is not possible within the scope of this research, the database provided by the Hofstede Centre lists the data gathered by Hofstede and his team, thus providing a valuable resource for this report. The dataset provides the values on the four original cultural dimensions as first proposed by Hofstede after the IBM study surveys, and currently includes data for 76 countries. This includes all the Member States of the European Union with the exception of Cyprus. Scores are partially based on the IBM surveys and partially on subsequent replications of Hofstede's original research (Hofstede Centre, n.b.). The scores of the different Member States are included in Annex 1, table 1 of this report.

2. Corruption

Corruption is the second explanatory variable included in the research design. Several indices of corruption have been created, most of these relying on perceptions of the populace or experts, or a combination thereof (Rohwer, 2009). Measurement of perceived corruption often faces several drawbacks, including that data is difficult, if not impossible to extrapolate to the 'true' amount of corruption in any given setting and that different survey populations may provide different results (Kaufman, Kraay, Mastruzzi, 2010, p.19; Rohwer, 2009). For this reason, several indices should be used for a proper case selection on this variable. The Worldwide Governance Indicators (WGI) and Eurobarometers provide two studies of perceived corruption that include data for European Member States. The first is a composite measure of data sources which rates control of corruption on a scale ranging from -2,5 to 2,5. Countries perceived to be excelling at combating corruption will receive a score close to 2,5, while the inverse is true for countries perceived as performing poorly (Kaufman, Kraay, Mastruzzi, 2010, p.4). The scores presented in this index include a standard error, which cautions against any statement on one country scoring higher or lower than another if their standard errors overlap (Kaufman, Kraay, Mastruzzi, p.10).

The Special Eurobarometer 374 Corruption (held by TNS Opinion and Social, 2012) provides the additional benefit of including measures directed specifically at perceived corruption of the judiciary. Two questions are especially relevant for current purposes, the scores for which have been included in Annex 2 tables 2 and 3. The first considers the perceived level of corruption in the judiciary directly, while the second question ascertains the trust of a country's populace in the judicial system were an individual faced with a corruption case.

3. Centralization

Analysis of the variable centralization will be performed using content analysis of the country reports on the implementation of the Framework Decision on the EAW drafted by several institutes. The fourth round of mutual evaluations by the European Council considered the implementation of the EAW in the various Member Sates in-depth, making these reports an important data source. The country reports managed by the Jagiellonian University in Poland also provide a wealth of information on the implementation of the Framework Decision in different Member States.[56] This includes questions on the friendly stance of national courts on the EAW surrender system, who is competent to issue warrants for what purposes, which courts are competent, whether procedures before national constitutional courts have been held etc. In addition, several reports exist examining a selection of countries, similar to this study, which may prove to be a supplementary source of information. An example is a study performed by JUSTICE, the British section of the International Commission of Jurists NGO, which includes elaborate country reports on ten Member States (JUSTICE, 2012).

4. Network coordination

While the impact of centralization, culture and corruption will be studied on the basis of a selection of countries that vary on these variables, such an operationalization is not possible for the network coordination provided by Eurojust and the EJN. Instead, the impact of network coordination will be measured through a semi-structured in-depth interview with two respondents at Eurojust. The semi-structured nature of the interview allows for some deviation from the original questionnaire. This is conducive to the validity of the operationalization as a lack of previous research on the impact of Eurojust

[56] Accessible here: http://www.law.uj.edu.pl/~kpk/eaw/

and EJN coordination on the performance of national authorities makes it difficult to predetermine exactly which interview questions are appropriate to ask. A more open structure based on the characteristics of an NAO as described in the chapter 3, but that allows for deviation if respondents indicate other important elements, is therefore preferable.

5. Organizational performance

The dependent variable in this research is organizational performance. Performance in the EAW context can be approached by performing content analysis of a sample of EAW surrender cases executed by the Dutch judges with regard to the nine other Member States. Such a sample has the advantage of allowing a comparison between the Member States, to ascertain whether cooperation in one of these situations operates more fluently than in others. However, this operationalization admittedly also introduces several limitations and disadvantages. The first disadvantage of such an operationalization is that only the executing role of judges is assessed. The second disadvantage of this set-up is that reciprocity is hard to measure, and that the performance of for instance foreign judges in their executing role is left unmeasured.

The Rechtsorde.nl portal contains results from several of the most sources of published cases in the Netherlands, making it one of the most expansive resources for publicly available Dutch EAW data. This portal, as elaborated upon in paragraph 4.4, will be used to draw random samples per Member State of about 5-20 surrender cases, which will then be coded to allow for generalizations across cases. Attaching a performance score to an extradition or surrender case is no straightforward matter, however. As will be recalled from chapter 3, several goals have to be taken into account, including on the operational level the automaticity of surrender, speed and appropriate judicial control. Surrender speed can be measured through the turnover time of the Amsterdam court. Although time limits are 60 and 90 from the day of arrest, the beginning date of a court procedure is openly accessible while arrest dates are not. Moreover, the quick procedures of the EAW mean that normally the arrest date will not be substantially far from the date on which the court procedure starts, making the measure somewhat valid.

Automaticity of surrender is the second aspect of an EAW case performance. Automaticity entails the trust in counterpart legal systems, and thus the non-application of substantive analyses of the alleged infringement. After all, the proportionality test and criminal law procedure of the issuing country should be trusted by the executing authorities under the EAW scheme, with every country ideally abiding by the minimum rules set out in the European Convention on Human Rights (ECHR) and the Charter of Fundamental Rights.[57] In such a situation, the executing country would no longer need to apply a substantive test of the facts of the case in the hearing held before the final decision to surrender is made. Therefore, a higher amount of paragraphs devoted to an in-depth analysis should be detrimental to the effectiveness of the application of the EAW instrument. Three types of in-depth analysis will be included as measures: content analysis of the case, analysis of a foreign legal system and analysis of the adequacy of the received arrest warrant. The details of these indicators will be elaborated upon in the next paragraph. A series of statistical tests will be used to discern whether differences between Member States exist. While the main facet of the automaticity analysis will be done through quantitative analysis, a supporting content analysis of several cases should be utilized to achieve greater depth. For this reason, each case analyzed will be provided with a description of the main problem(s) and every country will receive a short legal analysis on their performance with regard to the automaticity aspect of effectiveness.

[57] Fundamental rights are stressed also in preamble 12 of the EAW Framework Decision

Other supporting measures to be used in interpreting the extent to which surrender occurred automatically are the indicators on guarantees and their sufficiency and the indicator measuring whether a case was postponed.

Perhaps the most difficult aspect of to control for, however, is whether an appropriate amount of judicial control is applied by judges in surrender cases. Since an appropriate judicial control inevitably entails a normative judgment on the performance of the Amsterdam court, a quantification is particularly difficult with regard to this facet of EAW effectiveness. For this reason, a legal analysis will be used to ascertain the extent to which the Amsterdam court seems to apply an appropriate amount of controls. In this process, the analysis will specifically focus on issues such as whether the intensity of the court's scrutiny has differed over the years, whether the amount of scrutiny seems to differ between the different countries studied, etc.

4.3 The indicators

Several indicators will be used for the analysis of the sample. It will be recalled from the previous paragraph that organizational performance can be conceptualized for EAW purposes as consisting of three elements. Firstly, surrender should be a fast process. Secondly, surrender should be automatic, as mutual trust between European legal systems entails that a large part of substantive tests will be abolished. Thirdly, an appropriate amount of judicial control, taking into account the high level of mutual trust that should exist between the Member States, should still be present in the case. As such, all the developed indicators correspond to the first two aspects of policy effectiveness in the context of the European Arrest Warrant system. This paragraph has therefore been structured along the lines of the three main elements of the Amsterdam court's organizational performance, first discussing the indicator relating to surrender speed, secondly discussing several indicators used to approximate the automaticity of surrender and rounding off with the qualitative indicators utilized for appropriate judicial protection.

1. *Speed of surrender*

The quantitative indicators in the sample for the most past relate to the first two elements. With regard to the question whether surrender was a fast process, the indicators 'time in days before surrender' and 'postponement of surrender or not' will be especially relevant. The time in days indicator can be utilized in several ways. Firstly, a comparison can be made between surrender towards several Member States as to potential differences in the time it takes to surrender a person on average. Secondly, one could consider to what extent the Dutch system violates the current time limits imposed by the European Arrest Warrant Framework Decision.

While the question whether a surrender decision was postponed or not does not directly say something about the speed of surrender, it is related in the sense that it measures whether there is time to gain by improving EAW's in issuing Member States or increasing the mutual trust between Member States. To elaborate, intermediary decisions are often the consequence of the Dutch executing state having incomplete or ambiguous information from the original warrant or subsequent information provided by the issuing authorities.

2. *Automatic surrender*

The second major policy goal of the European Arrest Warrant is to contribute to the free movement of judicial decisions in the AFSJ. This was considered possible by the European legislator due to the mutual trust between the Member States, which have all ratified the ECHR and should all conform to the human

rights standards of the EU when implementing European law (see, for instance, Marin, 2008). As such it should be expected that higher amounts of mutual trust between judicial actors would serve to decrease the attention devoted to substantive tests on part of the executing Member State. Moreover, greater differences in culture may lead to differing work-methods and standards. Simultaneously, greater amounts of decentralization could imply that judicial authorities have less extensive experience with the EAW instrument, leading to higher numbers of insufficiencies in the issued warrants and transmitted information. All these factors could result in a more substantial in-depth analysis by the Amsterdam court. The study will measure the amount of in-depth analysis performed by counting the amount of paragraphs devoted in a given EAW surrender decision and will distinguish between three types of in-depth analysis:

1. The facts of a case and the contents of the procedure;
2. The laws of the issuing Member State;
3. Whether an EAW was drafted correctly.

It should be emphasized that the count of an absolute number of paragraphs in a case is not very meaningful. However, trends over the years and differences between Member States, if observed, could allow for comparisons and predictions. Furthermore, in the process of counting, only analysis by the Amsterdam court should be included. A mere statement of the position of the defence or the public prosecutor does not reflect the considerations of the Amsterdam court. Furthermore, the paragraphs included should contain considerations by the court, and not just be mere mentioning of for instance the existence of a provision in foreign law. Furthermore, the three types of paragraphs can be summed in order to view whether the any trend was visible in the last few years in the extent to which the Amsterdam court scrutinized incoming EAW's.

Also interesting from the perspective of automaticity is whether surrender was approved altogether. Specifically, noticeable differences between the countries selected should be looked for. For this reason, an indicator will be included on whether surrender was authorized or not. Data per Member State can then be used for comparison purposes. Furthermore, trends in the extent to which guarantees were deemed necessary by the Amsterdam court and the extent to which these were provided should be considered. Should these processes start to run smoother over the years, this would be indicative of a learning process on part of the judicial actors involved.

3. Appropriate judicial control

While the main analysis of the extent to which appropriate judicial control is present in the Amsterdam court's EAW cases will be legal in nature, several supporting quantitative indicators may be utilized to complement the legal analysis. As with the other criteria of performance included in this research, the criterion of appropriate judicial protection has been distilled from the EAW Framework Decision. Therefore, the definition of appropriate judicial protection used for the data analysis of the research will also be based on the requirements of the Framework Decision and, more broadly, European law. The paragraph will first broadly list the rights which should be observed in surrender proceedings, afterwards considering how the particular nature of the EAW Framework Decision and mutual trust between European Member States provides limitations to appropriate judicial protection in the executing phase of an EAW. The basic elements of the rights for defendants are illustrated by the EAW Framework Decision's preambles, which thus provides an appropriate starting point for an examination of the norms national authorities should abide by when implementing the EAW. Preambles 12 to 13 are in particular concerned with rights of requested individuals.

Preamble 12 notes that the Framework Decision respects fundamental rights and the principles recognized by Article 6 TEU and the Charter of Fundamental Rights of the EU, thereby establishing, in principle if not as a strict requirement,[58] that national laws and authorities should do the same. This is later confirmed by article 1(3) of the Framework Decision, which provides that the obligations resulting from the Framework Decision shall not have the effect of modifying Member State obligations under Article 6 TEU, the latter article being the main Treaty article on fundamental rights, and which itself also refers to the applicability of Charter norms. The preamble moreover provides some additional information on which rights should be considered of particular importance, as it specifically refers to Chapter 6 of the Charter concerning rights in the field of justice. This includes the right to an effective remedy and fair trial, the presumption of innocence, the principle of proportionality and legality and *ne bis in idem*. What is more, without presumption to higher standards adopted by the EU legislator or judiciary, Article 52(3) of the Charter requires that all the rights set forth in that Charter should be interpreted in such a way that they correspond to the meaning and scope of rights established by the ECHR.

Beyond the justice rights spectrum preamble 12 mentions the prohibition on discrimination explicitly as well. Surrender may be refused if the executing states have objective reasons to assume that the issuing state's prosecution discriminates against the requested person on the basis of characteristics like ethnicity, sex, age or gender. Furthermore, preamble 13 constitutes the EAW's primary reference to the observance of human rights. In particular it refers to the requirement that requested persons will not be 'removed, expelled or extradited' if there is a serious risk of the death penalty, torture or inhuman or degrading treatment occurring. This preamble reflects the absolute right to life and the prohibition of torture and inhuman and degrading treatment as provided for by Articles 2 and 3 of the ECHR. The remained of the EAW Framework Decision, as mentioned earlier in chapter 2, is surprisingly silent on the right to life and the prohibitions against discrimination, torture and degrading treatment, however. The instrument for instance does not include any mandatory or even optional refusal grounds with regard to these fundamental rights. Nevertheless, jurisprudence on both the national and European level has confirmed the applicability of these rights to the execution phase of an EAW.[59]

The mandatory refusal grounds discussed in chapter 2 also add some additional information on what should be regarded as an appropriate level of protection for requested persons. Of particular concern is that executing authorities should take heed of the principle of *ne bis in idem* or if a person can, by account of age, not be considered criminally liable under the laws of the executing state for the acts he committed.[60] Furthermore, the research should take into account the compliance of national authorities with their implementation of the optional refusal grounds, in particular those relating to nationality and residency, territoriality, trials rendered *in absentia*, offences which are statute barred offences under

[58] While preambles are useful for the interpretation of the intentions of the EU legislator, they offer no binding norms.

[59] See joined cases C-411/10 and C-493/10 – NS [2011] ECR I-13905, p.74-86, in which the ECJ ruled in the area of asylum law that 'if there are substantial grounds for believing that there are systemic flaws in the asylum procedure and reception conditions for asylum applicants in the Member State responsible, resulting in inhuman or degrading treatment, within the meaning of Article 4 of the Charter, of asylum seekers transferred to the territory of that Member State, the transfer would be incompatible with that provision'. This wording is similar to the test used in Dutch courts, which emphasizes that there must be concrete and substantial evidence for a human rights breach that is specific to the requested person. See for instance: District court Amsterdam, 05-07-2011, ECLI:NL:RBAMS:2011:BV0505

[60] Article 3(2) and Article 3(3) EAW Framework Decision

Dutch law and double criminality for non-list offences. In chapter 5 the Dutch implementation of optional refusal grounds will be considered more in-depth.

Another element of judicial protection in surrender proceedings concerns avoiding blind faith in the requests of other Member States. In light of the limitations imposed by the principle of mutual trust, this is often limited to checking whether formal requirements of the EAW have been implemented or requesting guarantees from issuing authorities. Article 8 of the EAW requires that the warrant sent out contains at least the identity and nationality of the requested person, evidence of the judgment or/and the circumstances and classification of an offence, the penalty imposed or imposable and other consequences of the offence. Under article 5 executing authorities may request retrial guarantees for judgments rendered *in absentia*. As will be seen in chapter 5, the Netherlands does require such guarantees and this in turn requires the Amsterdam court to consider whether a judgment has indeed been rendered *in absentia*, whether a person has not been informed of the impending trials against him and whether the issued guarantee is sufficient. Similarly, the Amsterdam court is required to interpret guarantees of Member States with regard to the return of surrendered nationals or residents of the Netherlands and should weigh the principle of mutual trust with the interest of a requested person in an unambiguous return guarantee with no exceptions.

Several elements of the right to a fair trial have also been made explicit in the EAW Framework Decision. While the available defense rights are somewhat limited by the fact that the main proceedings will take place in the issuing Member States on the assumption that the requested person will have access to a full set of rights to defend himself, there are still some important defense rights which should also be observed in the executing Member State. Article 14 of the EAW Framework Decision requires that a person has a right to be heard by the executing authorities. Article 11 provides for the obligations of the executing authorities to inform the requested person of the EAW transmitted, a person's right to consent or to refuse consent to surrender and the right to legal counsel and an interpreter. The principle of specialty must also be observed by the requesting Member State pursuant to article 27 EAW, and objective reasons to assume that this is not the case should therefore lead to a refusal of surrender by the executing state, although it must be re-emphasized that the starting assumption for the executing Member State is that of trust in that the requesting state will abide by its obligations under the EAW.

Thus, from this short summary of the defence rights available to requested persons in the executed Member States, several aspects form the core of a national court's judicial protection of a requested person. When applying appropriate judicial protection a national court has to pay attention has to justice rights as laid down in the Charter and the EAW Framework Decision, fragrant breaches of human rights, breaches of the prohibition on discrimination, whether guarantees are sufficient and unambiguous and the formal requirements of an EAW. For those rights which guarantee the situation in the issuing state or the conduct by issuing authorities, the conduct of an executing court should be based on the assumption of mutual trust and refusals must pertain to situations where there are objective reasons to assume a breach of the rights of the defendant. Thus, an appraisal of whether a national court applied appropriate judicial protection should always be seen in the light of its limited role as executing authority and consider that the main procedure in the issuing should – normally – allow the defendant to exercise a broader set of rights. This nuanced nature of appropriate judicial protection and the limited role of the executing authority means that the analysis section of this report should mainly highlight substantially concerning cases as insufficient performance results from an organizational performance perspective.

4.4 Interpretation of the quantitative indicators: limitations and points of attention

The previous chapter devoted attention to public performance measurement and the potential misuse of performance indicators. Having established which indicators will be used for data analysis, it is helpful to elaborate on how the quantitative data should be used for meaningful interpretations and what types of usage should be avoided. Worth considering first of all is the indicator days before a surrender decision is reached. Coining every case with a long turnover time as inherently bad does no justice to the internal dynamics of the Amsterdam court and other judicial actors, and the fact that more complicated procedures – requiring for instance additional guarantees – need more time to complete. Therefore, exceptionally long cases should be analyzed with the reasons for the delays in mind. An example of a case where a longer turnaround time would not necessarily be indicative of a bad performance is when a translator is not available, forcing the court to postpone a case in the interest of the requested person. In such a case, a tradeoff between efficiency and fairness is inevitable due to external circumstances and good arguments would exist to postpone the case. This also reflects the assertion by de Bruijn (2007) that public goods delivery often involves tradeoffs between different values. Therefore, assessing performance on the basis of only one of these values is undesirably reductionist and should be avoided. For these reasons, each section on surrender speed per Member State will involve an analysis of seemingly exceptional results and whether these can in fact be attributed to a bad performance of the Dutch or issuing authorities, or whether other factors caused delays instead. Informative in this regard will be the indicator that assesses whether cases were postponed or not. If yes, the cause for this postponement must subsequently be examined. Furthermore, it must be kept in mind that absolute surrender decision turnaround times are not meaningful in themselves. Instead, they must be seen in the light of EAW time limits or in the light of a comparison between countries. Again, underlying causes for differences between Member States should not be forgotten in such an interpretation. Another point with regard to the surrender speed indicator of court turnover times is that the start date of the court procedure may not coincide with the arrest date of a requested person, which is the official starting date of EAW time limits. However, as the starting date of the court procedure will normally be later than the arrest date of the requested person, the publically available court dates provide a valuable insight into how long the procedures at least take. Readers should be aware, however, that the actual procedure may have taken slightly longer.

The paragraphs of devoted to in-depth analyses of contents, laws and the adequacy of warrants cannot independently be utilized for a judgment on the performance of a Dutch surrender relationship with another Member State. As de Bruijn (2002) cautions, pure quantitative data in itself is meaningless and should always be supplemented with an analysis of how a given score was achieved. Instead of indicating an insufficient performance with regard to the goal of automatic surrender, a large amount of paragraphs could for instance also be devoted in a case into deducing details of the warrant in order to derive information that would, in the end, be sufficient to authorize surrender. While in the latter case it could still be argued that the issuing judicial authority hindered the performance in the relationship, it is wrong to attribute the analysis to a poor performance of the Amsterdam court. Such nuances need to be captured by the qualitative analysis that supports all country reports in chapter 6. Similarly, the data on how many return and retrial guarantees were necessary and whether they were sufficient should be utilized with care. Although guarantees that were not sufficient are often indicative of a lacking performance, their root cause may vary.

In light of the aforementioned considerations, it must be concluded the qualitative analyses that accompany the quantitative data are of vital importance. Each Member State country report will receive a thorough examination of interesting and exceptional cases alongside a report of the quantitative data for that states' relationships with the Netherlands. The concerns listed here are more difficult to reconcile at the stage of the inter-Member State comparisons. Nevertheless, for the differences between Member States found care must be taken to find explanations and spurious factors as much as possible.

4.5 Country selection

In the social science literature analysis presented in chapter 3 several elements were proposed that may influence the amount of mutual trust in the EAW cooperation scheme. It is appropriate to select cases in accordance with the effects on trust and network effectiveness that these variables imply, and to cover as much as possible of the existing heterogeneity of the actors studied (Campbell, Cook & Shadish, 2002, p.23-24). For this reason, the explanatory variables should be taken into account when selecting the different countries to be studied.

The first variables on which the case study should be based concerns the cultural dimensions of Hofstede. Annex 1, table 1 to this report includes the different scores of the EU countries (excluding Cyprus, for which no data is available). The Netherlands itself scores 38 on Power Distance Index (PDI), 80 on the individualism/collectivism index (IDV), 14 on the masculinity/femininity index (MAS), and 53 on the uncertainty avoidance index (UAV). Table 2 of that same annex shows the differences between the Netherlands and other Member States on Hofstede's cultural dimensions. The fifth column totals the differences by adding up the distances per cultural dimension for any given Member State and the Netherlands. In particular the Scandinavian countries, Latvia, Lithuania and Estonia score similarly to the Netherlands on Hofstede's cultural dimensions, with total distance ranging from 31 for Latvia to 49 for Sweden. Also notable is that out of the larger Member States, in particular Germany scores relatively close to the Netherlands. On the other hand, Greece, Portugal, Poland and the East European states Poland, Bulgaria and Romania score substantially dissimilar. All these countries score higher than 140 as regards distance on the cultural dimensions of Hofstede, with Slovakia topping out the list due with an combined distance of 192. In particular, Slovakia receives a far higher Masculinity rating than the Netherlands, this dimension accounting for nearly half the distance between the two countries. Another Notable detail of Slovakia is that, while total differences between this country and the Netherlands are indeed rather large, the difference on the UAV dimension is only 2.

The second variable for which variation should be achieved in the country selection is corruption. In recent years, three countries in particular seem to score relatively poor as regards perceived control of corruption in the WGI composite indicator: Greece, Romania and Bulgaria. These countries show the only negative scores in the EU table (respectively -0,25, -0,24 and -0,27 in 2012). However, considering the standard errors in the data for these countries range from 0,12 to 0,16, it is difficult to definitively establish which country is perceived as more corrupt by the survey participants. Scoring relatively highon the WGI composite indicator, on the other hand, are the Netherlands, Finland, Denmark and Sweden (respectively 2,13, 2,22, 2,39 and 2,31 for 2012).[61] Again, the differences between these 4 countries are hard to pinpoint exactly due to the existence of standard errors of around 0,16. Nonetheless, these four countries

[61] Note, that while Denmark has an opt in with regard AFSJ measures, it has chosen to implement the EAW Framework Decision, making it a relevant state to consider for the country selection.

consistently score in the top of the EU Member States with regard to the perceived control of corruption in the WGI. Of the three largest European Member States,[62] Germany ranks highest on the WGI indicators, with a score of 1,78.

The results of the two Eurobarometer questions are roughly consistent with the WGI scores, with many of the same countries present in the top and bottom portions of the score list. Again, the Scandinavian countries score high, along with Netherlands, Luxembourg and Germany. With regard trust in judicial institutions when faced with a corruption case, Austria also scores relatively high. The bottom scores now also include Lithuania and Slovenia for both Eurobarometer questions. It is furthermore notable that trust in judicial institutions when faced with corruption cases is remarkably low in the United Kingdom. The lower brackets also show some consistency with WGI measures, with both Eurobarometer measures indicating low scores for Bulgaria and Slovakia. Noticeably inconsistent with the WGI composite indicator is the relatively high score received by Romania and Greece in the Eurobarometer questions. While the WGI place Romania and Greece consistently as one of the poorest performing countries with regard to perceived performance in the combat of corruption, the Eurobarometer scores Romania 7th lowest as regards perceived amount of corruption in the judiciary and only 12th lowest as regards trust in judicial institutions in corruption cases. Greece performs perhaps better than Romania in this Eurobarometer, with respective scores being 6th lowest and 17th lowest. Poland has a mixed score when looking at the Eurobarometer questions. It is 12th lowest for the abuse of power for personal gain in the judiciary question and 19th lowest for the question on whether respondents have trust in the judiciary.

Considering the overlap and differences found between the corruption Eurobarometer and the WGI, the Scandinavian countries (that is to say Sweden and Finland) and Germany on the one hand, and Bulgaria Romania and Poland on the other, seem relevant for our case selection as regards variation on corruption due to their consistent scores over the three measures used. These results are similar to the case selection considerations devoted on the cultural dimensions of Hofstede, perhaps suggesting a co-variation between corruption and culture, which, although important to note as a potential weak point of the presented research methodology, will not be discussed further in this research save for the discussion at the end of the report.

The final variable to account for in the case selection is the centralization of the judiciary, which will be established for the Member States mentioned in the previous paragraph. The Asser institute has conducted an EU-wide investigation of EAW implementation, which *inter alia* makes note of the competent courts and prosecutors. It seems that the Netherlands is one of the most centralized of all European Member States. Only Finland and Sweden also show a relatively high degree centralization of its issuing institutions, with the issuing of warrants for the purpose of the execution of a sentence being performed by central authorities. Otherwise, the EAW system is implemented in a rather decentralized fashion in all nine countries. Considering this, it is opted to include the most similar of the large Member States as the third similar country for the analysis. Germany, while having a decentralized system both for its issuing tasks and its executing tasks, is reasonably similar to the Netherlands on both the cultural dimensions and the corruption indices and is therefore added as the third similar country.

It was already noted that Poland, Slovakia, Romania and Bulgaria all possess significant dissimilarities with the Netherlands in the areas of culture and corruption. All four Member States are also highly

[62] Germany, United Kingdom and France

decentralized with regard to the execution and issuing of warrants. While the Polish and Romanian implementation of the EAW does include a central coordinating and supporting authority for the issuing aspects of the EAW, the competence to issue a warrant lies with decentralized prosecutors. Considering that Slovakia has only three EAW cases available, however, the final choice for the three dissimilar countries is Poland, Romania and Bulgaria.

The intermediate cases will therefore be chosen on the basis of being culturally and corruption-wise moderately dissimilar, but having a centralized tenet in its EAW implementation. The Kingdom of Spain, while decentralizing the competence to issue warrants, has centralized the execution of EAW's. The country scores somewhat differently from the Netherlands on the other two variables, with WGI indicators providing a corruption score of 1.05 for 2012 and Eurobarometer corruption-related questions scoring Spain roughly as a middle EU country. Furthermore, the scores of Spain on the cultural dimensions of Hofstede are moderately dissimilar. Spain has no extreme scores on the different cultural dimensions and the total score difference with the Netherlands is 109 points. The United Kingdom (UK) is furthermore an interesting case to include in the selection, being one of the largest EU Member States and being reasonably dissimilar from the Netherlands on Hofstede's cultural dimensions. With a score of 1.68 on the WGI indicators and, an 8th place on the Eurobarometer perception of pervasiveness of corruption question and a 24th place on the trust in the judiciary Eurobarometer question, the country scores highly varying on corruption indexes. Furthermore, it employs a decentralized judiciary for EAW purposes. Thus, the country roughly scores in the middle between similar and dissimilar from the Netherlands. Its common law system provides an interesting extra difference with the other state included in the country selection. Finally, Belgium will be included as the third intermediate state. The country scores halfway on differences with the Netherlands on the cultural dimensions of Hofstede and also scores halfway for all EU countries on the three corruption indicators. Like the UK, Belgium has opted for a decentralized implementation of the EAW. Its close proximity to the Netherlands is an extra reason to include the country in the dataset.

This leads to the following set of countries with the following attributes:

Netherlands									
Corruption			Cultural Dimensions				Judicial centralization low/medium/high		
WGI 2012	Eurobarometer perceived spread of corruption	Eurobarometer trust in judicial authorities in corruption case	PDI	IDV	MAS	UAV	Issuing for trial	Issuing for execution of sentence	Executing
2,13	16%	53%	38	80	14	53	Low	High	high
Finland									
Corruption			Cultural Dimensions				Judicial centralization low/medium/high		
WGI 2012	Eurobarometer perceived spread of corruption	Eurobarometer trust in judicial authorities in corruption case	PDI	IDV	MAS	UAV	Issuing for trial	Issuing for execution of sentence	executing
2,22	6%	51%	33	63	26	59	Low	High	Low
Sweden									
Corruption			Cultural Dimensions				Judicial centralization low/medium/high		

WGI 2012	Eurobarometer perceived spread of corruption	Eurobarometer trust in judicial authorities in corruption case	PDI	IDV	MAS	UAV	Issuing for trial	Issuing for execution of sentence	executing
2,316	19%	53%	31	71	5	29	Low	High	Low
Germany									
Corruption			Cultural Dimensions				Judicial centralization low/medium/high		
WGI 2012	Eurobarometer perceived spread of corruption	Eurobarometer trust in judicial authorities in corruption case	PDI	IDV	MAS	UAV	Issuing for trial	Issuing for execution of sentence	executing
1,78	19%	59%	35	67	66	65	Low	Low	Low
Spain									
Corruption			Cultural Dimensions				Judicial centralization low/medium/high		
WGI 2012	Eurobarometer perceived spread of corruption	Eurobarometer trust in judicial authorities in corruption case	PDI	IDV	MAS	UAV	Issuing for trial	Issuing for execution of sentence	executing
1,05	41%	36%	57	51	42	86	Low	Low	High
United Kingdom									
Corruption			Cultural Dimensions				Judicial centralization low/medium/high		
WGI 2012	Eurobarometer perceived spread of corruption	Eurobarometer trust in judicial authorities in corruption case	PDI	IDV	MAS	UAV	Issuing for trial	Issuing for execution of sentence	executing
1,64	21%	23%	35	89	66	35	Medium	Medium	Medium
Belgium									
Corruption			Cultural Dimensions				Judicial centralization low/medium/high		
WGI 2012	Eurobarometer perceived spread of corruption	Eurobarometer trust in judicial authorities in corruption case	PDI	IDV	MAS	UAV	Issuing for trial	Issuing for execution of sentence	executing
1,55	32%	49%	65	75	54	94	Low	Low	Low
Poland									
Corruption			Cultural Dimensions				Judicial centralization low/medium/high		
WGI 2012	Eurobarometer perceived spread of corruption	Eurobarometer trust in judicial authorities in corruption case	PDI	IDV	MAS	UAV	Issuing for trial	Issuing for execution of sentence	executing
0,59	32%	34%	68	60	64	93	Low	Low	Low
Romania									
Corruption			Cultural Dimensions				Judicial centralization low/medium/high		
WGI 2012	Eurobarometer perceived spread of corruption	Eurobarometer trust in judicial authorities in corruption case	PDI	IDV	MAS	UAV	Issuing for trial	Issuing for execution of sentence	executing
-0,27	55%	35%	90	30	42	90	Low	Low	Low

Bulgaria									
Corruption			Cultural Dimensions				Judicial centralization low/medium/high		
WGI 2012	Eurobarometer perceived spread of corruption	Eurobarometer trust in judicial authorities in corruption case	PDI	IDV	MAS	UAV	Issuing for trial	Issuing for execution of sentence	executing
-0,24	76%	26%	70	30	40	85	Low	Low	Low

Table 4.1: Cases and their attributes as included in this research

Having established the case selection, it is now possible to schematically represent the network. With the Netherlands as executing Member State, the network will schematically look as represented in the first figure of Annex 4. Blue lines represent actions by issuing states, while black lines represent the actions of the Netherlands as the executing state. Also indicated is the centralization of each actor, and the corruption and cultural dimensions factors influencing the network externally. The second figure does the same for Dutch actors in their role as issuing authorities, with the other three Member States in their executing roles.

4.6 Sampling

This paragraph will shortly elaborate on the sampling method utilized for the purposes of this research and the types of court cases analysed. In the Dutch criminal law system, several types of cases exist pertaining to the surrender of persons under the EAW framework. Given the fact that a coding approach will be used to generate comparisons over large numbers of cases, the inclusion of several case types creates the risk that relatively rare case types or case types that do not say much about the performance of the European Arrest Warrant are included in the analysis. This sample will therefore only include the Amsterdam district court's surrender decisions. These are the final judgments of the Amsterdam court pertaining to the actual surrender decision for an EAW. Surrender decisions are rich in data on the extent to which the Amsterdam court considers foreign laws, the correct usage of the EAW by foreign actors, the content of alleged acts, human rights infringements and other refusal grounds, etc. Moreover, these cases contain data on the length of procedures before the court, whether surrender actually took place and whether additional information or guarantees from other actors were deemed necessary.

One major exception where cases in which proceedings were stayed will not be included in the sample is when a prejudicial question has been asked to the ECJ. Prejudicial questions are asked when a case concerns facts that can neither be considered *acte claire* nor *acte éclaré*. The difficulty stemming from the fact that a court cannot derive from EU law itself or established case law how to handle a set of facts means that such cases will often be subject to a larger amount of content-related considerations, generating the danger that they will hinder the representativeness of the data-set. Furthermore, Dutch *interlocutaire uitspraken,* or intermediary decisions, will be excluded due to the high risk of them duplicating content which will also be coded in the final decision, thus affecting indicator scores and decreasing the validity of the sample. Instead, the final decision sample will include whether a final decision was postponed or not. Other case types not included in the analysis are appeal cases before the Dutch *Hoge Raad* and so-called *wrakingsverzoeken* (court cases pertaining to the replacement of the chamber judges due to a perceived risk of arbitrariness).

Once the relevant surrender decisions and intermediary decisions have been gathered some further considerations on sampling are necessary. While the goal is to establish a set of cases representative for

the relationships between the Dutch Amsterdam court and its counterparts in the 9 selected Member States, the sampling method is faced with the requirement that any sample must remain manageable for the purposes of this research. Another fact to be taken into account during sampling is that the amount of requests to Holland for the surrender of a person varies considerably per Member State, with for example neighbouring states such as Germany and Belgium requesting persons far more often than other Member States. As some analyses will be performed with all cases of all Member States, it is helpful to retain similar sample sizes per state. This aids in avoiding the marginalization in the results of smaller Member States. Therefore the choice has been made to analyse a maximum of 20 surrender cases per Member State. A minimum of 5 available cases should also be taken into account, as a smaller number runs the risk of severely misrepresenting future EAW cases between the Netherlands and that Member State.

If at maximum 5-20 surrender cases are available for a given Member State, no further sampling is necessary. All available cases will be utilized for the analysis. A smaller number than 5 court cases means that a different Member State will need to be selected. Finally, if the number of surrender cases is higher than 20 an interval sample method will be used. The available court cases will be aligned according to date, after which 20 cases will be selected over the entire period with a regular interval. This both ensures a good spread of cases to analyse performance differences over the 2006-2014 period and helps retain a measure of representativeness for the sample. The primary source for court cases in this research will be Rechtsorde.nl portal. This portal is capable of retrieving data from various important jurisprudence sources in the Netherlands. This notably includes Rechtspraak.nl, one of the primary Dutch sources for published cases. As such it is one of the most complete sources for EAW cases of the Amsterdam District Court.

4.7 Conclusions

The different aspects of the research methodology, based in part on the previous two chapters, have been highlighted in this chapter. The chapter set out by discussing the operationalization of the different variables and denoting the ways in which they will be measured. Special attention was devoted to the measurements of performance through indicators, a highly difficult task in a criminal justice environment such as the EAW system. Subsequently the chapter considered, on the basis of the different independent variables, which EU Member States would be adequate for inclusion in the research. Aside from the Netherlands, which forms the starting point of this research, three cases most dissimilar to the Netherlands (Bulgaria, Poland, Romania), three cases relatively similar to the Netherlands (Finland, Sweden and Germany) and three intermediate case (Spain, Belgium and the United Kingdom) were selected. The next chapter will shortly introduce the legal systems of the various states in the country selection. Subsequently, chapter 6 will be devoted to the analysis of the data gathered through the different measurements put forth in this chapter.

5. Implementation of the EAW Framework Directive in the selected Member States

5.1 Introduction

This chapter will provide a short overview of the implementation of the European Arrest Warrant in the different selected Member States. Special attention will be devoted to the Netherlands, as the focus of this research is on the relationships of the Dutch authorities with those in third countries. Topic-wise, several issues will be considered per Member State. First, the competent judicial authorities will be listed for every Member State. Subsequently, attention will be devoted to national rules and doctrine on double criminality requirements, optional refusal grounds and mandatory refusal grounds. The final paragraph of the chapter will consider the role of Eurojust, and what functions it performs to coordinate cooperation and foster mutual trust between national judicial actors.

5.2 Implementation of the EAW in the Netherlands

As with all Framework Decisions, the EAW act results in obligations for Member States to transpose the acts' provisions into national laws. The Netherlands did so in 2004 – somewhat later than the transposition deadline (Glerum, 2013, p.83) – by adopting the Dutch Surrender Act, officially called the '*Overleveringswet*'. This paragraph will describe some of the main features of the Dutch Surrender Act, and will pay special attention to areas in which a peculiar or controversial method of transposition was used. Another point of attention is the implementation of the various refusal grounds of the EAW Framework Decision in the Dutch legal order. Furthermore, some attention will be devoted to the guarantee system the Dutch implementation utilizes, as these will be one of the factors taken into account in the data analysis of the performance of the Amsterdam district court.

Firstly notable with regard to the Dutch implementation of the various optional refusal grounds is the extent to which nationals are protected. Article 6 deals with the surrender of Dutch nationals to other Member States and provides that a return guarantee is needed if surrender for the purposes of prosecution is to be allowed.[63] Should the EAW concern the execution of a sentence, no authorization for surrender will be given. Instead, the Dutch authorities will inform the issuing authorities of the counterpart Member State that they are prepared to carry out the sentence themselves (mutual recognition of judicial decisions). In some instances the Dutch legislator has opted to extend this protection to foreigners with a permanent residence permit in the Netherlands. The ratio behind this extension is that foreigners who have integral and long-term ties to the society of a Member State should be allowed to undergo their sentence in that state, in order to facilitate their reintegration into society (Van den Brink, Langbroek & Marguery, 2013, p.177, 185-186; Glerum & Rozemond, 2009, p.71-73). In the Wolzenburg case it was made clear by the ECJ, however, that a decision on whether a person is a resident cannot be made conditional upon an administrative requirement such as the possession of a permanent residence permit. Instead, national authorities must utilize a set of objective criteria which may be the same material criteria underlying a person's eligibility for a permanent residence permit. Consequently, Article 6(5) of the Dutch Surrender Act must now be read as extending the protection

[63] The return guarantee condition is allowed by article 5(3) of the EAW Framework Decision

accorded to nationals to non-nationals when the latter would comply with these underlying permanent residence permit criteria.[64]

The implementation of the double criminality requirement for offences other than those included in the list of Article 2(2) of the EAW Framework Decision also includes some controversial aspects. The Dutch Surrender Act (Article 7(1)(1)) requires that any offence under the scope of Article 2(4) of the EAW Framework Decision is punishable under Dutch law with a prison sentence with a maximum penalty of at least 12 months. This requirement is different from the one included in article 2(1) EAW Framework Decision since the latter rule only relates to the issuing country, while the Dutch authorities occupy the role of executing state for the purposes of article 7(1)1. Critics argue that while article 2(4) of the EAW Framework Decision indeed allows for a double criminality requirement, the requirement of a prison sentence with a maximum of at least 12 months under Dutch law infringes the principle of supremacy of EU law (Glerum, 2013, p.83). Other than this problem the implementation of the required custodial penalties of Articles 2(1) and 2(2) of the EAW Framework Decision into article 7 of the Dutch Surrender Act seems quite literal.

Ne bis in idem is implemented thoroughly in Articles 9(1)c-9(1)f. Surrender is refused on the basis of these provisions for instance if prosecution is barred in the Netherlands due to the exceeding of a Dutch limitation period, if another country has finally judged upon the act for which surrender of the person is requested etc. Surrender is also refused if the person claimed is already being prosecuted in the Netherlands on the basis of article 9(1)b of the Dutch Surrender Act, although the Dutch Surrender Act seems to formulate prosecution more broadly than the EAW Framework Decision. While the Framework Decision only mentions prosecutions against the acts the EAW has been issued for in article 4(2), the Dutch act refers to any ongoing prosecution.

Serious suspicions of 'flagrant' breaches of human rights and fundamental freedoms are another reason for the possible non-execution of an arrest warrant, as provided for by Article 11 of the Dutch Surrender Act. In line with the ECtHR's M.S.S.[65] and ECJ's N.S. cases,[66] the starting point of flagrant human rights breaches is a situation of mutual confidence in the equivalence of the legal orders of other Member States. However, should there be a sufficiently serious and concrete likelihood of an infringement of human rights obligations resulting from the ECHR or/and EU law, surrender should be refused (Marin, 2011; Van den Brink, Langbroek, Marguery, 2013, p.179). This is in addition to the current article 94 of the Dutch constitution, which essentially provides that any provision in the Dutch legal order contradicting obligations under international law (such as obligations under the ECHR) must be disapplied (Smeulers, 2004). The Commission was initially critical of the inclusion of fundamental rights refusal grounds by Member States, as the possibility of using human rights to refuse surrender was not explicitly foreseen in the EAW Framework Decision. The Commission has, however, changed its position on this matter in recent years according to Mitsilegas (2012). Thus, the Dutch implementation of a human rights refusal ground, while strictly not permitted by the EAW Framework Decisions, seems to be accepted out of necessity.[67]

[64] C-123/08 – *Wolzenburg* [2009] ECR I-09621, p.48-74
[65] ECtHR, *M.S.S. v. Belgium and Greece* (2011) 30696/09, p.359-361
[66] C-411/10 – *N.S. and others* [2010] ECR I-13905, p.77-86
[67] Also relevant in this regard are the conflicting obligations that would confront Member States if the EU institutions would not have accepted flagrant human rights breaches as a refusal ground. The Soering judgment of the ECtHR,

Another optional refusal ground, namely the territoriality refusal ground included in articles 4(7)a and 4(7)b of the EAW, is implemented by article 13(1) of the Dutch Surrender Act. If a crime is committed wholly in the territory of the Netherlands, surrender to the issuing state should be refused. Moreover, if the crime was committed outside the Netherlands and Dutch criminal law does not provide for the possibility to prosecute such crimes if they are committed abroad, surrender must in principle also be refused. Interestingly enough, however, Dutch prosecutors are afforded the discretion to allow execution of the arrest warrant even if either of the two variations of this refusal ground are applicable (Van den Brink, Langbroek, Marguery, 2013, p.176-177). Such an exemption from the refusal grounds of the Dutch surrender act can be rationalized from the potentially low amount of involvement of the Dutch legal compared to the issuing legal order. In drug trafficking offences, for instance, the issuing Member State may form the hub of a drugs network while the Netherlands, as the executing state, is only one of the destination countries. Another reason is that another Member State may be better placed to prosecute an offence due to most of the research and evidence being available in that state. Finally, the possibility for the disapplication of the refusal ground is useful in cases where two Member States jointly investigate an offence and agree between them which Member State will handle the subsequent prosecution stage.

Designated as the court dealing with requests for surrender is the Amsterdam district court. Normally no appeal to decisions of this court is possible,[68] and the Amsterdam court is the only Dutch court competent to deal with EAW decisions. The efforts of the EAW to speed up surrender procedures means that central authorities should only be involved for practical and administrative assistance. To that end, the Dutch minister is no longer involved in deciding upon extradition, save for cases in which other international law tribunals have submitted a request for the apprehension and possible extradition for the person involved. This is a far cry from the situations existing in extradition treaties under international law. In those systems it is usually a central administrative authority which is competent to deal with a request for extradition (Smeulers, 2004). Within the Amsterdam district court, the Internationale Rechtshulpkamer (loosely translated as the international legal aid chamber) is charged with all EAW-related matters. Zittingsteam 3, or loosely translated 'hearing team 3', is the designated group of judges dealing with all European Arrest Warrants.

The Netherlands has furthermore regulated apprehension of persons in a decentralized manner. Any prosecutor or deputy prosecutor is competent to take a requested person into temporary custody, with the possibility to incarcerate the requested person for a maximum of three days.[69] In this period the requested person should be transferred to the Amsterdam prosecutor's office.[70] Once there, a judge may order the person to be detained for a period of 20 days on the request of a public prosecutor.[71] While

for instance, has made clear that extradition should not be possible in cases that include severe breaches of Article 3 of the ECHR. See: ECtHR, *Soering v. the United Kingdom* (1989) 14038/88, p.100-111

[68] *inter alia* because appeal would lengthen the procedure (Smeulers, 2004), and since there should be mutual confidence in the prosecutions and trials held in other Member States.

[69] Article 17(1) and 17(3) of the Dutch Surrender Law. According to paragraph 2 of the same article, police officers are also competent to arrest the requested person of their own accord if it is not possible for the prosecutor to instruct officers to proceed to an arrest.

[70] Article 17(4). According to article 17(3) it is possible for the Amsterdam district prosecutor to extend temporary incarceration for another period of three days.

[71] Articles 18(1) and 19(b)

every prosecutor in the Netherlands is competent to apprehend a requested person and to place him/her into temporary custody, they are not competent throughout the later phases of the surrender procedure. The requested person should, as quickly as possible, be transferred to the Amsterdam prosecutors' office. Should the requested person consent to his/her surrender, the person will be surrendered within the next 10 days. If the person does not consent to his surrender, a hearing before the Internationale Rechtshulpkamer of the Amsterdam district court is necessary, which must be requested at maximum 3 days after the reception of an EAW by the prosecutor at the Amsterdam court.[72] By contrast warrants may be issued by all prosecutors in the Netherlands, without there being an additional judicial check on the appropriateness or proportionality of a European Arrest Warrant (Asser Institute, 2006b).

5.3 Implementation of the EAW in Bulgaria

The Bulgarian implementation of the EAW is highly decentralized. The Bulgarian prosecutors handling a given case are also the competent authorities to issue a European Arrest Warrant. In any case in which there is a domestic warrant or custodial order and there are indications that a suspect is located in another EU Member State, a EAW should be issued (European Council, 2009b, p.6-8). This in principle means that the 112 regional and 28 district prosecutors' offices, as well as all higher prosecutors, are competent to issue and transmit European warrants. An interesting feature of the Bulgarian system is that only warrants at the trial stage must be decided on by the competent court. Should the warrant be issued for the execution of a custodial sentence, the prosecutor is directly competent to issue the warrant and the court stage is skipped. The Ministry of Justice provides a unit which may be considered a central authority of sorts, and is tasked with providing mutual legal assistance in criminal matters and the practical arrangements for the surrender of a person from and to Bulgaria (European Council, 2009b, p.6-7). Its activities remain supportive, however, and the key competences are all executed at the decentralized level. Moreover, while there are no guidelines other than the European Handbook on the EAW to support practitioners, a National Prosecution Network contact point exists to aid prosecutors in drafting an EAW (European Council, 2009b, p.10).

The execution of warrants is also decentralized in Bulgaria. If the location of the requested person is known, the EAW is transmitted directly to the 28 competent district courts, who confirm the authenticity of the warrant by approaching the issuing authorities (European Council, 2009b, p.16). In these cases the courts may directly authorize the arrest of a person. Upon arrest with pre-trial custody is possible for up to 72 hours. In cases in which the location of the person is not known, the prosecutor orders the arrest. In this procedure, the person may be detained for a period of 24 hours extendable by the prosecutor for another 72. Appeal to a detention order is possible at the 8 Courts of Appeal. In maximum 7 days after the arrest of a person not consenting to his surrender, the District Courts must give a decision, against which appeal is open, again, before the Courts of Appeal. Consenting persons may withdraw their consent within 3 days, after which the aforementioned 7 day decision-time for the court applies (European Council, 2009b, p.18-19).

With regard to the implementation of optional grounds for non-execution, Bulgaria has opted for a similar implementation of article 4(6) of the EAW Framework Decision as the Netherlands, requiring the mandatory return of Bulgarian nationals and permanent residents in trial cases. In conviction cases concerning Bulgarian nationals or permanent residents, the execution of the EAW is refused with the Bulgarian authorities undertaking to execute the custodial sentence themselves. The duration of the

[72] This also applies if the requested person is not in custody

foreign sentence then applies, although the maximum penalty under Bulgarian law may not be exceeded (European Council, 2009b, p.23-24).

5.4 Implementation of the EAW in Spain

The Kingdom of Spain has attributed competences with regard to the European Arrest Warrant in a manner combining a decentralized framework for the issuing of warrants and a more centralized framework for the execution of incoming warrants. The Framework Decision has been implemented through two laws: Law 2/2003 and Law 3/2003. All investigating judges are normally competent to issue a warrant drafted for the prosecution of a requested person, although a Central Investigative Judges organization at Madrid can issue warrants for terrorism-related cases, said cases falling under its special scope of investigatory competences. Penitentiary judges are competent to issue warrants for the execution of a sentence a requested person has already received (Asser Institute, 2006c). This decentralized system implementation means that in total 1704 courts are competent to issue EAW's in Spain (European Council, 2007, p.4).

The Spanish judiciary is organized in a more centralized manner with regard to the execution of foreign warrants. The Criminal Division of the National Court and the Central Preliminary Investigations Court are the competent judicial authorities in this situation. If a warrant is received by a different court it will be transmitted automatically to the national authorities (Asser Institute, 2006c; European Council, 2007c, p.5). Should a requested person consent to his surrender, a less cumbersome procedure involving the Central Preliminary Investigations Court as the judicial authority competent to authorize surrender is followed. Should the person withhold his/her consent, however, the competence to authorize surrender is shifted to the Criminal Division of the National Court. This centralized system is based on the rationale that a smaller set of authorities competent to handle European Arrest Warrants is beneficial for the consistency of decisions and helps generate a large amount of expertise in specialized employees (Oubiña Barbolla & González Vega, 2010, pp., 488-490).

The Spanish implementation of the Framework Decision differs from, for example, its Dutch counterpart with regard to the implementation of the double criminality requirement. Even outside the set of 32 list offences for which the Framework Decision abolishes the double criminality requirement, the Spanish authorities may decide not to apply the double criminality requirement test (Oubiña Barbolla, González Vega, 2010, p. 494). Article 12 of Law 3/2003 establishes the different mandatory and optional refusal grounds. With regard, first, to the mandatory refusal grounds, it is provided in article 12 that surrender must be refused if a person has been judged in a state other than the issuing state if that sentence is being served, has been served, or is time-barred. Secondly, surrender must be refused for underage persons. A third mandatory refusal ground is a variation of *ne bis in idem* and concerns acts for which the requested person has been pardoned by the Spanish authorities.

Several variations of *ne bis in idem* also exist as optional refusal grounds. A non-suit judgment (charges being dropped) that has been given in Spain or a parallel prosecution in Spain for the same acts as those listed in the EAW are grounds for optional non-execution. Another optional refusal ground can be applied when EU Member States or third states have given a final sentence on the acts on which the EAW is based. The application of this optional refusal ground is slightly different from its mandatory *ne bis in idem* counterpart in that a sentence has not been served, is not being served or is not time-barred yet (Oubiña Barbolla, González Vega, 2010, p. 505-507).

Reasonably similar to the Dutch Surrender Law is the implementation of the nationality and territoriality refusal grounds in article 12. Surrender for the purpose of the execution of a sentence of persons having a Spanish nationality may be refused by the Spanish court, the requested person having the right under Spanish law to sit out his sentence in Spain. If the person consents to his surrender this refusal ground can be left unapplied. Similarly, a Spanish person requested for a prosecution may only be surrendered if the foreign judicial authorities can provide adequate guarantees for the return of the person to sit out his/her sentence in Spain. The territoriality refusal ground is worded rather broadly, and states that refusal may – optionally – be refused if the acts were committed whole or in part on Spanish territory. Furthermore, a request concerning the surrender of a person for a crime happening outside Spain and not being punishable under Spanish law may be refused. It is unclear how this provision relates to the abolition of double criminality for the 32 list offences, as provided for by the European Arrest Warrant Framework Decision (Oubiña Barbolla, González Vega, 2010, p. 505-507).

Spanish doctrine with regard to trials rendered *in absentia* has apparently undergone an interesting metamorphosis. While the Framework Decision on the EAW allows for the surrendering authority to utilize the condition that a guarantee for a retrial has to be given before surrender is authorized, the National Court did not apply this possibility. The Constitutional Court subsequently overruled this approach in 2006, stating that a guarantee for a retrial is a part of the broader set of guarantees the Spanish system should give for a fair trial. See for a more elaborate discussion of this development (Oubiña Barbolla, González Vega, 2010, p. 512).

5.5 Implementation of the EAW in Finland

The Finnish EAW implementation as an issuing state for the purposes of prosecution is, to a large extent, decentralized. The 56 district courts of Finland are competent to issue a 'decision on remand' on the request of prosecutors (European Council, 2007b, p.4). Such a decision may form the basis for the district prosecutor to issue an actual EAW, which requires no further approval by a court (European Council, 2007b, p.11). It is possible for different districts to issue a combined warrant if the same suspect is concerned. The prosecutor will already have examined whether there is substantial evidence of the requested person's involvement in a crime and will have committed to a prosecution when it issues an EAW. The issuing of an EAW is furthermore subject to a proportionality test which is often somewhat higher than the minimum requirements provided by Finnish law. Notable in this regard is that the Finnish prosecutors *inter alia* consider the EAW history of other Member States in deciding the proportionality of issuing a warrant: should executing countries often submit requested persons to substantial surrender delays, the seriousness of the offence for which the surrender is requested should also be higher (European Council, 2007b, p.8).

With regard to the execution of sentence warrants, the procedure is more centralized. In these cases the Criminal Sanctions Agency, competent in matters relating to the enforcement of sentences and operating under the Ministry of Justice, is capable of issuing EAW's (European Council, 2007b, p.4-6). The CSA performs quarterly reviews of its registers of whether sentenced persons are serving their terms, after which EAW issuing activity for the purposes of sentence-execution will increase (European Council, 2007b, p.9).

All warrants, regardless of their purpose are transmitted to the National Bureau of Investigation (NBI). This authority reviews the EAW and whether multiple requests by different prosecutors have been submitted. It may request the prosecutors to amend their warrants in such cases. The NBI furthermore

has the capability to translate warrants into several different languages for the purposes of transmission (European Council, 2007b, p.12-13). The NBI moreover functions as the primary route for communication for other Member States, although direct communications are possible if this is deemed necessary (European Council, 2007b, p.16).

As an executing state it usually receives EAW's through the SIRENE or Interpol units of the NBI. The NBI will then attempt to ascertain the whereabouts of the requested person through its databases. The EAW is then transmitted to the appropriate district prosecutors, who will review whether the content of the EAW is in order with Finnish legislation (European Council, 2007b, p.18-19). Even in the case of incomplete EAW's, the Finnish authorities will proceed with the apprehension of a person, on the assumption that the additional information will be forwarded on time (European Council, 2007b, p.19).

All law enforcement agencies are competent to detain a requested person and should inform the NBI immediately after an arrest. The police should inform the requested person of the purposes for arrest and ask whether they consent with their surrender in an appropriate language. A district prosecutor is then notified as soon as possible, who will apply to the district court for an extended detention or a travel ban (European Council, 2007b, p.21-22). A requested person may have this detention order heard before the district court and can appeal to the Supreme Court, although the latter possibility was only utilized in one case by 2007. Should the suspect consent to his surrender the court will make its final decision within three days of the suspects' statement. In other cases, the district court will hear the case 'without delay', retaining some discretion as to the interpretation of this limit (European Council, 2007b, p.23).

Finnish implementing laws contain two mandatory non-execution clauses not found in the Framework Decision. The first concerns the risk of breach of fundamental rights and is based on recital 12 of the Framework Decision, while the second refusal ground concerns humanitarian grounds which cannot be resolved through postponing the surrender (European Council, 2007b, p.24). Moreover, Finnish implementing laws require a refusal of surrender if the act has been perpetrated on Finnish territory (territoriality requirement) if the act either is not punishable under Finnish law or if prosecution/punishment is barred in Finland (European Council, 2007b, p.24-25). Finally, persons under the age of 15 cannot be tried in criminal cases in Finland, and their surrender is precluded (European Council, 2007b, p.15).

5.6 Implementation of the EAW in the United Kingdom

While the country selection based on corruption, centralization and culture showcase the United Kingdom as a moderately different country compared to the Netherlands, the UK has several unique features that do make it a remarkable Member State. Important from the outset of this paragraph is that during the negotiations of the Lisbon Treaty the United Kingdom has, together with Ireland, brokered several rules allowing it to reduce EU influence in JHA matters. For the UK these rules can be found in protocols 21 and 36 attached to the Treaties.[73] The provisions of protocol 21 essentially specify that the UK will not take part in AFSJ measures, unless it notifies the Council that it wishes to do so. As the protocol makes it clear that measures adopted before the entry into force of the Lisbon Treaty remain unaffected,[74] it must be noted that the European Arrest Warrant did apply to the UK in the past years.

[73] Protocol No 21 on the Position of the United Kingdom and Ireland in Respect of the Area of Freedom Security and Justice

[74] Article 4a of Protocol 21

However, protocol 36 on transitional measures also specifies that five years after the introduction of the Lisbon Treaty (that is to say, in 2014) both the Commission will be allowed to start infringement proceedings on the basis of framework decisions and the Court of Justice will gain full jurisdiction of Member State implementation of AFSJ regulation. Once more the UK's reservations with regard to EU institutions controlling JHA matters is clear in protocol 36, with the UK having negotiated a concession of specifying that the UK may notify the Council that it does not accept this increased jurisdiction for the EU institutions and that it will opt-out of specific acts.[75] The EAW Framework Decision, still being one of the primary instruments adopted in the AFSJ, was therefore recently subject to heated debate in UK politics (see for instance Mason, 2014; Mason & Sparrow, 2014). In an interesting move, the UK government notified the Council that it wanted to opt out of all AFSJ matters in accordance with protocol 36, after which it would opt back in to 35 instruments on the basis of protocol 21 (Carrera, Eisele & Mitsilegas, 2014). After some national parliamentary struggles, the UK did opt in to these 35 AFSJ measures, which includes the EAW.[76] Although the UK eventually concluded to keep these EU measures in place, the episode exemplifies that UK commitment to the AFSJ is not always an obvious matter.

The European Arrest Warrant is implemented into the UK legal order by the Extradition Act 2003. This is an interesting choice in itself, as no principal distinction is made between extradition and surrender, in contrast to the to the views of the Commission that surrender is conceptually different from extradition. Instead, the act refers to category 1 and category 2 states, with category 1 consisting of the Member States which have implemented the European Arrest Warrant. Category 2 states, on the other hand, is formed by states which do not employ the European Arrest Warrant and thus concerns traditional forms of extradition under international law. The system is in principle decentralized, with local courts being capable of deciding on extradition. However, while local prosecutors are competent to issue warrants after the authorization by a court, the transmission of the warrant and the communication on additional information runs through the UK's central authorities (Crown Prosecution Service, n.a.). These central authorities also receive and process incoming warrants on the central level. The National Crime Agency fulfils this role for England, while the Crown Prosecutor fulfils this role for Scotland (Home Office, 2013). Furthermore, two levels of appeal are possible within the British system.

The UK has implemented refusal grounds of the European Arrest Warrant in a strict manner. Called bars to extradition in the UK, the various refusal grounds are listed in Section 11 of the British Extradition Act and elaborated on in the subsequent sections of the act. Remarkable is section 13 of the UK Extradition Act. While the prohibition against discrimination is a general principle of EU law, the infringement of which should be prevented by the state that issued the warrant, the UK has seen fit to incorporate the principle as a separate refusal ground. The dual facts that the issuing Member State is under an obligation to issue a warrant which does not discriminate against race, gender, nationality, religion, etc. and that the EAW does not include non-discrimination as a possible refusal ground signals some lack of trust on part of the UK legislator. Double criminality is abolished for all list offences, as follows from article 64(2)(a).

Article 20 implements trials rendered *in absentia*, and requires the UK judge to ascertain whether a person was present at his trial, whether his potential absence was intentional in nature and, if these two questions are answered in the negative, the person must be discharged. Thus, in contrast to the Dutch

[75] Article 10(4) of Protocol 36

[76] Specifically, the House of Commons got to vote on only 11 measures, which angered several MP's considerably. See: (Peers, 2014)

system, the UK does not require any guarantee. Section 21 constitutes a refusal ground for human rights offences on the basis of the UK Human Rights Act 1998, and like all human rights refusal grounds is not directly traceable to the EAW Framework Decision. Furthermore, appeal against an extradition decision in the UK is possible at the High Court pursuant to Section 26.

5.7 Implementation of the EAW in Belgium

The Belgian implementation of the European Arrest Warrant differs substantially from that of the Netherlands. The Belgian system is characterized by a decentralized approach, as opposed to its Dutch counterpart. In principle all local public prosecutors and the 27 attached district courts are competent to rule on EAW matters, with appeal being open to five Courts of Appeal. One exception from this rule is the federal public prosecutor, which is competent for several types of crimes and assists in the coordination of mutual legal assistance requests from other Member States (European Council, 2007a). In most cases the Examining Magistrate will be competent to issue a warrant for the purposes of prosecution, providing an additional court component to this type of EAW in Belgium. For the purposes of the execution of a custodial sentence, however, local public prosecutors are competent. The execution of EAW's is equally decentralized. Incoming EAW's may be addressed to all local prosecutors. The pre-trial chambers of the 27 district courts are competent to give a decision on whether to allow surrender should an individual withhold his consent. However, if an individual chooses to consent to his surrender, the court phase is skipped and the local prosecutor is directly competent to authorize the surrender (European Council, 2007a, p.25). Consent may be revoked until a day before the actual surrender, providing requested persons with the choice to always reconsider to utilize the route that utilizes a court. Two levels of appeal are possible, with each review having a time-limit of 15 days (European Council, 2007a, p.32).

Coordination in the Belgian EAW system is available through two national authorities, providing some measure of centralization. The Federal Prosecution Office has first of all been designated as the international contact point for other Member States. The Federal Prosecutor may be approached for matters such as the appropriate legal authority to forward an arrest warrant to and provides coordination when multiple EAW's are issued by several foreign authorities. Similarly, the Federal Department of Justice plays a coordinating role when both an extradition and an EAW surrender case overlap. This department is also charged with requesting return guarantees for Belgian nationals in execution cases. Furthermore, the department of Justice is competent to gather statistics on the implementation of the EAW system in Belgium. As such, the decentralized Belgian system incorporates some centralized elements to ensure the smooth functioning of the system.

A mandatory refusal of surrender is given in the case of an amnesty law being applicable to the individual concerned. Another mandatory refusal ground is applicable when a person has previously been accused or finally acquitted by an EU Member State, unless this request is for the execution of a sentence and that person is not serving a sentence for these facts in Belgium. A request for an offence failing the double-criminality test and not falling under the scope of the EAW list offences will also be refused. Furthermore, refusal is mandatory when the person concerned is a minor under 16 years of age (Asser Institute, 2006a). The Belgian legislator has opted to include another refusal ground for cases in which a serious threat of human rights breaches as they have been enshrined in article 6 TEU exists. Interesting in this regard is the direct reference of the Belgian legislator to EU fundamental rights, as one could argue that this reference may potentially result in contradictory obligations under national law and under the ECHR. The Treaty of

Lisbon[77] and the future accession of the EU to the ECHR have dampened this risk in recent years, however. As with the Dutch flagrant human rights breaches refusal ground, the Belgian refusal ground only applies when concrete indications of breaches can be shown by the defense Asser Institute, 2006a). The nationality refusal ground has been implemented in an optional fashion, with refusal being subject to the discretion of the public prosecutor in question. Should surrender be allowed for the purposes of prosecution this may be made subject on a return guarantee for the Belgian national or resident involved to serve his sentence in Belgium. Similarly, Belgian nationals may be refused in surrender cases relating to the execution of a sentence. The Belgian implementation is somewhat more lenient towards surrendering nationals/residents than the Dutch system, however, as Belgians may be surrendered in execution of sentence cases. This is not possible in the Netherlands, as the Dutch system requires that nationals serve their sentences in the Netherlands. Territoriality has been included as the final optional refusal ground of the Belgian system. Like the Dutch implementation of this refusal ground, Belgian law stipulates that a surrender may be refused if an act occurred at least partially on Belgian soil. Furthermore, if the act was perpetrated outside the territory of the requesting state and if that act is not punishable under Belgian law the courts may also decide to refuse surrender. Furthermore the Belgian authorities may demand a guarantee that a retrial is possible if a requested person has been convicted *in absentia*. The retrial guarantee has been implemented somewhat more leniently than the Dutch version, with Belgian law also deeming the existence of a retrial provision in the requesting Member State's laws as sufficient. It will be recalled that the Dutch district court requires a somewhat more specific guarantee, as it has ruled on several occasions that the transmission of a general provision did not provide adequate guarantees that this provision is also applicable to the case in question (European Council, 2007a). Moreover, Belgian law allows its judicial authorities discretion whether to demand a guarantee or to refrain from doing so.

5.8 Implementation of the EAW in Germany

Germany entertains a rather conservative approach to its implementation of the European Arrest Warrant. The actors dealing with the European Arrest Warrant are mostly decentralized along traditional criminal law hierarchies and several refusal grounds have been implemented in a rather restrictive manner. The ministries of the different German Länder are competent to delegate EAW powers concerning the foreign legal requests to subordinate organs in their hierarchy, usually choosing to delegate EAW related matters to Higher Regional Courts (European Council, 2009c, p.5-6) and the prosecutors' offices attached to those courts. Under these Higher Regional Courts there is a more decentralized level of Regional Courts, which mostly deal with the issuing of EAW's. Prosecutors attached to higher court levels, such as the Higher Regional Courts or federal prosecutors, are in principle also competent to issue EAW's, although this occurs less commonly.

Surrender of an individual requested for the execution of a sentence is not permissible if that person holds the German nationality, with German law implementing the nationality refusal ground in a mandatory fashion. As such, cases concerning the execution of a sentence for a German national will conclude with either Germany executing the sentence for which the person was requested or with surrender if the requested person has consented to this latter option. Residents of Germany enjoy a slightly lower level of

[77] The Charter of Fundamental Rights of the EU must be interpreted in light of the ECHR according to article 52 CFEU. The Treaty of Lisbon has provided the CFEU with primary law status, ensuring the applicability of this provision and thus lessening the opportunity for diverging interpretations of human rights occurring between the EU and ECHR systems.

protection, with an optional refusal ground applying to them. If a foreign authority wishes for Germany to execute a sentence, they must request German authorities to do so (European Council, 2009c, p.26-27). Surrender for prosecution purposes, similarly to the Netherlands, is implemented in such a fashion that the issuing authorities should grant a return guarantee for the person involved. After the potential conviction of the requested individual Germany will convert and apply the sentence imposed upon him (26-28). After a court declares the surrender permissible the public prosecutor attached to the case needs to make a final decision on the execution of the EAW (European Council, 2009c, p.35).

Ne bis in idem has been incorporated into the German system in a similar fashion to countries such as Belgium and the Netherlands. The German IRG states that an act that has received final judgment may not lead to extradition or surrender. Furthermore, surrender for youths under 14 years of age is impermissible. Like Belgium, the German system refers to article 6 TEU for its human rights breach refusal ground. Surrender may thus be refused if this would risk breaching the rights and principles included in this article, including fundamental and human rights. As with many other Member States, Germany has moreover opted to retain the double criminality requirement for all offences not falling under the scope of article 2 of the EAW Framework Decision. Somewhat more strict than most other countries, however, is that if the double-criminality requirement is not fulfilled this constitutes a mandatory refusal ground for German authorities. Furthermore interesting is the fact that if prosecution or execution of a sentence is time-barred under German law, surrender must also be refused, meaning that the German legislator does not recognize the potentially higher time-limits of other countries as equally valid. As with many other Member States, Germany asks for a retrial guarantee if a person has been sentenced *in absentia*. In such a case the requested person must be given the chance to have his facts reconsidered in an appeal or retrial. Finally, it is worth mentioning that life sentences extending beyond 20 years are a grounds for refusal and that Member States incorporating systems that allow such longer sentences have to give a sufficient guarantee that the requested person is not subject to such a sanction (European Council, 2009c, p.24-30). In sum, it is especially noteworthy that Germany has opted to implement many refusal grounds as mandatory, going slightly further than many other Member States.

5.9 Implementation of the EAW in Sweden

Sweden has implemented the European Arrest Warrant by adopting an Act on the surrender of persons from Sweden according to an European Arrest Warrant (hereinafter: Swedish Surrender Act) and through Statutory Instrument 2003:1178. The Swedish Surrender Act is relevant for those cases in which the Swedish authorities are executing a request from another Member State. Statutory Act 2003:1178, on the other hand, lays down the relevant provisions for the issuing of a warrant by Sweden (Wong, 2005, p.3).

The Swedish system partially centralizes and partially decentralizes the implementation of the issuing aspect of the EAW Framework Decision. When a warrant is necessary for the purposes of a prosecution, the local prosecutor handling a case is the competent issuing authority. The prosecutor may only act after a court decides on the remand in custody of a person, which entails that a reasonable suspicion of the person concerned is present according to that court. However, should the warrant be issued for the purposes of executing an earlier passed sentence, several specialized national boards are competent. The most general of these boards is the National Police Board which acts on the request of the Prison and Probation Service. The National Board of Health and Welfare issues warrants when compulsory psychiatric care is an element of the sentence, while the National Board of Institutional Care specializes in sentences for young persons (Wong, 2005, p.6-7). As an executing state, the Swedish authorities are significantly decentralized. Local prosecutors are competent for the initial arrest of a requested person, with local

courts being competent to decide on their actual surrender and remand into custody until a final surrender decision has been taken (Wong, 2005, p.10-11).

The double criminality requirement is maintained for all non-list offences, meaning that the act committed must also be punishable under Swedish law in order for surrender to take place. *Ne bis in idem* is implemented in a typical manner, with Swedish courts considering whether an offence has been judged in final instance or whether it is covered by amnesty (Wong, 2005 p.5). Surrender of a national is possible, but Swedish authorities may require other European states to return their nationals after prosecution and allowing the Swedish authorities to take over the execution of the sentence (Wong, 2005, p.11). The Swedish Surrender Act has also included a clause relating to the to mandatory refusal execute warrants if that would contravene provisions of the ECHR. This defence only succeeds in exceptional cases, however (Wong, 2005, p.13). As such, the implementation of refusal grounds by the Swedish legislator seems typical of current European legal orders, with no strange elements standing out.

5.10 Implementation of the EAW in Poland

With regard to the European Arrest Warrant Poland is an interesting case. The Member State has served both as the address for complaints from other Member States and the EU and the object of study for many EU law scholars due to its national criminal laws. In particular problematic during the early stages of the European Arrest Warrant system was the amount of requests originating from Poland for comparatively trivial offences (Lazowski, 2009, p.434-435). This is a direct result of an extensive internal Polish tendency to send out a warrant if an offence is investigated by a prosecutor (Lazowski, 2009, p.435-436) and relatively high Polish maximum sentences, the result of the latter being that many Polish offences meet the maximum sentence criteria established in the EAW Framework Decision. What is more, domestically the European Arrest Warrant has not been an entirely uncontested instrument. Especially the judgment of the constitutional court of 2005 has been an important moment in the early years of Poland's European membership. The constitutional court essentially considered the implementation of the EAW contrary to the prohibition on the extradition of nationals, as was then laid down in article 55(1) of the Polish constitution. At issue was whether surrender in the context of the EAW should be understood as a different concept than extradition and the court answered in the negative, stating that the constitution did not mention a surrender procedure. As the EAW was categorically no different from classical forms of extradition in the view of the constitutional court, the prohibition on the extradition of nationals also applied to the new EAW legislation. As the Polish EAW implementation did allow for the surrender of nationals, this judgment forced the Polish legislator to redraft its implementing laws and simultaneously amend article 55(1) of the constitution to allow for exceptions to the prohibition on the extradition of nationals.

Poland has institutionalized a decentralized EAW implementation in which prosecutors are competent to issue warrants (Górski, Hofmański, Sakowicz, Szumiło-Kulczycka, 2008, p.326). The prosecution system of Poland includes three ranks relevant for the issuing side of the European Arrest Warrant. Primarily involved with issuing warrants are the circuit prosecutors, which are competent at first instance to prosecute offences. They may act upon the request of the 'lower' district rank of prosecutors, as the latter prosecutors are not competent themselves to issue warrants. If a case reaches the appeal stage the appellate prosecutor will assume the responsibilities of their regional counterparts. Both appellate and circuit prosecutors require a court decision to authorize the transmission of an EAW. Finally, the deputy attorney general serves as the national prosecutor for Poland. This organ has a bureau for international affairs, which is also tasked with EAW matters on the national level. The organ serves as an NAO and as

such receives copies of EAW's sent out by prosecutors, should be notified if EAW time limits are breached and has created guidelines on the drafting of an EAW (European Council, 2007c, p.4-15).

The executing side of Poland's' implementation of the EAW is also decentralized. The system consists of circuit courts, courts of appeal and, finally, the constitutional court (Lazowski, 2009, p.431). Interesting is that the current version of article 55(1) of the Polish constitution requires courts to adjudicate on the admissibility of the surrender of Polish citizens, thus constitutionalizing part of the role of the Polish courts as judicial actors in the Polish system. The circuit prosecutor will arrest a person based on an EAW, after the relevant circuit court will be motioned in 48 hours. Pursuant to this motion the court may then decide on temporary detention and/or the execution of the warrant (European Council, 2007c, p.19-20).

One interesting refusal ground in Polish law concerns territoriality. Surrender should refused for all offences that occur on Polish soil and that concern Polish citizens. This constitutes a possible infringement to the EAW Framework Decision, which only conceives the refusal ground as optional in nature. Two other exceptional refusal grounds were introduced after the revision of Polish law following the Polish constitutional court's objections to the initial implementing law. The first concerns a mandatory refusal ground for political offences which were nonviolent, while the second concerns refusals for violations of rights and freedoms of persons. Both have been implemented not only in article 607p of the Polish CPC, but are traceable to the revised version of article 55(1) of the Polish constitution as well (European Council, 2007c, p.34). Especially the political offences ground for refusal is interesting, as it is in no way traceable to the EAW Framework Decision. Instead, the refusal ground is reminiscent of Article 3 of the ECE, which provides for several potential situations in which an extradition may be refused due to the political nature of an offence.

5.11 Implementation of the EAW in Romania

Romania is one of the many countries that utilizes a decentralized approach to the implementation of the EAW system. The criminal justice branch of the Romanian judiciary is divided along 188 first instance courts, 42 tribunals, 15 courts of appeal and the High Court of Cassation and Justice. Each of these courts has a prosecution office attached. A centralizing element in the Romanian system comes in the form of the coordinating Ministry of Justice, which has been designated as the central authority for Romania (European Council, 2009d, p.4). One function the Ministry can fulfill for the various issuing courts is that of a translator of EAW's, although courts may also utilize other licensed translators (European Council, 2009d, p.9). The Ministry is furthermore capable of transmitting EAW's to the competent authorities of other Member States, which is common practice according to the Council evaluative report of 2009 (European Council, 2009d, p.10). Finally, the Ministry of Justice may receive and forward EAW's to prosecutors' offices (European Council, 2009d, p.14).

In line with its decentralized system, the issuing of warrants for the purposes of prosecution is a duty of the judge who would be competent to try the case in first instance. If the case is still at the pre-trial stage, a prosecutor will file a request for the issuing of a warrant to that judge. If the trial stage has already begun, the court will file a request to this judge. Furthermore, the courts of first instance are charged with the enforcement of sentences in Romania, meaning that a warrant for the execution of a sentence will always be issued by one of these courts. An interesting feature of the Romanian system is that EAW's first require an internal warrant, which has significantly higher detention thresholds than those of the EAW

Framework Decision. Where the EAW requires a minimum of 2 years detention for the maximum imposable penalty, the Romanian internal system requires that the crime is punishable with a sentence of at least 4 years of detention. This means that EAW's for trivial offences should not be expected from Romanian authorities (European Council, 2009d, p.6-8).

One problem already encountered by the Council evaluation team in 2009 was the trial *in absentia* guarantees provided by Romanian courts. Romanian courts would refer to article 522 of the Criminal Procedure Code, which is a practice not always accepted by foreign courts (European Council, 2009d, p.11). The Netherlands is one of the Member States which requires a high degree of specificity for its return guarantees. It not only requires a degree by the relevant authority for the specific case at hand, but also refuses surrender if the translation of the guarantee and/or the provision is either severely faulty or leaves room for differing interpretations. It will therefore be interesting to see how these differing practices play out in the relationship between the Dutch and Romanian judiciaries.

The execution of foreign warrants is regulated one level higher than the issuing of warrants, with Romanian Courts of Appeal and their attached prosecutors' offices being the designated authority to consider a request for a person from another Member State. Interesting in the Romanian system is that it does accept warrants in all languages, with the prosecutors checking whether the EAW needs to be translated into the officially accepted languages Romanian, English or French and if necessary authorizing a licensed translator to do so (European Council, 2009d, p.15). If a requested person consents to his/her surrender, a court will consider if any of the mandatory or optional refusal grounds apply to him within 10 days. If not, the surrender will be authorized (European Council, 2009d, p.21). Should consent be withheld, a more elaborate procedure applies. The person is heard, after which a court session at the Court of Appeal is held. Individuals can appeal to decisions of these courts at the High Court of Cassation and Justice (European Council, 2009d, p.21). Law 222/2008, implementing the EAW Framework Decision, has transposed all mandatory and optional refusal grounds of the Framework Decision very much in line with the EAW Framework Decision. As such, all grounds for refusal are in line with the Framework Decision, and no optional grounds of the Framework Decision have been transposed as mandatory in the Romanian system (European Council, 2009d, p.22). In the past, several EAW's were refused due a breach of article 6 ECHR on the right to a fair trial, for a time generating a judiciary-based refusal ground. These alleged breaches amounted to undue provisional detention orders or the existence of the act. On appeal in 2008, the High Court of Cassation and Justice considered that refusals on such grounds were beyond the discretion of the Romanian courts, thus ending the practice (European Council, 2009d, p.23).

Refusal of surrender on the basis of nationality is, as said, implemented as an optional refusal ground. Since the reforms of the implementing act in 2008, the refusal ground may only be applied in execution of sentence cases where the Romanian national refuses to serve the sentence in the requesting Member State. In prosecution cases it is mandatory for foreign authorities to provide a return guarantee for the requested person. As opposed to many Member States that also provide some form of protection for non-nationals with a long-term residence, the Romanian legislator has opted to transpose this refusal ground in such a manner that it only applies to Romanian nationals (European Council, 2009d, p.24). *Ne bis in idem* applies, as with many of the other Member States in this sample, in those cases that a person has been finally judged or acquitted of a crime (Tomescu, 2009). Double criminality is furthermore an optional refusal ground, with the court of appeal having discretion whether to apply the requirement in specific cases. Furthermore, if Romanian authorities have the intention of prosecuting a person for the acts that

a person is requested for by an EAW, the surrender may be refused by the Courts of Appeal (Popescu, n.a.).

5.12 The role of Eurojust and the European Judicial Network in fostering mutual trust between judicial actors

In addition to the European Arrest Warrant, the European response to the 9/11 attacks and the perceived lack of effective cooperation in the area of EU criminal justice also resulted in the establishment of a new agency, which came to be known as Eurojust. Eurojust is founded on the basis of Council Decision 2002/187/JHA[78] and its tasks include the stimulation and coordination of prosecutions on request of the Member States and, most relevant for our purposes, the facilitation of '*the execution of requests for, and decisions on, judicial cooperation, including regarding instruments giving effects to the principle of mutual recognition*'.[79] Eurojust usually operates on a request of the Member States through one of the national members of its main board, the College of Eurojust. When cooperation is requested, Eurojust may facilitate case coordination by for instance asking Member States to set up joint investigation teams, provide information, coordinate the usage of the EJN, convince the most appropriately situated Member State to take up the prosecution and less appropriately situated Member States to take on a more supporting role, etc. Eurojust thus seeks to enhance cooperation by both offering a forum for discussion and by providing practical assistance at the prosecutorial level (Klip, 2012, p.451-452). When determining Eurojust's material scope of powers, the Council Decision refers to the Council Decision establishing Europol. Article 4(1) and the annex of the Europol Council Decision provides that Europol (and thus Eurojust) is competent in the areas of serious crime, including for example organized crime, terrorism, drug trafficking, money laundering, corruption etc., provided that at least two Member States are involved. Many of these categories correspond with the categories included in the EAW Framework Decision, and Eurojust's explicit involvement in mutual recognition instruments means that the effect on mutual trust of this agencies' coordinating efforts may be profound.[80] It should be worth mentioning here, however, that Eurojust has no coercive powers over Member States or direct enforcement powers whatsoever. Its role is confined to a merely supporting one (Fletcher, Gilmore & Lööf, p.66-67).

As regards, more specifically, Eurojust's role in improving the implementation of the EAW and the cooperation between Member State judicial authorities, it can be said that Eurojust performs four distict roles. Its first and foremost activity concerns facilitating the implementation of an issued warrant pursuant to article 3(1)b of the amended Eurojust Decision.[81] Roughly 17-20% of all cases handled by Eurojust fall under the ambit of 3(1)b of the Eurojust Decision, which amounted to about 250 cases annually in the period 2009-2012 (Eurojust, 2010, p.31; Eurojust, 2011, p.16, Eurojust, 2012b, p.21; Eurojust, 2013, p.21).

Its other two functions of note with regard to EAW cooperation have been laid down in the EAW Framework Decision. Article 16(2) of that measure provides that executing authorities may enlist the aid of Eurojust when several conflicting EAW's have been issued by different Member States. This may happen, for instance, when several countries have jurisdiction and seek to prosecute an indicted person for the same offence. In such cases, Eurojust brings together the national desks of the different Member States in order to reach a consensus on a given issue (Eurojust, 2011, p.17). Only a few cases per year falling under the scope of article 16(2) were reported to Eurojust in the period 2009-2012 (Eurojust, 2010,

[78] Later amended by Council Decision 2003/659/JHA and Decision 2009/426/JHA.
[79] Council Decision 2009/426/JHA articles 3(1)a and 3(1)b
[80] Eurojust in fact seeks to foster mutual trust (Eurojust 2012, Eurojust 2013), and identifies the EAW as one of its key working areas (Eurojust 2012)
[81] Council Decision 2009/426/JHA

p.31; Eurojust, 2011, p.16-17; Eurojust, 2012b, p.21; Eurojust, 2013). In both of these procedures, national authorities cooperate bilaterally at first, after which supranational aid is enlisted should this be perceived as necessary by the national authorities. The significance of this for the network will be elaborated upon in the next chapter. Finally the possibility for Member States to report other Member States in case of repeated refusals to execute or request or other difficulties. The College of Eurojust will then issue a non-binding opinion to the Member States concerned on how to solve the situation. Finally, Member States are required to notify Eurojust when they are forced to breach the time limits established by the EAW Framework Decision pursuant to article 17(7) of the EAW Framework Decision. The frequency of these cases has differed rather substantially in the past few years, rising noticeably from 30 cases in 2009 (Eurojust, 2010, p.31) to 85 in 2010 (Eurojust, 2011, p.17), 116 in 2011 (Eurojust, 2012b, p.23) and then dropping slightly again to 94 recorded instances in 2012 (Eurojust, 2013, p.22).

The European Judicial Network (EJN) is a system of national contact points, created to facilitate the dissemination of information between judicial actors in the different Member States.[82] The contact points in the Member States try to ensure that national authorities are provided with sufficient information from other Member States and European actors to combat serious crime (Europa, 2009), according to the preamble to the Joint Action in particular crime committed by transnational organizations. The Joint Action of 1998 was eventually repealed by a new Council Decision in 2008.[83] The goal of the new Council decision was firstly to accommodate the reliance of the EU on mutual recognition into the EJN, and secondly to redefine the relationship between the EJN and Eurojust. Eurojust is to have a privileged relationship with the EJN, and the Council Decision on the EJN provides that they will have a dedicated telecommunications link between each other. There should also be direct contact between the EJN national contact points and the national members of the College of Eurojust, due to their similar function. Finally, it is worth noting that the secretariat of the EJN has been integrated within the Eurojust organizational structure, although it forms an autonomous unit not directly subject to the instructions of Eurojust. Due to the similar coordinating approach both the EJN and Eurojust take to stimulate and improve European judicial cooperation, the links created between the two make sense. Moreover, institutionalizing ways to disseminate information might foster the dissemination of knowledge and trust between EU judicial authorities. In ascertaining the role Eurojust has in fostering (system) trust, the EJN should thus not be neglected.

5.13 Conclusions

This chapter has shown the different ways in which the European Arrest Warrant has been implemented in the nine selected Member States. Interesting is the divergent approaches that Member States take to organizing the judiciary, with some Member States opting for entirely decentralized systems and other centralizing theirs partially. All the selected Member States have implemented the EAW framework in such a way that the issuing of warrants for the purposes of prosecutions is performed decentralized. Nevertheless, countries such as Finland, Sweden and Spain have sought to centralize the issuing of warrants for custodial sentences. Furthermore, the execution of foreign warrants has been centralized in the Netherlands and in Spain. There are also substantial differences in the implementation of the EAW framework itself. For example, the Finnish system includes a proportionality test before the issuing of warrants which is higher than its usual internal proportionality considerations, considering for example the extent to which other countries have failed to surrender a person on time. This relatively critical stance of foreign authorities differs somewhat from for example Spain, which has only adopted the doctrine of

[82] The EJN's founding act is Joint Action 98/428/JHA

[83] Council Decision 2008/976/JHA on the European Judicial Network

asking for retrial guarantees after 2006 and does not have refusal grounds for human rights infringements. Finally, the chapter shortly elaborated on the role of Eurojust in the coordination of the EAW system. The vast majority of EAW cases handled by Eurojust relate to the facilitation of implementing an issued warrant, a form of bilateral cooperation between the involved Member States. Eurojust is furthermore involved in multi-lateral surrender cases where conflicting warrants have been issued, which only amounts to a few cases each year. Finally, Eurojust is informed when national authorities are forced to breach Framework Decision time limits.

6. Data analysis: execution of EAW's from other Member States

6.1 Introduction

In this chapter the results from the analysis of the surrender cases sample will be presented and discussed. As has been noted in chapter four, both quantitative indicators and legal analyses will be utilized in order to gain an appropriate understanding of the performance of the Amsterdam district court with regard to the execution of incoming EAW's. First, the chapter will start by analyzing the execution of warrants from the 9 selected Member States individually.[84] These paragraphs will contain most of the legal analyses. As the amount of cases analyzed per country is relatively low, any observations based on the dataset will be made in a careful manner. Each paragraph dedicated to a Member State is split into three parts pertaining to the policy effectiveness aspects of the EAW: surrender speed, automaticity and appropriate judicial protection. In addition to the various country reports an aggregate level analysis of various recurring legal issues will be presented. The content of this first legal section of the chapter is important to properly interpret the quantitative indicators. After the analyses of surrender towards the different Member States included in the study, the subsequent paragraphs will take the analysis one level higher. Firstly, the groups of countries introduced in chapter four – the dissimilar, intermediate and similar country groups – will be compared on several indicators, including surrender speed, ratio of surrenders versus refusals, postponements, additional questions, etc.. Secondly, trends over the period 2006-2014 will be discussed for all Member States and groups of Member States. Information on the various cases included in the dataset can be retrieved in Annex 5 to the report. In addition to short summaries on the legal problems encountered by the Amsterdam district court, information on the scores of a case on the various quantitative indicators can be found in this Annex as well.

6.2 Swedish cases executed by the Netherlands

1. Speed

The Swedish cases in this sample vary somewhat with regard to turnover speed. Nevertheless, some continuity is visible in comparison with other Member States, as most cases seem to be handled in periods ranging from 45-75 days. One noticeable exception is present, with case 13/706674-10[85] costing the Amsterdam district court 197 days to resolve. This case took substantially longer than others in the sample due to psychiatric care concerns for the requested person. As the person was not able to stay in temporary custody with restrictions without running the risk of severe mental damage, the court ordered in an intermediary decision that extra information on safeguards to prevent a flagrant breach of human rights should be requested from Swedish authorities. The investigation was opened again after information was available from Sweden. The average decision-speed for Swedish surrender cases in the Netherlands is 80,5 days, although it must be noted that the aforementioned exceptional case taking 197 days has a large influence on the average. If this case is excluded for the calculation of the average, the result is far lower at 63,86 days.

[84] Sweden, Finland, Germany, Belgium, Spain, the UK, Bulgaria, Romania and Poland
[85] Amsterdam district court, 05-07-2011, ECLI:NL:RBAMS:2011:BV0505

2. Automatic surrender

There seem to be no recurring problems in the cases analyzed for Sweden with regard to refusals, content and law related tests in the Netherlands or the adequacy of warrants drafted by Swedish authorities. Noteworthy is that several return guarantees were necessary and all were provided in an adequate manner by the Swedish authorities. This meant that additional information from Swedish authorities was not necessary to elaborate on the guarantees, reducing the problems for Dutch authorities to execute warrants from Sweden. For other aspects of the EAW the information provided by Swedish authorities also seems adequate, with only the aforementioned exceptional psychiatric care case requiring additional information. This is similarly reflected in the fact that only one case concerning a Swedish warrant had to be postponed by the Amsterdam court.

As there seem to be no structural problems with warrants and information provided by Sweden, it is unsurprising that there also seems to be no particular structure in the paragraphs devoted by the Amsterdam court to the analysis of facts, laws and warrants. The aforementioned psychological care case required some analysis of the facts of detention that had been previously incurred on the person when residing in Sweden. Another noticeable judgment is case 13.706.477-12,[86] which was an execution of a sentence case handled with an analysis of Swedish law of five paragraphs and an analysis of the warrant of two paragraphs. The former analysis was necessary due the Swedish criminal code provision not complying with the minimum requirement of one years' worth of detention in order to be able to execute an EAW when a double criminality test is applicable. The situation was unique since the sentence imposed concerned a forensic mental care element, which required the person to be detained indefinitely until the person no longer requires care or until the person runs no risk of receding. The Amsterdam court ruled that even though the primary provision did not comply with EAW requirements, the indefinite mental care sentence imposed did, thus allowing the surrender. Therefore, the analysis in question benefited the objective of automaticity in surrender instead of hindering it. A short analysis of the adequacy of the EAW was furthermore necessary since Swedish authorities had checked the wrong box in the English translation of the warrant. This was corrected by the Amsterdam court. Aside from these two distinct cases no significantly elaborate analyses were found.

3. Appropriate judicial protection

It seems that judicial protection functions well with regard to Swedish warrants. The court actively balances mutual trust and judicial protection in its case law with regard to Swedish EAW's, as is apparent in for example case 13.497.398-2008.[87] In this case the defense argued that the dates on which the facts the EAW was based on were inaccurate. The court decided to trust Swedish suspicions and did not delve into an analysis of the facts. Conversely, the court actively decided to protect the interests of the requested person in the earlier mentioned psychiatric care case 13/706674-10,[88] as concrete and specific circumstances were presented to the court that led to a suspicion that a flagrant breach of human rights would potentially occur after surrender. Also in this case a balancing of mutual trust and judicial protection is apparent. The court does not outright refuse surrender, but requests information from Swedish authorities on the extent of the risk of a breach of article 3 ECHR. Only after having been reassured by Swedish authorities does the court allow surrender.

[86] Amsterdam district court, 03-08-2012, ECLI:NL:RBAMS:2012:BY2001
[87] Amsterdam district court, 08-10-2008, ECLI:NL:RBAMS:2008:BF8942
[88] Amsterdam district court, 05-07-2011, ECLI:NL:RBAMS:2011:BV0505

One potential concern with regard to judicial protection of requested persons in the Netherlands is the implementation of the residency refusal ground. While not pertaining particularly to the relationship between Sweden and the Netherlands, the issue became apparent in case 13.706375-12,[89] which did coincidentally concern a Swedish warrant. The request concerned a Swedish national who had moved to the Netherlands and who had acquired a residence permit of indefinite duration. The EAW refusal ground included in article 4(6) of the Framework Decision on the EAW states that requests for residents in a Member State may optionally be refused on the condition that the refusing Member State undertakes to execute the sentence itself. The implementation of the refusal ground in article 6 of the Dutch Surrender Act is more restrictive, however. It adds the conditions that the Netherlands must have jurisdiction to prosecute the offence and that the requested person would not lose his right to residence as a consequence of the fact for which surrender was requested. The jurisdiction criterion provided the problem in this case, with the fact occurring on Swedish soil and the person not being a Dutch national. Considering that not all the criteria of the refusal ground were met, the Amsterdam court had to allow surrender without asking for a return guarantee. This implementation of article 4(6) EAW can be seen as problematic, as it potentially hollows out judicial protection for persons which are residents in the Netherlands. It also defeats the purpose of reintegration of nationality and residency based refusal grounds, as refusal and the request for a return guarantee is excluded by the fact that the Netherlands does not have jurisdiction over the offence. It will be seen that this problem recurs in the execution of warrants from several Member States, although a recent Belgian case (which will be discussed in the paragraph on the Member State) shows that the Amsterdam district court is slowly adjusting its jurisprudence to be more in line with the residency refusal ground as laid down in the Framework Decision.

6.3 Finnish cases executed by the Netherlands

1. *Speed*

With 5 cases Finland is the smallest country with regard to Dutch EAW executions in the dataset. This means some caution is appropriate when discussing averages and extrapolating past performance to future situations. Concerning the cases currently available, surrender seems to function relatively well. With an average turnaround time of 65,2 days, surrender towards Finland currently holds the shortest average duration. The 5 cases gathered vary between 39 and 83 days and none of the cases were postponed. Thus, keeping in mind that there are not enough cases to establish the extent to which Finland performs well with regard to surrender speed, the current data contains no suggestions that there are any structural problems either.

2. *Automatic surrender*

The data available for Finland for the period 2006-2014 suggest that a high degree of automaticity is present with regard to the execution of Finnish cases in the Netherlands. All 5 cases resulted in surrender of the requested person. None of the cases contained any substantial analyses by the Amsterdam court of the content of the case, the laws of Finland or the adequacy of the incoming warrant. In three cases the Netherlands required a return guarantee from Finnish authorities. It is noteworthy that all these guarantees were accepted without problems and that they contained a high degree of specificity, were unambiguous and that the English translations (as far as reproduced in the court cases) were of good quality. It is also worth noting that all these guarantees were available before the first surrender hearing,

[89] Amsterdam district court, 17-07-2012, ECLI:NL:RBAMS:2012:BX1729

thus avoiding the necessity of a postponement of the case by the Dutch court. In this regard, it is interesting to point out that even though the requests for surrender originate from the decentralized judicial authorities, the Finnish Ministry of Justice is charged with the drafting of return and transfer of sentence guarantees.[90]

3. Appropriate judicial protection

No specific problems stand out with regard to judicial protection in the available Finnish cases. A somewhat notable judgment concerns case 13/707070-11. In this case, the defense firstly argues that the Finnish authorities did not reasonably describe the criminal intent of the person and secondly that the act is of a civil instead of criminal nature. The court replies by stating that the warrant only requires the time, place and involvement of a person with regard to the alleged act, with criminal intent not being necessary for a warrant to be executed. Furthermore, with regard to the question whether the act is only a civil matter in which the person did not comply with the requirements of his/her contract, the court replies that the question whether there was criminal intent should be left to the Finnish authorities. Subsequently, the court reaffirms that the question whether the Finnish authorities wrongfully checked the box of one of the list offences for which no double criminality exists under the EAW should only be investigated if there is an evident contradiction between the description of the facts and the checked category. This can be seen as a reasonable balancing of the mutual trust that should exist under the EAW and the option to maintain judicial protection in exceptional cases.[91]

6.4 German cases executed by the Netherlands

1. Speed

For turnover speed the German cases of the sample show a remarkable amount of consistency. One out 20 was handled substantially quicker than most EAW cases at 18 days. The longest out of the German cases took 124 days before a judgment was passed and this is the only German case scoring beyond the 100 days mark. The relative absence of extreme scores results in a substantially more consistent median turnover and average turnover time than for other countries which have more extreme scores. The average turnover time for German cases was 61,55 days. The median turnover time is 58 days. This shows that the Amsterdam court performed comparatively well on German cases with regard to surrender speed and turnover time and that no significant speed problems were present in this section of the sample, beyond the time limit breaches which all country sections of the sample exhibit.

2. Automatic Surrender

With regard to the automaticity aspects of surrender the German cases also show a relatively good performance on part of the Amsterdam court. The court does not seem to systematically employ any type of analysis of warrants emanating from Germany and only a few cases were (partially) refused. One case which shows a high amount of content analysis concerned the question whether prosecution for the alleged facts was time-barred in the Netherlands. For 26 of the 185 alleged facts the court found that these were indeed time-barred in the Netherlands, with surrender for offences being permissible. Considering the complicated tests involved in determining whether a prosecution's time bars have been increased due to acts of prosecution having taken place, the amount of paragraphs devoted to a content

[90] See cases: Amsterdam district court, 09-04-2010, ECLI:NL:RBAMS:2010:BM6337, Amsterdam district court, 04-09-2012, ECLI:NL:RBAMS:2012:BY2647 and Amsterdam district court, 18-07-2012, ECLI:NL:RBAMS:2012:BX9620

[91] Amsterdam district court, 18-07-2012, ECLI:NL:RBAMS:2012:BX9620

analysis does not seem to be an indication that the court struck an improper balance between the goals of automatic surrender and appropriate judicial protection.[92]

The few (partial) refusals in the sample do not seem to indicate a specific pattern of problems either, although incidental issues may be observed. One peculiar case concerned not so much the decision-making discretion of the Amsterdam court as it does a problem with the combined application of current European surrender and transfer of proceedings law. In case 13-751660-14 the German authorities requested a person for a drug trafficking offence.[93] Under German legislation, the second fact of weapon possession is to be seen as ancillary to the main offence and thus functions as an aggravating circumstance instead of a separate offence. However, while the main offence would not be subject to a double criminality test due to it being a list offence, the court was faced with the question whether the non-list request for weapons possession should be seen as separate from the main fact complex – and thus undergo a double criminality test – or should also be seen as an aggravating circumstance to the drug trafficking offence for surrender purposes. For the purposes of the Dutch surrender act, the court concluded that weapons possession could be seen as an aggravating circumstance, and thus did not need to undergo a separate double criminality test. However, as the person concerned was a Dutch national, a return guarantee and a transfer of the execution of the sentence was necessary under the Convention on the Transfer of Sentenced Persons. This piece of international law requires the court to apply another double criminality test. As the Dutch Opium act[94] did not provide for weapons possession as an aggravating circumstance, the court concluded that for the purposes of the Convention's double criminality requirement, the weapons possession fact had to be considered separately. As the penalty for weapons possession separately was not high enough, the court eventually concluded that surrender for this portion of the facts must be refused. Thus, the joint application of European surrender law and international criminal law can, in exceptional cases, lead to circumstances in which double criminality reenters through the backdoor. This issue will be discussed more elaborately in the section on EU-wide problems that were noticed in the data.

Furthermore, as mentioned above, one case had to be partially refused due to Dutch time bars and should therefore not be considered severely problematic for the purposes of automatic surrender. An isolated issue occurred in case 13.706.084-12, which concerned the potential presence of a *ne bis in idem* situation.[95] While at face value an earlier Dutch sentence for the same drug trafficking facts in the same time-period seemed to imply *ne bis in idem* was applicable, the prosecutor nonetheless had attempted to gain access to the criminal file of the requested person from a second Dutch court which had delivered the earlier sentence. This would have allowed for a more accurate review of which trafficking facts the person had already been convicted for and whether the German request also pertained to some separate facts. As the case file was not transferred to the Amsterdam prosecutor in time, the Amsterdam court decided to refuse surrender altogether on the assumption that *ne bis in idem* was indeed applicable for all facts. It is not possible to ascertain on the basis of the sample of this research whether or not this was an isolated case, but it does highlight the need for appropriate internal communication in the Netherlands in *ne bis in idem* cases.

[92] Amsterdam district court, 29-04-2010, ECLI:NL:RBAMS:2010:BM6364
[93] Amsterdam district court, 05-09-2014, ECLI:NL:RBAMS:2014:5767
[94] The Opium act pertains to drug offences in the Netherlands.
[95] Amsterdam district court, 13-03-2012, ECLI:NL:RBAMS:2012:BW0086

Furthermore, case 13.497.223.2006 concerned an interesting situation in which the Amsterdam court showed a somewhat lower level of mutual trust in German authorities.[96] In this case, the Amsterdam court considered that German authorities had wrongfully checked the list-offence for sexual exploitation of children, as there was no economic interest involved. Existing EU level definitions of sexual exploitation of children at that time did not necessitate an economic element, however. Article 2(c) of Framework Decision 2004/68/JHA on combating sexual exploitation of children and child pornography for instance notes that sexual exploitation can *inter alia* concern 'engaging in sexual activities with a child, where (i) use is made of coercion force or threats; (ii) abuse is made of a recognized position of trust, authority or influence over the child. While other types of conduct in article 2 mentions economic elements, these are alternative, not cumulative criteria. Thus, the stance of the Amsterdam court is arguably contrary to the Dutch obligations under European law. Another issue was present in case 13/706701,[97] where German authorities had sent wrongful information to the Dutch authorities on the circumstances under which a requested person had earlier left their custody. According to the initial EAW, the person involved had escaped a mental institution, while the defense managed to prove the requested person had instead been discharged from the institution. Subsequent information by the German authorities corrected the earlier EAW information and stated that the person had been discharged and was subsequently subject to a new judicial decision. While the court considered the new information sufficient, it made note of the detrimental effects wrongful information would have on the mutual trust that should exist between Member States.

German-Dutch communication in general seemed to function well. One added benefit of the German-Dutch relationship is the lower language barrier, with Dutch judges being able to interpret guarantees, warrants, etc. in German if necessary. While the Dutch government has only specified Dutch and English as formal languages in which it recognizes warrants without translated complements being necessary, Dutch authorities often make recourse to the original German material. Thus, guarantees were highly specific and unambiguous and every guarantee provided by German authorities was accepted as sufficient without incident. It also allowed the Dutch court to examine the original warrant provided by German authorities after the defense had argued that translations were ambiguous in case 13.497345-2007,[98] eventually leading the court to refute the argument of the defense. This example illustrates how access of EAW personnel to the native language of the issuing country can be beneficial for the performance and automatic surrender in specific cases.

3. Appropriate judicial protection

As with the automatic surrender performance criterion, no structural problems were found with regard the judicial protection of persons requested by Germany. One notable case concerned a trial *in absentia*. The requested person had sent a written objection to his sentence to the German authorities three weeks after receiving a letter concerning his conviction, and before surrender proceedings were initiated. The objection was received too late by the German authorities, however, rendering appeal or a retrial in Germany impossible. Therefore, the Amsterdam district court decided to refuse surrender on the basis that it was impossible for the requested person to apply for a retrial. The court did not elaborate explicitly why the German course of actions rendered it effectively impossible for the requested person to apply for a retrial as meant by Article 12(c) of the Dutch Surrender Act, however. It can be speculated that the

[96] Amsterdam district court, 06-06-2006, ECLI:NL:RBAMS:2006:AX9436
[97] Amsterdam district court, 17-10-2011, ECLI:NL:RBAMS:2011:BU9244
[98] Amsterdam district court, 24-08-2007, ECLI:NL:RBAMS:2007:BB7953

time period available to the requested person to apply for a retrial was so short as to make the procedure effectively impossible, but this remains unclear in the court decision. From a performance perspective, the court seems to have chosen appropriate judicial protection over automatic surrender in this instance.

Another problem also detected with regard to surrender towards other Member States is that of the Dutch lack of jurisdiction over residents in the Netherlands. This lead to a situation in cases 13.497.557-2005[99] and 13.497.374-2006[100] where Dutch residents had to be surrendered, even though they could objectively be qualified as persons who should be equated to Dutch nationals. As with other similar cases from other country samples, the Dutch court reasoned that the resulting discrimination between nationals and non-nationals was objectively justified to achieve the aim of avoiding lawlessness. Nevertheless, these concerned exceptional cases and the general picture painted by sample cases shows no structural problems emanating from German cases specifically.

6.5 Belgian cases executed by the Netherlands

1. Speed

The Belgian section of the sample holds the distinction of containing both the longest case and the shortest case, at respectively 555 days and 9 days.[101] An uncorrected calculation of the average turnaround time yields 97,1 days, although the case that took 555 days can be seen as biasing the average. Using the 1,5 IQR approach, it is apparent that the case with a turnaround time of 555 days can indeed be considered an outlier. Removing this case from the average turnaround calculation yields the corrected average of 73 days. The view that this corrected average represents the sample data better is supported by the median surrender turnaround time, which is 66 days. One other notable case which could almost be classified as an outlier, but lies just within the 1,5 IQR range had a decision time of 144 days.[102] Most other cases fall within the 50-80 days range, however. Therefore, other than a few cases with extreme turnover values Belgium overall does not seem to differ substantially from the other selected Member States. It is interesting to note that the median and average scores are slightly over the time limits imposed by the EAW Framework Decision. This implies that the performance of the Dutch court with regard to external efficiency was, on average, just below the 60 day threshold of the formal output goals assigned to it.

2. Automatic Surrender

In general, the cases in the sample for Belgium indicated the Amsterdam court performed well on the automatic surrender performance criterion. In 13 cases surrender was allowed, with another 5 cases containing partial surrenders and partial refusals. Only 2 cases were completely refused. Furthermore, the Amsterdam court did not seem to structurally engage in any type of substantial analysis of Belgian cases. Even when it does engage in substantial analyses, these are usually short and based on the principle of mutual trust. One case, concerning the sufficiency of the Belgian options for a retrial, did contain 5 paragraphs of content analysis and 4 paragraphs of analysis on Belgian legislation, however.[103] This case will be discussed in-depth later in the paragraph. One noticeable aspect in the Belgian cases of this sample

[99] Amsterdam district court, 17-03-2006, ECLI:NL:RBAMS:2006:BD2943
[100] Amsterdam district court, 20-10-2006, ECLI:NL:RBAMS:2006:BD3834
[101] Respectively Amsterdam district court, 11-04-2008, ECLI:NL:RBAMS:2008:BD5990 and Amsterdam district court, 01-04-2011, ECLI:NL:RBAMS:2011:BQ7168
[102] Amsterdam district court, 26-08-2014, ECLI:NL:RBAMS:2014:5341
[103] Amsterdam district court, 31-07-2007, ECLI:NL:RBAMS:2007:BB8746

was the low amount of linguistic problems with regard to return and retrial guarantees, as Belgian authorities were able to supply these guarantees in Dutch. Thus, no translation issues were present and Belgian guarantees were seen as unambiguous in all but one case.

The one retrial guarantee that was not accepted, also being the earlier mentioned case with the extensive content and law analyses, was not problematic due to linguistic reasons, however. Instead, the court referred to earlier extradition problems with Belgium before the adoption of the European Arrest Warrant. Under Belgian law, a person can apply for a retrial 15 days after the sentence has been made known to him. However, the court was of the view that this posed additional risks in extradition and surrender procedures as the Belgian authorities might decide that the sentence became known to the requested person when he was apprehended on the basis of the surrender procedure in the Netherlands, as they had done in earlier public international law cases. This would effectively deprive the requested person of his/her right to a retrial. While the Belgian requesting court sought to assure Dutch authorities that the person would receive the right to apply for a retrial immediately after surrender, the Dutch court feared that the Belgian prosecutor – the competent authority to decide on such retrials - would decide otherwise. This lead the court to demand an additional guarantee that Belgian authorities would transfer the requested person outside Belgian borders, should the decision on the application for a retrial be made in the negative. As the Belgian authorities were not capable of providing such a guarantee, the Amsterdam court decided to refuse surrender.[104] Subsequent cases interestingly enough show a different pattern with regard to the Belgian retrial guarantees given out. In the two retrial cases of the sample that were present from 2010 onwards it is no longer the Belgian court which provides the retrial guarantee. Instead, Belgian authorities have opted to let the prosecutor competent on the decision for a retrial send out the guarantee, which apparently assuaged the Amsterdam court that there would indeed be an option for the requested person to apply for a retrial after surrender, enabling surrender to take place.[105] This development should be considered positive from the perspective of the automatic surrender.

Several other examples of incidental problems with regard to automatic surrender exist as well. One such case concerns an EAW that was partially based on weapons possession, which did not meet the 12 months minimum maximum sentence limit under Dutch law.[106] In another instance, the Belgian authorities filed a request with Dutch authorities, in which the nature of the involvement of the requested person in a criminal organization was not specified, leading to a partial refusal.[107] The same case included a request for drugs trade, while this type of offence could not reasonably be established from the facts provided in the EAW (in this case the court thus did apply a substantive analysis). Thus, while in general the Dutch-Belgian surrender relationship seems highly automatic, there are still some specific cases in which problems occurred. Nevertheless, while these problems do indicate some room for improvement, they cannot be seen as structural in nature.

3. Appropriate judicial protection

No extensive and structural problems were found with regard to the judicial protection of persons requested by Belgium. Nevertheless, several specific cases are worth mentioning. In case 13/497468-06

[104] Amsterdam district court, 31-07-2007, ECLI:NL:RBAMS:2007:BB8746

[105] Amsterdam district court, 16-08-2011, ECLI:NL:RBAMS:2011:BR5751 and case Amsterdam district court, 10-12-2010, ECLI:NL:RBAMS:2010:BO8108

[106] Amsterdam district court, 07-09-2012, ECLI:NL:RBAMS:2012:BY2654

[107] Amsterdam district court, 16-08-2011, ECLI:NL:RBAMS:2011:BR5751

the Dutch authorities feared that the requested person might have been confused with the real suspect, as the EAW contained several mistakes (for instance containing the wrong nationality) and the requested person was recognized by an accomplice from a photo.[108] The court decided to stay the case and request additional information from the Belgian authorities, which provided the needed clarification. The case shows that the court engages in an exercise whereby the principle of mutual recognition is balanced with the interests of the requested persons. It neither refuses surrender altogether nor engages in blind trust by accepting a faulty EAW, but instead requests the Dutch prosecutor to communicate with Belgian authorities on the matter. This postponement lead to the earlier mentioned surrender time of 555 days, showing that in this case the court deemed an appropriate analysis more important than achieving good surrender turn-around times.

An example where the Amsterdam court has not been entirely consistent with its judicial protection is with regard to the Belgian offence of 'gang forming', which the Belgians do not consider equivalent to the list offence organized crime. Instead, gang forming is considered less structured in nature. After establishing that a double criminality test is necessary, the court considered in case 13.706264-11 there was no provision in Dutch criminal law which sought, in essence, to protect the same legal good. This lead to a partial refusal for these acts.[109] However, several years later in case 13.751267-14 the Dutch court decides that, in fact, there is an analogue Dutch provision, which lead the court to authorize surrender in that case.[110]

Another notable set of cases highlight the changes in Dutch jurisprudence legislation with regard to the extraterritorial jurisdiction over offences committed by Dutch residents. In the first case the Amsterdam court nuanced its position over the criterion of Article 6(5) of the Dutch Surrender Act that equating a resident of the Netherlands to a Dutch national can only occur if the Netherlands also has jurisdiction over the offence, which can be seen as discriminating for nationals. In earlier cases, the Amsterdam court argued that this discrimination was necessary and objectively justified by the goal of avoiding situations in which offences would remain unprosecuted. In this case, however, the Amsterdam court is faced with the situation that the Belgian authorities agree to transfer the person back to the Netherlands.[111] The court thus elaborates on its original jurisprudence that in cases such as these, where the conviction and sentencing of the person is achieved and when the Netherlands can take over that sentence, the jurisdiction criterion of Article 6(5) goes beyond what is objectively justifiable in light of the principle of non-discrimination under European law. One year later, the Dutch legislator had implemented additional rules providing for extraterritorial jurisdiction for Dutch residents. Therefore, the court again takes a different approach in case 13.737.292-13.[112] As the requested person could indeed be regarded as a resident who would not lose his right to permanent residence in the Netherlands as a consequence of the sentence, and since the Netherlands now had jurisdiction over the offence, the person had satisfied all the criteria of the Article 6 refusal ground. However, this case concerned an execution of a sentence which had become final. This meant that Belgian authorities could not be asked for a retrial guarantee. What is more, Dutch law only provides for a return guarantee option for prosecution cases. This meant that the

[108] Amsterdam district court, 11-04-2008, ECLI:NL:RBAMS:2008: BD5990
[109] Amsterdam district court, 01-04-2011, ECLI:NL:RBAMS:2011:BQ7168
[110] As article 140 Criminal Code has provided for the criminal liability for this offence for decades, changes in Dutch law cannot explain this difference (Juribus, 2014). See Amsterdam court, 06-06-2014, ECLI:NL:RBAMS:2014:3643
[111] Amsterdam district court, 23-07-2013, ECLI:NL:RBAMS:2013:4914
[112] Amsterdam district court, 26-08-2014, ECLI:NL:RBAMS:2014:5341

Amsterdam court had to refuse surrender altogether. Thus, while the legal protection of residents is improving in Dutch law, it seems the Dutch Surrender Act now contains a new problem after the introduction of extraterritorial jurisdiction for residents from the perspective of automatic surrender. In cases such as these, EAW requests can no longer be granted by Dutch authorities, with the only option remaining being a separate transfer of sentence or prosecution procedure.

6.6 United Kingdom cases executed by the Netherlands

1. Speed

In terms of turnaround times the most notable aspect of surrender cases with requests originating from the United Kingdom is the ongoing consistency. For the 15 cases in the sample 13 had turnaround times between 50 and 84 days. Only two cases can be deemed exceptional. The first is a very short case of 30 days. The second concerns one of the longest cases included for all Member States in this study. This case took 303 days for the Amsterdam court to decide. An average of all cases yields a turnaround time of 79,87 days for surrender towards the UK. Excluding the outlying case of 303 days reduces the average turnaround time significantly, however, with the new average being 62,93 days.

2. Automatic Surrender

One notable aspect about the studied United Kingdom cases is the high ratio of surrender. All UK cases in the dataset were either completely or partially authorized for surrender. For two of the three cases in which the Amsterdam court partially authorized surrender, it is notable that it only refused surrender for respectively 2 out of 14 requests and 1 out of 18 requests. In the third case surrender was authorized for 1 out of 2 requests. Furthermore notable is the high degree of specificity of UK return guarantees. This is possibly facilitated by the fact that the UK has as its native language one of the languages in which EAW's and other documents are accepted by the Dutch authorities. Nevertheless, it is notable that the UK also goes beyond merely specifying that return will be authorized, but also states the procedures and international law applicable and under what provisions and conditions sentences can be adapted by the Dutch authorities. An illustration of the well-drafted nature of UK guarantees is that out of 8 cases which necessitated a return guarantee, all were considered sufficient.[113]

While the high surrender ratios and well-drafter guarantees are an indication that, in general, the relationship between the Netherlands and the UK functioned well, this does not mean that no issues were present at all. There were several specific cases where some problems with the automaticity of surrender towards the UK were encountered, although none of these seem to imply any structural problems specific to the UK. Firstly, while it is true that all return guarantees were considered sufficient by Dutch authorities, one specific return case required additional clarification by the Amsterdam court. In the guarantee, the UK Head of Extradition Policy and Legislation of the Home Office noted: '*We do not consider that a transfer under the Framework Decision on the European arrest warrant of 13 June 2002 allows you to alter the duration of any sentence imposed by a UK court under Dutch* national law.'[114] As an adaption of the imposed sentence is necessary under Dutch law, this threatened the unambiguousness of the

[113] See Amsterdam district court, 06-03-2007; ECLI:NL:RBAMS:2007:BA7314; Amsterdam district court, 05-12-2006, ECLI:NL:RBAMS:2006:3889; Amsterdam district court, 02-07-2010, ECLI:NL:RBAMS:2010:BN1442; Amsterdam district court, 27-05-2011, ECLI:NL:RBAMS:2011:BQ7972; Amsterdam district court, 25-10-2011, ECLI:NL:RBAMS:2011:BU2123; Amsterdam district court, 14-08-2012, ECLI:NL:RBAMS:2012:BY2010; Amsterdam district court, 27-05-2014, ECLI:NL:RBAMS:2014:5190 and Amsterdam district court, 30-05-2014, ECLI:NL:RBAMS:2014:3283

[114] Amsterdam district court, 27-05-2014, ECLI:NL:RBAMS:2014:5190

guarantee according to the defense. However, in a subsequent letter from the UK the issuing authority clarified that the UK desires that the Netherlands abides by the limits to adapt a sentence established in article 8 of the Framework Decision on the mutual recognition of judgments in criminal matters. The Amsterdam court subsequently refers to the principle of mutual trust, accepts that the latter interpretation of the UK guarantee is correct and authorizes the surrender.

In a case where a person offered foreigners unlawful accommodation, the intent to make a profit required under Dutch criminal law was not specifically described in the warrant, necessitating the Amsterdam court to indirectly deduce intent from the description of facts and the general nature of such cases. One interesting aspect of this case is that, were it not for the necessity of a return of a Dutch national, double criminality checks would not have been applicable as the fact concerned an EAW list offence. However, the 1983 Convention on the Transfer of Sentenced Persons is the basis for the return and adaptation of sentences for Dutch nationals convicted in the UK. This piece of international law still necessitates a double criminality check before its procedures can be applied.[115] This backdoor reintroduction of the requirement of double criminality poses a risk for the automatic nature of the EAW system, even if most list offences are punishable in all Member States.

3. Appropriate judicial protection

While the surrender relationship of the Amsterdam District Court with the UK seemed to function well when judged against the turnaround times and automatic surrender criteria, there is one case which can be seen as somewhat questionable from a judicial protection point of view. In this complicated case a surrender towards the UK and a transfer of a Dutch prosecution converged. However, a procedure started by the defendant against the transfer of proceedings was still ongoing at another Dutch court when the final surrender hearing took place. The defense argued that the right of the suspect to object to his transfer of proceedings would be illusionary if surrender would be authorized before the final results of the transfer of sentence case were clear. The Amsterdam court refers to an earlier extradition case in which the Appeal Court of The Hague found that transfer of proceedings and extradition are two separate procedures and that a combined application of the procedures would threaten the application of the mutual legal aid that such procedures are designed to facilitate. Furthermore, the outcome of the objection proceedings in the transfer of sentences case can, according to the Amsterdam court, only be relevant if there is reasonable certainty that the case will be ruled in favor of the defendant.[116] This implies that the bar for postponing the case until the considerations of the other Dutch court on the transfer of proceedings case are clear is substantially high. The Amsterdam court thus makes a tradeoff between the values of automatic surrender and fairness to the requested person which heavily favors the former.

In another case, the Amsterdam court engages once more in a balancing exercise of automatic surrender and protection of the requested person. The defense argued that the court should take into account that the requested person has chronic heart problems, is concerned about the continued existence of his company and has a wife that is dependent on him. The court considers that personal circumstances can only have a limited role in surrender proceedings, and states that in this light the request from the UK cannot be considered unreasonable. Furthermore, the return guarantee and the possibility for the prosecutor to delay factual surrender due to for instance the medical situation of a person reduce the impact of the authorization on the persons' interests according to the court. In this case the court seems

[115] Amsterdam district court, 14-08-2012, ECLI:NL:RBAMS:2012:BY2010
[116] Amsterdam district court, 30-05-2014, ECLI:NL:RBAMS:2014:3283

to make a reasonable balance between the values it is assigned to weigh, as the personal circumstances mentioned do not seem so severe as to make a surrender request disproportionate.[117]

A final interesting case concerns whether several sexual abuse of minors offences were time-barred in the Netherlands, which would lead to application of the *ne bis in idem* refusal ground. The court carefully examined which committed offences fell under the jurisdiction of Dutch authorities, as the Dutch provision authorizing the Netherlands to prosecute sexual offences committed by a non-national outside of the Netherlands was only adopted after parts of the acts were already committed. Instead of refusing or authorizing surrender for the entire fact complexes, the court decided to refuse surrender only for those acts over which the Netherlands had jurisdiction and which were time-barred. As such, it engaged in a complicated yet seemingly fair analysis of the applicability of the *ne bis in idem* refusal ground.[118]

6.7 Spanish cases executed by the Netherlands

1. Speed

On average, a Spanish EAW cases took slightly longer to decide on than cases from most other sampled Member States, with the average turnover time for Spain being 76,67 days. However, removing the outlier of a postponed case which lasted 170 days nuances this image substantially, with the corrected average being 65 days. All cases which were not postponed varied between 38 and 76 days to decide and the Amsterdam court managed to comply by the EAW Framework Decision deadlines in six out of nine Spanish cases. Furthermore, no structural problems delaying Spanish cases more than requests from other Member States were encountered.

2. Automaticity

While on the turnover time criterion Spanish cases are not exceptional, several problems seemed to be present with regard to the automaticity of surrender towards Spain. Foremost is the seemingly difficult communication between the authorities of both states. This is apparent, first of all, in the mixed quality of return guarantees granted by Spanish authorities. Both cases 13.497.255.2007 and 13.497253-2008 concerned difficulties for the Netherlands to obtain a sufficient guarantee.[119] In the first case, the Spanish authorities did in fact attempt to provide a guarantee. However, pursuant to the Convention on the Transfer of Sentenced Persons a double guarantee is necessary. Firstly, the return itself should be guaranteed and, secondly, the executing country should be able to adapt the sentence according to its national laws. While the Spanish authorities did guarantee the return of the requested person, they did not add that the sentence could be adapted. This lead the court to refuse the request. Subsequently, in case 13.497253-2008, the Dutch prosecutors repeatedly requested a guarantee from their Spanish counterparts. The Spanish prosecutor replied that only a Spanish court is competent to decide on such a guarantee. Even though both the defense and the Dutch prosecutor took the stance that this meant that the case should be postponed, the Amsterdam court decided to refuse the surrender in light of the repeated non-response. On the other hand, there are also three cases in which the Dutch court rather easily found a Spanish return guarantee sufficient, even if two of the guarantees were not very

[117] Amsterdam district court, 06-03-2007, ECLI:NL:RBAMS:2007:BA7314

[118] Amsterdam district court, 25-10-2011, ECLI:NL:RBAMS:2011:BU2123

[119] Respectively Amsterdam district court, 06-07-2007, ECLI:NL:RBAMS:2007:BB2690 and Amsterdam district court, 01-08-2008, ECLI:NL:RBAMS:2008:BF1897

elaborate.[120] While it is difficult to establish the presence or absence of a trend on the basis of the nine publicly available Spanish cases in the 2006 to 2014 period, it is interesting to note that the mixed performance of the return guarantee system does not seem to change over time.

Communication problems are also apparent in the difficulty the Dutch prosecutors had in obtaining additional information from Spanish authorities. Aside from the insufficient return guarantee, the earlier mentioned case 13.497.255.2007 is also of note due to the defence managing to obtain information that the Spanish legislation on which the request was based was not in force at the time the requested person should have committed the alleged acts. The Spanish authorities did not respond to repeated requests from its Dutch counterparts to provide a clarification. In another case, the court was faced with an EAW which did not include several essential elements such as fact descriptions and dates on which the alleged facts occurred. Again, the Dutch prosecutor did not receive a reply from its Spanish counterparts clarifying the issue, leading the court to refuse surrender. Finally, the aforementioned unfulfilled requests for a return guarantee in case 13.497253-2008 are noteworthy. Both the problems with return guarantees and more broadly communication problems between the authorities of the Netherlands and Spain have caused a relatively high number of refusals for early Spanish case, with surrender being allowed for only two out of six cases in the sample in the 2006-2008 period. Two interviewed Eurojust employees have confirmed that communication between the authorities of the Netherlands and Spain does not always function optimally. Specifically for the Dutch-Spanish relationship, they mention that cultural differences and linguistic problems sometimes hinder practical cooperation. In particular the non-hierarchical approach taken by Dutch prosecutors and the higher degree of respect for organizational hierarchy present in the Spanish system were mentioned as causes for these problems. It must also be mentioned, however, that communication problems were not as apparent in the cases studied after 2008. Furthermore, surrender in the three cases for the 2009-2014 period was allowed.

The communication problems between the Spanish and Dutch authorities are also subtly apparent in the amount of paragraphs devoted by the Amsterdam court to a given type of analysis. For Spain, the court had to engage reasonably often in an analysis of the contents of a case. Furthermore, the aforementioned problems with the EAW's sent out by Spanish authorities led to some short analyses on this point. While relatively many cases in the Spanish section involve an analysis to some degree (seven cases contain some form of content analysis by the court), it is also notable that none of these analyses go beyond 3-4 paragraphs.

3. Appropriate Judicial Protection

No structural problems seemed to underlie the judicial protection available for persons requested by Spanish authorities. Instead, the court shows that it has no blind trust in the Spanish legal order by refusing several surrenders in which the Spanish authorities did not communicate the necessary information. Notable is that it refused surrender due to the recurrent non-response in case 13.497473-2005, while even the defense itself had requested postponement instead of outright refusal at that stage. The court also engages in a balance between judicial protection and automatic surrender several times. A good example is case 13.497.004.09, in which the court was faced with the proportionality and human rights consequences of a surrender. In this case the court refers to the Handbook on how to issue a European Arrest Warrant, stating the handbook's status as guideline, before concluding that disproportionality

[120] Amsterdam district court, 06-03-2007, ECLI:NL:RBAMS:2007:BA0993; Amsterdam district court, 04-03-2009, ECLI:NL:RBAMS:2009:BH6183 and Amsterdam district court, 03-01-2012, ECLI:NL:RBAMS:2012:BV1112

arguments can only succeed in exceptional cases. In the current case, the availability of a less severe method for Spanish authorities to summon the person to a trial than an EAW was not a conclusive argument outweighing the argument that the surrender should be argument due to the gravity of the fact (namely the transport of a large amount of drugs). With regard to the human rights consequences, in particular the duration of the procedure, the court notes that the Spanish prosecution had not gone on for an unreasonable amount of time. The court notes that even if there was a breach of ECHR rights, this would not equate to a flagrant breach of human rights.[121] This case shows that while the court operates on the presumption that the EAW is proportionate and that the Spanish legal order is equivalent with regard to human rights, but that it also takes care to balance the arguments of the defense – even if these arguments do not succeed.

6.8 Romanian cases executed by the Netherlands

1. Speed

With regard to the speed at which surrender requests were handled Romania did not seem an exceptional Member State. The ten Romanian cases in the sample seemed to vary mostly around 60 days of turnover time, with two exceptions being noticeable. In 2011, two cases cost respectively 154 and 91 days to resolve. As such the average time before a final decision is 77,1 days. Both cases were adjourned twice, explaining why these cases took longer than average. Still, it is worth mentioning that the average period, even if cases that were adjourned twice are excluded, is substantially longer than the time limits provided for by the EAW. While 2011 seemingly constituted a year in which the duration of cases was longer than in other years, this observation may result from the low number of cases available for Romania. Other than 2011, surrender speeds seems to have remained relatively stable in the 2010-2014 period that Romania requested persons from the Netherlands (before 2010 no cases are available).

2. Automatic surrender

The results from Romania are interesting primarily due to the fact that only execution of sentence cases were handled by the Dutch court. Accordingly, cases from Romania are dominated by issues that are characteristic of execution of sentence cases. Foremost of these is the retrial guarantee, which is visible in a number of cases. In four out of ten cases a retrial guarantee was deemed necessary by the Amsterdam court. Another two cases contained requests for a retrial guarantee by the defense, which were turned down by the court. Although the retrial guarantee process eventually did not seem to result in structural problems, there was some organizational learning involved to allow the process to work effectively. In the first retrial guarantee case stemming from late 2010,[122] the Amsterdam court had to consider several letters from the competent Romanian court that attempted to provide a sufficient guarantee. While noting the relevant provisions for a retrial after a trial *in absentia* in Romania, the second letter sent by the issuing authority stated that the Romanian court would examine whether the conditions of that provision were fulfilled. The Amsterdam court subsequently considered that it could not unequivocally determine whether a retrial would indeed take place, as there was seemingly still discretion for the Romanian court. This lead to the Amsterdam court refusing the surrender. The episode seems to feature a misunderstanding what the guarantee should entail from Romania's side, as later guarantees performed better under the scrutiny of the Amsterdam court. The learning process can be illustrated by two cases, with the first still containing some problems, but also some substantial improvements. In case 13.706.605-

[121] Amsterdam district court, 04-03-2009, ECLI:NL:RBAMS:2009:BH6183
[122] Amsterdam district court, 01-10-2010. ECLI:NL:RBAMS:2010:BO7714

11 the Amsterdam court received no response from the competent Romanian court whether the first of two sentences for which surrender was requested was in fact a trial *in absentia*, leading to a refusal for that part of the EAW. However, for the second sentence, the Dutch court received a rather elaborate response on the three conditions under Romanian law which must be fulfilled in order for a requested person to apply for a retrial.[123] As the Amsterdam court could reasonably assume that the conditions for a retrial were fulfilled, surrender was allowed for that sentence. The second case illustrative of the progress of the trial *in absentia* process with Romania is case 13.706.579-12, which included a remarkable leap by the Amsterdam court. In this case, the court stated that it had considered the retrial guarantee in earlier cases (including the previously discussed case). While the judicial authorities of Romania did not supply an elaborate version of the conditions resulting from the Romanian Criminal Procedural Code this time, the court chose to draw on the guarantees provided by Romania in the earlier cases. Thus, a guarantee which in itself might be considered somewhat ambiguous was supplemented the Amsterdam court's knowledge of Romanian law from earlier cases, leading the court to allow the surrender of the requested person despite the defense's assertions that no unequivocal guarantee was provided.

3. Appropriate judicial protection

For the most part the reasoning of the Amsterdam court with regard to cases stemming from Romania seemed sound. The retrial guarantee learning process elaborated on in the previous paragraph for instance showed that the Amsterdam court was careful not to surrender requested persons for the execution of judgments delivered *In absentia* when it was not entirely sure whether a retrial was possible. When more knowledge of the Romanian system became available to the court through case-law, it adjusted its position to be more lenient with regard to retrial guarantees.

One interesting case that could potentially have been decided in a more favorable way for the requested person is case 13-706480-2012.[124] This case concerned the request of a person for the execution of a sentence that was established after joining the sentences of four judgments for acts that were committed in the same time-period. Under Romanian law the highest of these sentences is then imposed. The Amsterdam court considered that surrender for two sentences that fell outside of the scope of list offences and were not punishable under Dutch law by a sentence of at least 12 months was barred as they did not meet satisfy the time-periods of the double criminality test. Furthermore, a third sentence was imposed conditionally, while surrender can only be allowed unconditional sentences. Therefore, surrender was only allowed for the fourth judgment, with the added comment by the Amsterdam court that it could not establish which portion of the sentence should be enforced, leaving this matter to the Romanian authorities to decide. This lack of insight in the sentence which will eventually be imposed in Romania can be seen as problematic from the viewpoint of the specialty rule, which requires that sentences or prosecutions may only be carried out in so far as surrender can be allowed by the executing state. This is, however, the only case that stands out as questionable in the light of appropriate judicial protection by Dutch judicial actors. In other executing cases originating from Romania it seems that extra information and/or guarantees are requested consistently, double criminality is checked for adequately

[123] Amsterdam district court, 19-10-2011, ECLI:NL:RBAMS:2011:BX9003. The three conditions are: there needs to be a case of extradition/surrender, the requested person needs to be absent in all court cases, and the person needs to file a request for a retrial.

[124] Amsterdam district court, 06-11-2012, ECLI:NL:RBAMS:2012:BY6638

and refusal grounds are applied in manner which balances trust in the Romanian legal order with judicial protection in the Netherlands.

6.9 Polish cases executed by the Netherlands

1. Speed

The data gathered for Poland shows an atypical result for average surrender speed, with 118,15 days being higher than the average turnover rate of most other Member States in the sample. A closer look at the data suggests that there are a low number of extremely high surrender time data points, however. Firstly, the median score is far lower at 78 days, which suggests the average of 118,15 is biased somewhat due to high value data points. Utilizing the widespread IQR approach to the question whether there are outliers implies that the two highest value cases (with scores of respectively 328[125] and 453 days[126]) are substantially separated from the rest of the sample. These two cases therefore warrant specific attention to explain their high values. The two cases show several similarities. They were decided upon in roughly the same time period, with case 13.497.470-2008 being judged on 03-07-2009 and case 13/497.127-06 slightly later on 05-01-2010. Furthermore, both cases were postponed twice after a first court hearing and involved similar issues. Both concerned the question whether surrender should be refused due to the requested person being a resident in the Netherlands pursuant to article 6(5) of the Dutch Surrender Act. It is at this point that the two cases diverge somewhat, however. Case 13/497.127-06 concerned the question whether the requested person could be considered a resident for the purposes of the EAW Framework Decision and article 6(5) of the Dutch Surrender Act. As this particular issue was also at stake in a contemporary case which was referred to the ECJ for a preliminary ruling,[127] the Amsterdam court decided to stay proceedings and wait for the ECJ's answer to provide clarity. In case 13.497.470-2008, the court ruled that article 6(5) could not preclude surrender as the exception contained in the article for those cases in which the Netherlands did not have jurisdiction to prosecute was applicable.[128] As this position of the court had already been accepted in previous cases, this issue cannot be seen as the reason for the extraordinarily long case duration. Instead, it seems that on two occasions the Amsterdam court considered it necessary to pose questions to the issuing Polish authorities.

Other than these two cases the relationship with Poland seemed to conform more to the trend visible in other Member States. Most cases varied between 50 and 80 days before a decision was taken by the court. Cases that took longer than 100 days often involve at least one postponement due to a variety of reasons. In two cases[129] additional questions were necessary to confirm whether Poland had summoned a person in a sufficient way, in order for the Amsterdam court to decide whether a retrial guarantee was necessary. A fourth postponed case, lasting 155 days, concerned the issue whether Polish authorities would apply a sentence duration resulting from several offences, while surrender would only be allowed by the Amsterdam court for one of the requests. The Amsterdam court, contrary to its usual trust in the

[125] Amsterdam district court, 03-07-2009, ECLI:NL:RBAMS:2009:BJ1772

[126] Amsterdam district court, 05-01-2010, ECLI:NL:RBAMS:2010:BK9117

[127] Case C-123/08 *Wolzenburg* [2009] ECR I-09621

[128] The reasoning for this exception in the Dutch Surrender Act is that a refusal to surrender while the Netherlands does not have jurisdiction to prosecute the offence may lead to the situation that the offence goes unpunished, as has been noted by the Amsterdam court. Interesting, however, is the fact that the Amsterdam court also admits that the Dutch implementation of the residency refusal ground runs counter to the EAW Framework Decision. It asserts, however, that it cannot apply Dutch law *contra legem*.

[129] Amsterdam district court, 21-02-2012, ECLI:NL:RBAMS:2012:BV6450; Amsterdam district court, 27-04-2012, ECLI:NL:RBAMS:2012:BW8962

issuing Member State's willingness to subtract an appropriate part of the sentence for the refused surrender requests, decided to ask clarification to the Polish authorities before allowing surrender. In another case[130] the requested person was granted an opportunity to gather documents in order for him to prove he was a resident of the Netherlands. As several cases seem to concern ambiguous or incorrect information given by Polish authorities, this may be a point for future improvement.

2. Automatic surrender

As with surrender speed, the extent to which surrender to Poland occurs automatically also differs greatly per case. There seems to be no systematic trend in the amount of paragraphs devoted to a given type of analysis in Polish cases. Nevertheless, for various reasons, the Amsterdam court has devoted some attention to either the contents of a case, the laws of Poland or the adequacy of a Polish warrant. Several sampled cases included problems with the information provided by Polish authorities. Within the three paragraph types devoted to analysis indicators, this is most often reflected in analyses of either the warrant or the contents of the case. Sampled case law which included unclear or wrongful information on the part of the Polish authorities includes case 13/497233-05,[131] case 13.706.083-12,[132] case 13-751041-14[133] and case 13.706900-10.[134] In the first case the location and time of an alleged offence was not specified accurately, leading the Amsterdam court to partially refuse surrender.[135] Similarly, in case 13-751041-14 the court did not receive information from its Polish counterparts on the minimum maximum sentences applicable under Polish law, rendering it impossible to rule on the validity of the incoming warrant. It will be recalled that the EAW Framework Decision includes minimum maximum sentences of three years for list-offences and one year for non-list offences, to prevent the system being used for very minor offences.[136] As it remained unclear what sanctions could be imposed by Polish authorities after a postponement to request more information, the Amsterdam court refused surrender. Thirdly, the court had to provide an in-depth analysis in case 13.706.083-12, as Polish information sent to the Dutch authorities seemed contradictory as to the date on which a person was summoned for his trial. As this could potentially indicate an insufficient summon to trial on part of Polish authorities (which necessitates a retrial guarantee), the court decided to postpone the case and request additional information its Polish judicial counterparts. After a Polish clarification that a wrongful date had been sent, the surrender was eventually authorized.

The automatic surrender aspect of EAW effectiveness was also undermined in the relationship Netherlands-Poland due to restrictive retrial possibilities under Polish law. This, coupled with the fact that Polish authorities often send out execution of sentence warrants under the EAW framework, has led to some problems. Two sampled cases reflect the issue. First of all, in case 13.706706-10,[137] the Polish authorities informed their Dutch counterparts that a judgment rendered *in absentia* had become final and that no retrial would be possible upon the person's surrender. This lead the Amsterdam court to perform a short analysis of the contents of the case and the EAW, before refusing surrender. Such problems have

[130] Amsterdam district court, 08-10-2013, ECLI:NL:RBAMS:2013:6651
[131] Amsterdam district court, 06-07-2011, ECLI:NL:RBAMS:2011:4857
[132] Amsterdam district court, 27-04-2012, ECLI:NL:RBAMS:2012:BW8962
[133] Amsterdam district court, 30-05-2014, ECLI:NL:RBAMS:2014:3251
[134] Amsterdam district court, 21-01-2011, ECLI:NL:RBAMS:2011:BP2315
[135] Amsterdam district court, 06-07-2011, ECLI:NL:RBAMS:2011:4857
[136] EAW Framework Decision articles 2(1) and 2(2)
[137] Amsterdam district court, 12-10-2010, ECLI:NL:RBAMS:2010:BO7881

been shown to persist in more recent cases, with judgment 13-751448-14 concerning a refusal of surrender for similar reasons.[138] The Polish prosecutor informed the Dutch prosecutor and court that a person has one month to apply for a retrial after he becomes aware of the judgment rendered against him. Whether this retrial occurs is then decided upon by a Polish court. However, as the requested person had become aware of the judgment rendered against him after surrender proceedings were instated against him in the Netherlands, his retrial was time-barred even before surrender could be decided upon in the Netherlands. This lead the court to refuse surrender after analyzing the relevant Polish legislation in three paragraphs. The fact that Polish authorities often issue warrants for the execution of custodial sentences and its restrictive laws persisting into 2014 seem to indicate that this problem could continue to undermine the effective application of the EAW in future Polish warrants executed by Dutch authorities.

3. Appropriate judicial protection

One problem that particularly stands out with regard to appropriate judicial protection in the Dutch-Polish portion of the EAW case sample is that of the Dutch residency refusal ground. Besides the famous Wolzenburg case, in which the ECJ decided that the Dutch implementation cannot make refusal conditional upon a formal requirement such as the possession of a residence permit but should provide objective conditions instead, the residency refusal ground was implemented wrongfully in the Dutch legal order in a second way. This second problem pertains to the requirement under article 6(5) of the Dutch Surrender Act that the Netherlands must have jurisdiction over the offence in question in order for the Netherlands to either refuse surrender or request the transfer of a sentence. According to the Amsterdam court, the reason behind this element of the provision is to prevent suspects from evading prosecution in the Netherlands when the Netherlands cannot prosecute them or take over the execution of a sentence. The court has also noted, however, that this implementation runs counter to the wording of article 4(6) of the EAW Framework Decision, the latter providing that national implementation should provide for the possibility to transfer a sentence. As the Amsterdam court cannot apply the Surrender Act *contra legem*, it is forced to apply the wrongful implementation of the Netherlands, allowing surrender for residents if the Netherlands does not have jurisdiction. This problem was particularly evident in several of the sampled Polish cases, with four out of the twenty sampled cases involving the problem.[139] Lazowski (2009, p.435) speculates that a large number of EAW's are issued by Poland in part due to a mass migration of Polish nationals to other states, in part to elude prosecution. If true, this could indicate that the problem of residency refusal grounds may persist.

In other areas judicial protection provided by the Amsterdam court seemed to function well. While the previously mentioned large number of postponements attest to some problems being present with regard to surrender speed and automatic surrender, they should be welcomed from a judicial protection point of view. The court for instance consistently asks for additional information on part of the Polish authorities whether the request concerned a judgment rendered *in absentia*. It furthermore refused surrender if Polish authorities were incapable of either adequately clarifying the issue or were incapable of providing a retrial guarantee if there was a judgment rendered *in absentia*.

[138] Amsterdam district court, 23-09-2014, ECLI:NL:RBAMS:2014:6826

[139] See Amsterdam district court, 06-02-2009, ECLI:NL:RBAMS:2009:BH2341; Amsterdam district court, 03-07-2009, ECLI:NL:RBAMS:2009:BJ1772; Amsterdam district court, 30-08-2013, ECLI:NL:RBAMS:2013:5379

Another notable judgment by the Amsterdam court in the context of its balancing efforts between the values of automatic surrender and appropriate judicial protection is case 13.706900-10.[140] In this case the Amsterdam court discerned that the Polish authorities had not reasonably checked the list-offence box in the EAW, as the offence only concerned the possession of 30 grams of marihuana. The relevant box in the EAW concerns the illicit trafficking of drugs, which thus requires actions beyond the mere possession of a narcotic substance.[141] The court subsequently applied the dual criminality test required for non-list offences, which the request failed, leading to a partial refusal of surrender for the requested person. The case reflects that the Amsterdam court not always take the offences checked by issuing authorities in the warrant for granted, even if it does work on the assumption of mutual trust. This is an indication that, within the context of list offences, the amount of mutual trust of the Amsterdam court is not so extensive that it can be considered blind trust in other authorities.

6.10 Bulgarian cases executed by the Netherlands

1. Surrender speed

With regard to surrender speed Bulgarian cases seem to be similar to other states in the sample. Three cases were decided on after a period of 100 days or longer, with the longest case taking 162 days. The two longest cases were both instances in which the Amsterdam district court had adjourned the hearing. One postponement was due to a request for more information from the Bulgarian authorities on whether a transfer of sentences was possible to allow a resident to undergo his sentence in the Netherlands, while the other concerned a case in which translated pieces were not available yet to the court. Non-postponed cases, on the other hand, took roughly 50-60 days for the court to decide. Thus, there seem to be no underlying patterns generating structural deviations for Bulgarian data. On average, surrender decisions for incoming Bulgarian EAW cases took 79,22 days to decide on. The median is somewhat lower at 57,50 days.

2. Automatic surrender

An interesting facet of the Bulgarian cases in the sample is that, like Romania and – to an extent – Poland, a high number of requests for the execution of sentences is present. As is the case with Romania, the high amount of execution EAW's leads to some problems with regard to retrial guarantees. Of the nine Bulgarian cases two required retrial guarantees. In these two cases the Bulgarian authorities gave only a very limited guarantee. In the first case the Bulgarian authorities opted to send an English translation of the relevant retrial application provision in Bulgarian law (article 423 CPC). The Amsterdam court considered that the guarantee was not sufficient for two reasons. Firstly, the mere reference to a provision of a Member States' laws could not be seen as a sufficient guarantee. Secondly, the court considered that the English translation of the guarantee contained grammar flaws and could be interpreted in several ways. Thus, the guarantee was both not specific enough and too ambiguous to satisfy the Amsterdam court.[142] The second case was similar, with the Bulgarian authorities specifying the facts of the case upon the request of the Dutch court and prosecutor and subsequently stating that there exist options in Bulgarian law to apply for a retrial. It added that the current request 'is such a case'. The court did not accept the Bulgarian guarantee as sufficient for the purposes of article 12(d) of the Dutch Surrender Act, as the guarantee once again did not unambiguously confirm that the person will be informed of both the sentence imposed against him after surrender and the time limits to apply for a retrial or appeal. While

[140] Amsterdam district court, 21-01-2011, ECLI:NL:RBAMS:2011:BP2315
[141] EAW Framework Decision article 2(2)
[142] Amsterdam district court, 13-11-2009, ECLI:NL:RBAMS:2009:BL5781

the current amount of Bulgarian cases is too low to infer whether this will remain a problem in the future, these two cases do indicate a point of attention for future appraisals of the Dutch-Bulgarian relationship in the context of retrial guarantees under the EAW. Aside from this issue, however, surrender seems to occur with a reasonable extent of automaticity.

3. Appropriate judicial protection

While in most cases judicial protection in the Bulgarian cases executed by the Netherlands seemed to function well, one case stands out as peculiar. The case concerns a person who alleges that the Bulgarian authorities have previously tortured him for 'knowing too much' after being an informant for the Bulgarian police.[143] Furthermore, the defense argues that Bulgarian authorities will not provide them with the reports on the requested person's stay in the hospital as a consequence of these torture practices. Finally, it is argued that several defense rights were breached in the subsequent trial against the requested person in Bulgaria, for instance by not notifying defense lawyers of the procedure which has led to the EAW. The Amsterdam district court, however, does allow the surrender. It bases its considerations in part on the principle of mutual trust, in part on the obligations of Bulgaria under the ECHR, and in part on a lack of evidence. It notes, furthermore, that a letter from the Bulgarian hospital denied that the requested person was staying there. Finally, it notes that the procedure that led to the EAW was started after the repeal of a previous procedure, after objections by the lawyers, meaning that there was no reason to assume that no effective remedies were available. Two things can be concluded from the case for the purposes of this report. First, the bar for refusals based on flagrant human rights breaches is substantially high in the Netherlands, as the Amsterdam court did not even consider additional questions to Bulgarian authorities necessary. Secondly, the Amsterdam district court places much faith in the adherence of foreign authorities to ECHR standards, illustrating the court's high amount of trust under the EAW. Whether the assumption that no fundamental rights breaches occurred was ultimately correct is difficult to ascertain from only the facts presented in the EAW case, and would require additional analysis of the process in Bulgaria.

In case 13.497.394-2009 a Turkish resident of the Netherlands was requested by Bulgarian authorities. As was already seen in cases from several other Member States, the Dutch nationality and residency refusal grounds has a discriminatory element due to the fact that only residents have an added jurisdiction criterion. If the Netherlands does not have jurisdiction to prosecute the crime, surrender is normally allowed to prevent a crime from not being prosecuted. However, in this case the defense requested that this criterion should be bypassed by obtaining a return guarantee from the Bulgarian authorities on the basis of the European Convention on the International Validity of Criminal Judgments, which would allow the sentence to be executed in the Netherlands.[144] Both the Dutch authorities and the Bulgarian authorities agreed, leading to a refusal of surrender and transfer of sentence. Thus, the court was open to a solution which would improve the position of the requested person in comparison with the usual application of the residency refusal ground. This decision can therefore be seen as an early version of the Polish 2013 decision to set aside the discriminatory jurisdiction criterion if an unequivocal return guarantee is obtained,[145] although this early case had to be based on an international law convention, which was only ratified by a small number of EU Member States.

[143] Amsterdam district court, 17-08-2012, ECLI:NL:RBAMS:2012:BY1996
[144] Amsterdam district court, 23-07-2013, ECLI:NL:RBAMS:2013:4826
[145] Amsterdam district court, 16-10-2009, ECLI:NL:RBAMS:2009:BK6551

Moreover, in case 13.497555-2009 the court shows not to engage in blind trust with Bulgarian authorities, as it refuses to allow surrender for an execution of sentence request which required a retrial guarantee. The Bulgarian authorities, repeatedly referring only to their retrial provision under Article 423 of the Bulgarian Criminal Procedure Code (CPC), only showed that it was possible in their country to apply for retrials. By not additionally stating that this possibility would also be applicable for this specific person, the guarantee was not unambiguous enough for the Amsterdam district court to allow surrender for this portion of the EAW.[146] A year later a similar retrial guarantee problem was encountered in case 13.706.008-12. As with the previous case, the Bulgarian authorities referred to Article 423 CPC. In this case, however, they added that the current request concerned such a situation. This was still not deemed unambiguous enough for the Amsterdam court. It was for instance not possible to discern whether the lawyer representing the requested person in the verdict rendered *in absentia* was authorized to do so by the requested person, despite the request by the Dutch prosecutors to Bulgarian authorities to provide this information. As this means that it cannot be determined whether the refusal ground of Article 12 of the Dutch Surrender Act is applicable, surrender had to be refused.[147] Thus, while normally the Amsterdam court does seem to show a high amount of confidence in the equivalence of other legal orders, it takes a strict approach when it comes to the ambiguousness of retrial guarantees under Article 12 of the Dutch Surrender Act, in these cases favoring judicial protection over automatic surrender.

6.11 Aggregate level analysis: recurring legal issues

Before turning to the quantitative analysis of the sampled data, it is first worth considering which legal problems have been found recurrently throughout the sample. Although this paragraph may invoke the suggestion that the EAW instrument's application is severely flawed due to its emphasis on the things that went wrong, it must be recalled that most separate country analyses found that the majority of cases struck a reasonable balance between automatic surrender and appropriate judicial protection. The problems presented in this chapter thus concern a relatively small number of EAW cases, but can nonetheless be considered detrimental to the performance of either the Amsterdam district court or the larger EAW network. Several of the problems presented here will also be analyzed from a quantitative perspective in paragraph 6.13.

Return and retrial guarantees

One recurrent problem for all Member State concerned the adequacy of return and retrial guarantees. These resulted in numerous communication and interpretation problems for the authorities involved, even if the majority were in the end considered adequate. Overall, the return guarantee system seemed to function better than the retrial guarantee system, with the former type of guarantees being accepted more often. The differences in the amount of times a specific type of guarantee was found to be sufficient will be elaborated on in the paragraph 6.13. This finding can be explained by the fact that return guarantees were issued on the basis of the Convention on the Transfer of Sentenced Persons. While criticism against the usage of a piece of international law based on pre-EAW extradition systems can be found in various places in the literature, the counterargument offered here is that this did allow for some unity in procedures and expectancies among the various Member States. For instance, other authorities giving out return guarantees usually seemed well aware of the fact that a return guarantee in itself does not suffice for the purposes of the Convention, but that a second guarantee on the adaption of a sentence

[146] Amsterdam district court, 13-11-2009, ECLI:NL:RBAMS:2009:BL5781
[147] Amsterdam district court, 13-03-2012, ECLI:NL:RBAMS:2012:BV9401

would also be required. By contrast, the retrial guarantees suffered from substantial legal disparities between Member States. When conditions for retrial guarantees under the Dutch Surrender Law were met, there were several instances in which the issuing authority was no longer able to provide such a guarantee due to retrials already being impossible or time-barred under their national laws. In other cases, in particular several cases from Romania, it was unclear which conditions for retrial existed under national law, leading the Amsterdam court to engage in an in-depth analysis of foreign laws. Thus, the retrial system seemed to encounter more substantial problems than the return system under the EAW surrender instrument, in particular because of divergent legal requirements per Member State. This poses a potential threat to the automatic surrender of requested person if not addressed.

While return guarantees did seem to function better in the sampled cases, this system was not free of its own set of problems either. In numerous cases the Dutch implementation of the nationals/residents refusal ground was at issue. Besides cases similar to the one that lead to the Wolzenburg jurisprudence of the ECJ, which concerned the wrongful Dutch implementation of the refusal ground as the Dutch clause included an impermissible formal requirement in the form of a permanent residence permit, national cases also focused on the arguably discriminatory nature of the refusal ground for residents of the Netherlands. The latter type cases focused on the issue that while nationals must always be returned for the execution of their sentence after prosecution, residents can only be returned if the Netherlands also has the jurisdiction to prosecute the offence. More recently, an important nuance to this issue was created by the Amsterdam court, which considered in a Belgian case that where an unequivocal return guarantee has been provided the court should set aside the jurisdiction requirement included for residents in the Dutch Surrender Act.[148] The future application of this new possibility to avoid the discriminatory effects of the jurisdiction requirement of the Dutch Surrender Act is therefore an important development to keep track of.

Double criminality related problems

In case 13-751660-14, concerning a German request, the issue of the differences existing between the Convention on the Transfer of Sentenced Persons and the EAW with regard to double criminality was noted. It will be recalled that in this case a German request contained the aggravating circumstance of weapons possession. While for the purposes of the EAW the Amsterdam court did consider this a part of the original offence, thereby removing the necessity for a double criminality check, it considered otherwise for Convention purposes. As the weapons possession fact was not liable to a severe enough penalty under the double criminality check under the Convention, surrender was still refused for the weapons possession element. As surrender was still allowed for the primary request the prosecution of the person was not harmed extensively, the case does illustrate how the patchwork application of both the EAW instrument and the international law such as the Convention on the Transfer of Sentenced Persons can result in problems. While the 2012 Dutch implementation of Framework Decision 2008/909/JHA on the transfer of sentenced persons should gradually eliminate this obstacle, it should also be noted that the 2012 legislation does not apply to those Member States which have not implemented the Framework Decision themselves.[149] For this category of Member States, the 1983 Convention still applies, meaning that the problem could still arise in proceedings with a large portion of Member States. In February 2014 the Commission noted that Bulgaria, Cyprus, Germany, Estonia, Greece,

[148] Amsterdam district court, 23-07-2013, ECLI:NL:RBAMS:2013:4914

[149] Wet wederzijdse erkenning en tenuitvoerlegging vrijheidsbenemende en voorwaardelijke sancties, Article 5:2(2)

Spain, Ireland, Lithuania, Portugal and Sweden had not yet implemented the Framework Decision (European Commission, 2014).

In addition to issues arising out the joint application of the EAW and the Convention on the Transfer of Sentenced Persons, another issue concerns more directly the definition of the categories of offences included in article 2 of the EAW Framework Decision. This problem stems from the fact that the EAW leaves the definition of offences to national laws. Nevertheless, it does provide that double criminality is abolished for the 32 'list offences' of article 2 if minimum maximum sentences are met. While a relatively rare occurrence, the Dutch Amsterdam court has at times engaged in an interpretation of the classification of a fact as a list offence to the court not finding it evidently clear that the fact would indeed correspond to that category. In the field of human trafficking and sexual abuse, this has at one point lead the court to find that the issuing authority had in fact wrongfully ticked the list offence box, as the element of financial gain was not present.[150] It was argued that the interpretation of the Amsterdam court did not correspond to European definitions of sexual abuse at that time, which did not necessarily require a financial element. Such cases can be harmful to the automatic surrender under the EAW instrument, as the reintroduction of a double criminality check through a false positive finding adds a potential ground for refusal which would otherwise not be applicable to a given case.

Translation issues

One additional problem is that of translation errors in warrants, additional information and guarantees. It was already discussed extensively that some of the guarantees from the new Member States such as Bulgaria and Romania showed some translation issues. This lead the court to either request additional information to clear up issues, or to refuse surrender. While the sample only included court decisions instead of the original warrants, some paragraphs in these cases indicate that unclearly translated warrants have, at times, provided issues for prosecutors and the court. Conversely, it was also seen that guarantees by countries which are capable of providing the Dutch court with native language level information (i.e. Germany, Belgium and the UK for this sample) experienced relatively little translation problems. Furthermore, both interviewed EAW employees considered translation issues an important problem for the EAW network and stated that even in the context of the EJN, contact points are not always sufficiently trained in the languages that they should speak. They noted that, at least for Dutch authorities, employees could more often attend language courses, especially if management would be more supportive of this solution. In a limited amount of sampled cases, translation issues have hampered the output of the court both from the perspective of turnover time and the perspective of automatic surrender. The first issue arises out of the fact that several cases required postponements for additional information or additional guarantees to be sent on.

Communication problems

A relatively high number of cases have shown communication problems, in particular between issuing and executing authorities. Cases such as these can broadly be summarized in several categories. The first concerns insufficient or inadequate information delivered with the EAW or at the request of a prosecutor, requiring the court to take action at the trial stage.[151] The second concerns wrongful information sent by

[150] Amsterdam district court, 06-06-2006, ECLI:NL:RBAMS:2006:AX9436

[151] For instance Amsterdam district court, 27-05-2014, ECLI:NL:RBAMS:2014:5190, a case in which UK authorities seemed to imply that they would not allow a sentence to be altered after the return of a Dutch national. Further

the issuing authorities, and potential corrections of those afterwards.[152] The third consists of cases in which the issuing authorities do not respond to a request for further information, either once or repeatedly.[153] The three categories can overlap somewhat with one another. For instance, an issuing prosecutor may attach insufficient information on a return guarantee or the description of facts to a warrant, leading the court to order the Dutch prosecutor to ask additional questions. Subsequently, the issuing prosecutor may neglect to answer these questions, leading two categories of communication issues to be present.

Information concerning extra information which was subsequently not given after repeated requests were particularly harmful to the automatic surrender goal of the Amsterdam court, although it must be emphasized that this cannot be attributed to an insufficient performance of the court itself. Cases in which the Amsterdam court does not see a reply after several questions from the Dutch prosecutor to the relevant issuing authority are always refused if the original information was insufficient, making this a priority issue to solve. Insufficient information and wrongful information are slightly less harmful, although still points to keep in mind for Member State authorities when sending out warrants. The sample included mistakes such as wrong checked boxes for list offences, wrong amounts of facts listed, insufficient descriptions of facts, insufficient guarantees, wrongful information on a requested person who had been discharged - not escaping - from an institution,[154] etc. Even if these points are subsequently corrected by the issuing authorities with additional information, such problems can still lead to higher turnover times. Moreover, transmitting wrongful information may be detrimental to the mutual trust between Member State authorities, regardless whether this information was sent intentionally or not. The court alludes to this in the aforementioned case which included wrongful information on the discharge from an institution of a person. Where cases are refused on the basis of such mistakes this is a problem for the automatic surrender goal of the Amsterdam court. Although it cannot be assessed which portion of communication problems are due to Dutch executing authorities being unclear or insufficient in their correspondence, there do seem to be indications that at least part of the problem lies with the various issuing authorities. The quantitative comparison between countries in paragraph 6.13 will shortly devote attention to the prevalence of the issue.

Joint sentences and principle of specialty issues

A final recurring issue in the sampled cases of the Amsterdam court concerns execution of sentence cases where several sentences have been joined together. Member States such as Poland, Romania and Bulgaria seem to make such joint sentences commonplace and present the Amsterdam court with the problem that it cannot determine which portion of the sentence is attributable to what fact. However, under the EAW Framework Decision and the principle of specialty it should not be possible for an issuing authority

inquiry revealed that this was not the intent of the UK prosecutor but that the initial information had been worded ambiguously.

[152] For instance the earlier discussed case on a German warrant Amsterdam district court, 17-10-2011, ECLI:NL:RBAMS:2011:BU9244, in which Germany sent wrongful information on the discharge of the requested person, noting the person had escaped instead of him being discharged. Another example is Amsterdam district court, 06-07-2007, ECLI:NL:RBAMS:2007:BB2690, in which Spanish authorities did not pass through information that the legal provision on which the request was based was not in force at the time the act was perpetrated.

[153] In Amsterdam court, 30-05-2014, ECLI:NL:RBAMS:2014:3251 the Polish prosecutor had not attached the minimum maximum sentences required for the Amsterdam court´s review on the permissibility of surrender. After repeated non-response to requests, the Amsterdam court refused surrender.

[154] Amsterdam district court, 17-10-2011, ECLI:NL:RBAMS:2011:BU9244

to also prosecute or execute a sentence with regard to facts for which a person has not been surrendered. Thus, if surrender is only partially allowed for a portion of facts of an EAW, the executing authority cannot enforce a sentence for the refused portion of the EAW. For joint sentences this creates the problem that the Amsterdam cannot effectively enforce the specialty rule from its position as the executing Member State. Its standard reply in the most of these cases is that it allows surrender and, as it cannot determine the portion of the sentence which should be enforced, will leave the determination of the enforceable sentence to the issuing authorities under the principle of mutual trust. As this research limits itself to the executing role of the Amsterdam court, no information was available on the process occurring after a person has been factually surrendered. Further research is needed to ascertain whether local authorities indeed apply an appropriate correction to the joint sentence imposed against the requested person. Nevertheless, this can be seen as an issue for the appropriate judicial protection of the requested person, as a person may become subject to a sentence for which his surrender was refused, without any method being available to the Dutch judicial actors to monitor or correct foreign authorities that could do so.

6.12 Quantitative country comparisons: turnover time

In this paragraph the differences and similarities in turnover time for the different country groups will be discussed. It will be recalled that the hypotheses presented in chapter 3 were based on the assumption that more similar countries would entertain better performing surrender relationships with the Netherlands. It is therefore interesting that some subtle differences between the three country groups (similar, dissimilar and intermediate countries) can be observed with regard to turnover time, although the differences do not seem to be extremely large. While the data mainly shows values for surrender times between roughly 45 and 80 days, but also contained a relatively high amount of high values over 80 days while containing very few values below 30, the data seems to be skewed somewhat. Performing a Shapiro-Wilk test to ascertain whether or not the data show normality confirms this face value suspicion, as the test confirms at the 0,01 significance level that all three country-groups do not form normally distributed samples.[155] Furthermore, subjecting the tree country-groups to 1,5 IQR procedures shows that there are several outliers.[156] As parametric tests such as ANOVA tests assume normalcy and are sensitive to outlier values, it was more appropriate to utilize non-parametric tests, in particular the Kruskal-Wallis test, for the analyses. The tests were run with and without the signaled outliers. The Kruskal-Wallis looks at the extent to which the medians of two samples are comparable or whether there has been a shift in medians (Spurrier, 2003)[157]. The null hypothesis is designed to examine the chance of the differences in the observed sample distributions arising randomly. When accepting the alternative hypothesis, conversely, the researcher assumes that the differences in the rank distributions of the different samples did not arise by chance.

[155] All three results yielded a rounded *p*=0,00

[156] For the similar countrygroup (Sweden, Finland and Germany) two cases with a turnover time t>113 were outliers: case 13/706674-10 and case 13.497.374. For the intermediate sample (Spain, UK, Belgium) all cases above 110,375 were outliers, which were cases 13/4977468-14, 13-751229-14, 13.737355-13, 13.737.292-13 and 13.737.142-13. Furthermore, case 13.706264-11 fell below the lower 1,5 IQR bound with a value of 9 days. Finally, the dissimilar countrygroup (Bulgaria, Poland, Romania) showed several high value outliers in cases 13/497.127-06, 13.497.470-200

[157] J.D. Spurrier (2006), on the null distribution of the Kruskal-Wallis statistic, *nonparametric statistics,* 15-6, pp.685-691

	Number of cases (N)	Mean rank (not corrected for outliers)	Mean rank (>1,5 IQR outliers removed)
Similar countrygroup (Sweden, Germany, Finland)	31	48,88	44,16
Intermediate countrygroup (Spain, UK, Belgium	38	59,10	53,14
Dissimilar countrygroup (Bulgaria, Poland, Romania)	36	65,96	60,46

Table 6.1: mean country-group ranks on turnover rates with and without outliers

At face value a difference between the ranks for the three groups of countries is visible, as can be seen in table 6.1. As suggested in chapters 3 and 4, EAW's from countries similar to the Netherlands on the basis of culture, corruption and centralization/decentralization show a lower mean rank than those EAW's from a group of countries which is more dissimilar. The Kruskal-Wallis test for the samples not altered by removing outliers shows that the differences are significant at the $p<0,1$ significance level, the test yielding a $p=0,098$ value.[158] Using data that excludes the outliers found on the basis of the >1,5 IQR method yields a slightly stronger indication of a difference between the sample distributions, with a p value of 0,092.[159] The similar results for both the altered and the unaltered samples illustrates that outliers did not have a substantial effect on the Kruskal-Wallis procedure. However, the fact that sampled data does not reach significance at the $p<0,05$ level warrants some caution in interpreting these results as conclusive evidence to support the statement that there is a structural difference between the distribution of the sampled data. The conclusion is therefore that there is some indication that the Amsterdam court performs slightly better with regard to turnover time when confronted with EAW's from more similar countries than when confronted with EAW's from more dissimilar countries, but that the effect found in the sample data would require subsequent research to confirm its existence.

Moreover, the sampled data strongly supports the intuitive proposition that postponed cases have a relatively higher turnover time. Separating the data for postponed cases into a binomial variable in which a case is either postponed or not postponed, and subsequently performing a Mann-Whitney-U non-parametric test for two samples, generates support for the test's alternative hypothesis that the populations have a different distribution with p values of 0,00 for both the turnover data including outliers and the turnover data excluding outliers. Therefore, the results are significant at the $p<0,05$ level. The substantial differences in turnover time for postponed and non-postponed cases have been illustrated in table 6.2, which is based on both data including outliers and data excluding outliers.

[158] Degrees of freedom (Df) 16, N=116
[159] Df 2, N=105

	Postponed	Non-postponed
Mean turnover time (outliers included)	142,3	63,4
Median turnover time (outliers included)	103	59,5
Mean turnover time (outliers excluded)	100,23	60,29
Median turnover time (outliers excluded)	88,5	59

Table 6.2: Mean and median turnover times for postponed and non-postponed cases

6.13 Quantitative country comparisons: automatic surrender

Surrender vs refusal ratio differences between the three country groups

One of the most interesting comparisons between the Member State groups is whether the ratio of surrenders versus refusals differs between more similar countries and more dissimilar countries. To be able to compute the data on surrenders in a meaningful way, it has been transformed into a categorical variable. Surrenders take on the value of 2, while refusals take on the value of 0. Partial refusals will be intermediately valued as 1. This transformation of the data leads to some reduction in its richness as some cases include partial refusals for instance for 1/3rd or 3/4th of the requests. Nevertheless, the transformation was necessary to allow for the application of statistical tests for categorical variables in contingency tables. The data is summarized in table 6.3.

	Similar countries	Intermediate countries	Dissimilar countries
Surrender completely allowed	26	30	23
Partial surrender allowed	5	8	7
No surrender allowed	2	6	9

Table 6.3: cross-tabulation of country-groups and surrender ratio

At first glance there does seem to be an increase in the amount of refusals for dissimilar countries, but the differences seem too small to be attributed to a structural relationship. Both the chi-squared and the Fisher's exact test were applied to confirm this. For expected cell counts below 10, some methodologists have recommended to replace the chi-squared procedure with the safer Fisher's exact test (see for instance Cochran, 1954, at p.420). As several cells do have lower expected values than 10, both the chi-squared test and a Fisher's exact test have been applied in order to retain the option of choosing the safer score if the differences between both test results are substantial. The computation of neither test has resulted in a *p* value significant at the $p<0,1$ level. The Fisher's exact reports a *p* value of 0,332 and the chi-squared reports a *p* value of 0,316.[160] The results are roughly similar, indicating that the chi-squared test was not adversely affected by the small sample size to a substantial degree. The results from either test therefore support the argument that although there were some differences in turnover speed, postponements of cases and the amount of additional information requests between the three groups of

[160] $\chi^2 = 4,730$, df=4, N=116

Member States, there is no evidence to support the claim that perhaps the most important output of the Amsterdam court for the EAW system – its ratio of surrenders – also differs per Member State. This furthermore means that the other structural differences, for instance a relatively high amount of cases with insufficient information from some Member States, were mostly surmountable for the court. They did not lead to a structural problem with the amount of cases in which surrender is refused. As such, the finding nuances the earlier observed differences in performance between Member States. Combined with the observation that in a large majority of cases surrender is (partially) allowed, as earlier noted argument that most refusals that did occur seemed justifiable and well-motivated,[161] these results support the claim that the Amsterdam court generally performs well with regard to the automatic surrender element of the EAW.

A surprising result, furthermore, is that the purpose of a case seems to predict whether surrender will take place to reasonable extent. The sample data shows a relatively high amount of surrenders for prosecution cases, while execution of sentence cases are relatively often (partially) refused by the Amsterdam court. The data is summarized in table 6.4. It can be seen that although there are fewer execution of sentence cases present in the sample, these cases have generated the majority of refusals and partial refusals. A chi-square test approximating whether both variables are related confirms this statement at the p<0,05 level.[162]

		Refusals	Partial refusals	Surrenders	Total
Purpose	Prosecution	4	9	52	65
	Execution of sentence	12	11	25	48
		16	20	77	113

Table 6.4: cross-tabulation of the purpose of an EAW and surrender vs refusal ratio

One important factor in this issue seems to be the retrial guarantee. In the legal analysis of the sampled cases of the various Member States, several problems were already noted with regard to trials conducted *in absentia* and the retrial guarantees required by the Dutch authorities. Early Bulgarian cases were shown to have experienced some translation problems, with the Dutch court not finding guarantees unambiguous enough. For some Polish cases, internal time-bars and court discretion resulted in several cases where Polish prosecutors were unable to provide adequate guarantees. A Belgian case was refused due to earlier experience under extradition law where the Belgian court eventually did not allow a retrial. Thus, a variety of differences in laws and domestic problems resulted in guarantees not being given or insufficient guarantees.

Conversely, the return guarantee seems to function slightly better due to it being partially standardized under the Convention on the Transfer of Sentenced Persons. While many return guarantees were necessary for both prosecution and execution of sentence cases, a large majority of these were seen as sufficient. Under the Convention, two elements are required. Firstly, the Convention requires an unambiguous guarantee that the person will be returned after sentencing. Secondly, an unambiguous

[161] See the various country reports earlier in chapter 6.

[162] χ^2 = 11,367, df=2, *p*=0,03, N=113 (3 cases were excluded due to the unusual presence of a combined execution and prosecution request)

guarantee that the sentence can be adapted and executed in the Netherlands is required. Most guarantees seem to conform well to this structure and are thus accepted by the Amsterdam court. While the amount of retrial guarantees is unfortunately not high enough for a resilient statistical analysis, it is notable that out of 12 retrial guarantee cases 5 guarantees were not accepted and 1 case concerned the acceptance of a guarantee for one fact while the a guarantee for another fact was not given. For return guarantees the acceptance rate is higher, with 36 out of 38 guarantees being accepted.

Amsterdam court output: content analysis performed by the Amsterdam court

In addition to the direct output in terms of surrenders/refusals, chapter 4 also presented a methodology which utilized a measurement of the content analyses of the Amsterdam court in EAW cases. This resulted in four indicators. The first considers to which extent the Amsterdam court has considered the facts of a case (including facts pertaining the offence, subsequent occurrences and how authorities handled the procedure). The second indicator measures how many paragraphs the Amsterdam court has devoted to analyses of foreign criminal laws. The third measures to what extent an analysis has been devoted to the adequacy of an incoming EAW. Finally, the fourth accumulates these scores into a total amount of paragraphs devoted to analysis indicator. The results for each indicator, split up per group of country, have been summarized in table 6.5.

		Facts of a case	Laws of issuing country	Adequacy of a warrant	Total analysis
Similar countries (Sweden, Germany, Finland)	N	33	33	33	33
	Median	0	0	0	1
	Mean	0,85	0,24	0,39	1,48
Intermediate countries (Spain, UK, Belgium	N	44	44	44	44
	Median	1	0	0	1
	Mean	1,05	0,23	0,41	1,68
Dissimilar countries (Poland, Romania, Bulgaria	N	39	39	39	39
	Median	1	0	0	2
	Mean	1,36	0,69	0,18	2,23

Table 6.5: Mean and median scores for the four in-depth analysis indicators

The table shows how most of the data clusters around the low values of 0 and 1, especially for the non-aggregated indicators. Furthermore, the fact that the mean is usually lower than the average score indicates that a relatively large proportion of cases tended towards a low score and that the average score was influenced by a smaller number of high values. These attributes of the data can be seen as an indication that, in general, the Amsterdam court does not apply a large amount of analysis of facts, laws or EAW's and restricts itself to a position of mutual trust. The court recounts facts provided by issuing countries but does not often analyze them substantively. Furthermore, it is notable all of the three groups of countries seem to be approached relatively similarly by the Amsterdam court. The extremely slight differences between the facts, laws and adequacy indicators means that further statistical analysis would not provide additional insights.

Requests for additional information

In her relatively recent report, Weyembergh (2013, p.26-28) noted that executing authorities may express a degree of mistrust through requests for additional information to issuing authorities. In particular she

mentions the examples pertaining to EAW's being handled by UK authorities, in which UK judges have made requests for additional information for seemingly small details. Thus, Weyembergh argues that such information requests may be harmful for the application of the principle of mutual trust. If applied appropriately, however, they may by contrast be seen as beneficial to the judicial protection of defendants. While the various country reports that were presented earlier in this chapter did not seem to hint at a structural problem with regard to the requests for additional information sent out by the Amsterdam court, it is interesting to see to what extent requests differ per country group. The cross-tabulation is presented in figure 6.6:

	Similar countries	Intermediate countries	Dissimilar countries
No additional information request	32	38	30
Additional information request	1	6	9

Table 6.6: Cross-tabulation of additional information requests in cases and country-group

First of all it is necessary to re-emphasize that these numbers exclude information requests pertaining to additional guarantees on retrials and returns. Furthermore, it must be noted that the amount of cases in which extra information was requested is relatively small at 16 cases. As this also means that the expected value for cells in the cross-tabulation will be lower than 5 for the row listing cases that did require additional information, it is recommended to use the Fisher's exact test instead of a chi-squared test based on the Pearson's technique (see, Cochran, 1954, at p.420). Both tests, however, indicate with only a marginal difference between them that the Amsterdam court's requests for additional information are related to the extent to which another Member State is dissimilar or similar. The Fisher's Exact test returns a *p* value of 0,051, which is significant at the $p<0,1$ level, while the Chi-squared returns a *p* value of 0,049,[163] which just crosses the boundary of significance at the $p<0,05$ level. Thus, both tests indicate that the Amsterdam court more regularly confronts Bulgaria, Romania and Poland with requests for additional information than it does the other 6 sampled Member States. Conversely, the surrender relationship between Dutch authorities and Sweden, Finland and Germany seems to perform well on this point, as there is only one request for additional information between them. Explanations for the relatively large amounts of requests made towards dissimilar countries were already implicit in the various country reports. In particular Poland and Bulgaria have been noted to send incomplete warrants or warrants with seemingly ambiguous information. Accordingly, it was necessary for the court to request additional information, in order to be able to grant surrender. Therefore, in contrast to being an indication for mistrust as suggested by Weyembergh (2013) in relation to UK examples, it seems that in the case of the Amsterdam court an effort is being made to allow surrender despite the fact that an insufficient warrant is presented to it. Such requests were necessary to adequately weigh the goals of appropriate judicial protection and automatic surrender. This result can even be said to provide an indication that the requests are, perhaps counter-intuitively, an expression of trust in other authorities; while the information was incorrect or insufficient, the Amsterdam court assumes the underlying request is not unjustified. Instead of refusing surrender altogether it therefore seeks to resolve the conflict by asking for additional information. Simultaneously, the indication that warrants from some countries require additional information more often than others does illustrate a quality difference between the issuing authorities of

[163] χ^2= 6,043, df=2, N=116

Member States, which should be resolved in order to achieve a higher degree of automatic surrender and reduce the amount of postponed cases.

6.14 Longitudinal analysis

The fact that the sampled cases range from 2006 to 2014 also offers the chance to investigate the long-term developments of the execution of EAW cases by the Amsterdam district court. In this paragraph the court's performance over the years will be discussed, with cases being grouped into three time periods: 2006-2008, 2009-2011 and 2012-2014. The choice to use three-year periods instead of individual years has been made on the consideration that the relatively low number of cases available per year could skew analysis results due to outliers. This, however, has the downside that the analysis loses some degree of specificity. Nevertheless, weighing both options, it was decided that three year periods were the lesser of the two evils. In the subsequent subsections developments in turnover time, surrender ratios, case purposes (execution cases *vis á vis* prosecution cases), double criminality test usage and postponement of cases will be discussed. As most analyses utilize two ordinal variables, the paragraph often relies on the chi-squared procedure for cross-table association analysis and post-hoc Cramer's V effect size estimates.

Turnover time

An interesting first question for the longitudinal analysis is whether the output of the Amsterdam court has changed during the 2006-2014 period. Most indicators display the same result; the court's output has been substantially consistent during the examined time-period. With regard to turnover times, both mean scores and median scores show high similarities over the years. As with the individual country reports, the mean scores seem somewhat outlier prone and thus score higher and less consistent than the median values. The mean and median scores have been summarized for three periods in table 6.7:

	2006-2008	2009-2011	2012-2014
Mean turnover time	83,66	91,62	84,13
Median turnover time	62	64	71
N	29	39	48

Table 6.7: Mean and median turnover times per time-period

While the considerable turnover consistency of the Amsterdam court is in itself a good result, it must not be forgotten that both the average scores and the mean scores for cases in the sample indicate that breaches of the 60 day time limit of the EAW Framework Decision were commonplace in all time-periods. In earlier paragraphs the problem of substantial breaches for a large portion of postponed cases and small or near-breaches for many non-postponed cases was already highlighted. A longitudinal perspective adds to this the observation that the problem has not decreased over time and thus warrants future attention.

Ratio of surrenders/refusals

Perhaps the most important question regarding EAW case developments over the 2006-2014 period is whether the amount of surrenders show a relative increase or decrease. The amount of surrenders compared to partial surrenders and full refusals show reasonable consistency over the years. The most notable change concerns the relatively high amount of partial surrenders for the 2009-2011 period. However, after an increase in this period, partial refusals seem to decrease again to levels similar to the 2006-2008 period. The data also seems to suggest a very slight increase in the relative amount of surrenders and a slight decrease in the amount of full refusals. This is illustrated below in figure 6.1. A chi-squared test does not provide any evidence that the relative amount of surrenders and refusals and the

different periods are associated, however.[164] A Fisher's Exact test, again performed due to the presence of a cell with a very low expected count, performs similar and therefore does not change this observation.[165] Thus, while some changes can be observed throughout the years, it must be concluded that there is not enough evidence to support a statement that this an indication of a structural change in performance. Furthermore, it must be emphasized that the high relative amount of surrenders for all time-periods indicates that the Dutch Amsterdam court performs relatively well with regard to automatic surrender.

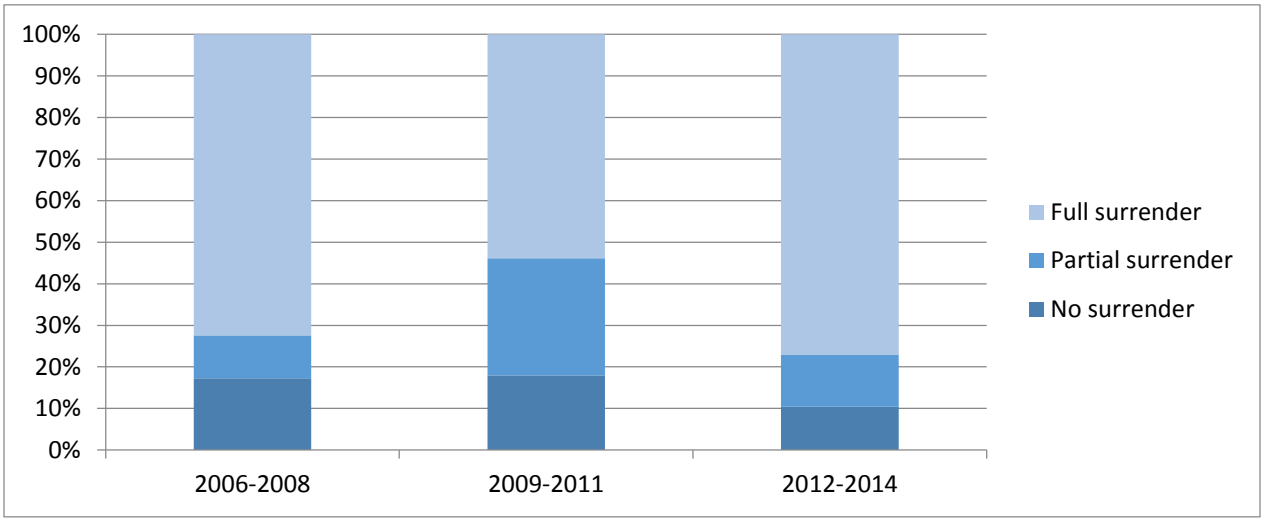

Figure 6.1: Developments in the purpose of warrants: execution cases and prosecution cases

The accession and first usage of the European Arrest Warrant by Romania and Bulgaria is visible in the distribution of prosecution/execution of sentence cases. Before 2009, most cases consisted of requests for the prosecution of a person, while after 2009 a more even picture between the two types of EAW's can be seen. As was mentioned earlier in the country comparisons, the new Eastern European states can be observed to issue a larger amount of warrants for the execution of sentences. While on face value this development may not seem impactful, it does have some ramifications due to the fact that execution of sentences cases bring with them different legal problems for the court than prosecution cases. The court has to engage in evaluations of whether sentences were made known to requested persons appropriately, whether the person was capable of attending a hearing or instating a lawyer to do so for him and where appropriate consider the sufficiency of guarantees from other Member States. It was also observed that the retrial guarantees in the current sample have relatively often been considered insufficient by the Amsterdam court, although the low amount of retrial guarantees in the sample warrant caution with regard to stating that this is also the trend in other cases. If the observation does hold for all EAW cases after EU enlargement, this would mean that the Amsterdam court will be faced with a challenge to automatic surrender. Nonetheless, this issue does not seem to have dramatically influenced the ratio of surrenders for each of the time period. Figure 6.2 illustrates the more balanced ratio of warrants in the sample after 2008.

[164] χ^2=6,966, N=116, df=4, p=0,138; the results are not significant at the p<0,10 level
[165] χ^2=6,642, N=116, df= 4, p=0,148; the results are not significant at the p<0,10 level

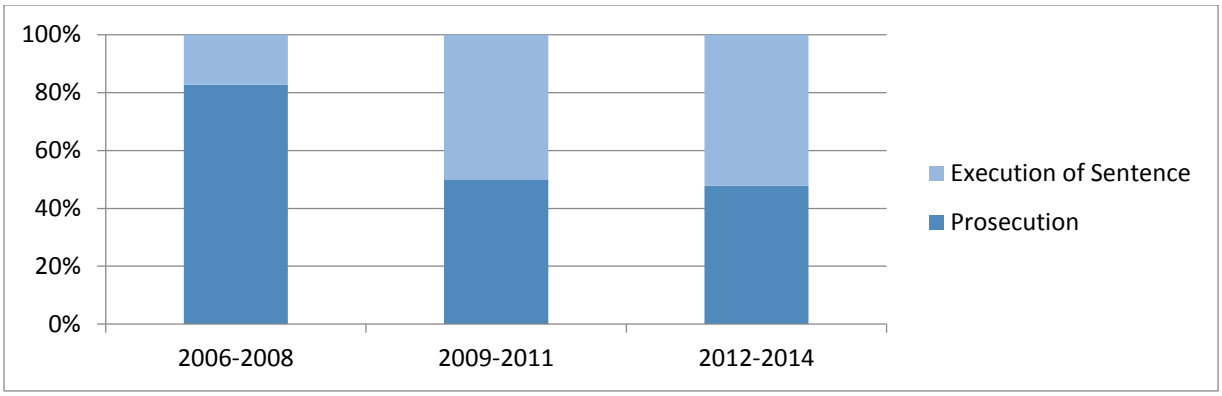

Figure 6.2: Developments in the purpose of warrants – execution warrants vs prosecution warrants

Double criminality test developments

Another notable development in the time-period 2006-2014 concerns the increase in the ratio of double criminality tests in sampled. Although for each three year time-period cases that fall under one of the 32 list offences seem to dominate, cases partially or fully tested for the double criminality requirement gradually increase. In the period 2012-2014 partial double criminality tests and full double criminality tests have occurred almost as often as cases without any double criminality test. This development is illustrated in the bar chart in figure 6.3:[166]

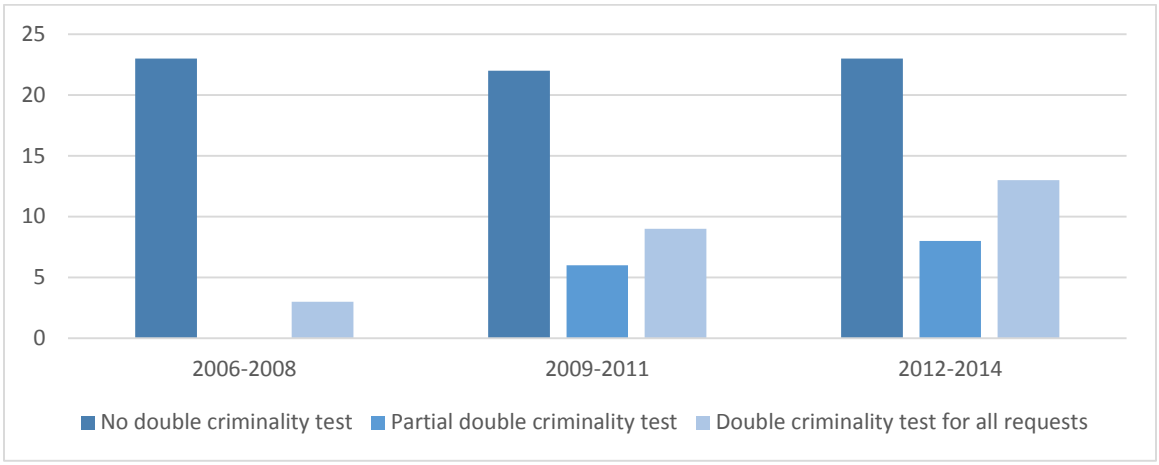

Figure 6.3: Developments in the application of a double criminality test by the Amsterdam district court

Performing a chi-squared test on the different periods and their corresponding sampled ratios of double criminality tests yields support that the variables are associated with one another at the $p<0,05$ level.[167] A post hoc Cramer's V test indicates that although the effect size of this development is relatively weak at the 0,220 level, it is statistically significant at the $p<0,05$ level. Repeating the chi-squared test with a Fisher's exact to avoid potential errors due to low expected cell frequencies yields similar results, albeit with a slightly lower p value.[168] The sample thus provides an indication that the categories of cases have

[166] Note that only 107 cases have been utilized for this analysis. While the total amount of cases included in the sample is N=116, several cases included situations where the Amsterdam court had concluded that surrender should be refused before arriving at the double criminality test phase.

[167] $\chi^2=10,360$, N=107, $p=0,035$

[168] $\chi^2=10,974$, N=107, $p=0,023$

slowly changed over the years towards non-list offences. While not per se problematic from a performance aspect, the development may pose additional challenges to the automatic surrender goal of the EAW system in the future, as double criminality tests do provide cases with an additional criterion upon which they can be refused. The developments in the sample with regard to the double criminality requirement may be explained by the increasing number of Polish, Bulgarian and Romanian cases in later years, as these seem to generate a large part of the cases that require double criminality tests. Using the country group variable that ranks the sample countries by similarity – with Poland, Bulgaria and Romania being dissimilar – the sample indicates a significant association with double criminality tests at the $p<0,05$ level as well.[169] Thus, the gradual influx of cases from the Eastern European states seems to affect the development of cases with regard to whether double criminality tests need to be applied by the Amsterdam district court.

Postponements

Like the amount of double criminality tests, the relative amount of postponements seems to have increased in the period 2006-2014. While the large majority of cases in the period 2006-2008 were not postponed, the subsequent period 2009-2011 shows an increase to 11 out of 39 cases being postponed. Furthermore, the period 2012-2014 shows a further increase to 19 out of 48 cases being postponed. This is succinctly illustrated in figure 6.4. The chi-squared procedure for both variables shows that the data is significant at the $p<0,10$ level, yielding a p value of 0,054.[170] Although a result with a stricter significance level would have been desirable, the data thus does provide some evidence to support the argument that postponements are related to the three time periods studied.

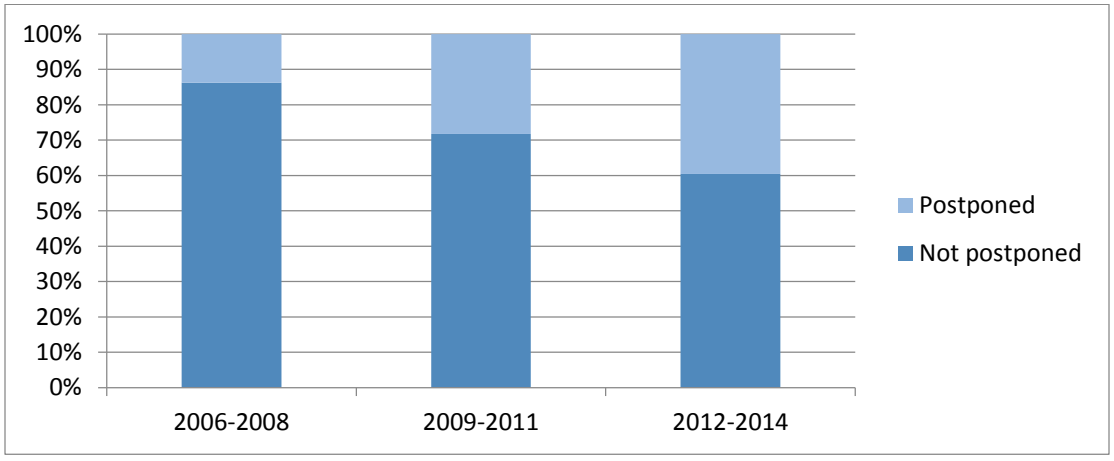

Figure 6.4: developments in the ratio of cases that were postponed once or more

As with the developments in the ratio of double criminality tests, the relative amount of postponements may be partially caused by the gradual increase in cases coming from the Eastern European countries. Using the same testing procedure as was used for the time-period analysis, support for the argument that the similar, dissimilar and intermediate Member State groups are related to the amount of postponed cases as well, with the Pearson's chi-squared test yielding a p value of 0,06, which is again significant at the $p<0,10$ level.[171] Cross-tabbing all three variables provides an indication that both time-period and

[169] Chi-squared test, $\chi^2=12,205$, N=107, $p=0,016$
[170] $\chi^2=5,838$, N=116
[171] $\chi^2=10,134$, N=116

Member State group were relevant in causing postponed cases. What is especially notable in the table is not just the increase in Eastern European cases that were postponed, but that cases from the intermediate country group – consisting out of Spain, the United Kingdom and Belgium – also experienced a gradual increase per time-period. A chi-squared test was not performed for this cross-tabulation as the expected values for each cell becomes very low when splitting data up according to three variables, which would easily result in false-positive or false-negative test results.

Postponed	Country group	2006-2008	2009-2011	2012-2014
No	Similar	11	7	11
	Intermediate	13	12	7
	Dissimilar	1	9	11
Yes	Similar	2	1	1
	Intermediate	2	3	7
	Dissimilar	0	7	11

Table 6.5: cross-tabulation of postponements, country-groups and time-periods

The increase in postponed cases, if also applicable to the larger population of cases outside the sample, can be seen as problematic from a surrender speed perspective. While normal cases are already often close to the 60 day time limit included in the European Arrest Warrant Framework Decision, paragraph 6.12 illustrated that the duration of postponed cases, even if only measured on the date of application at the Amsterdam district court, often take longer.

6.15 The coordination provided by Eurojust and the European Judicial Network

In addition to the role of the Amsterdam court, the research set out to study the influence of Eurojust as the EJN as coordinating institutions for the EAW network, through in-depth interviews with Eurojust employees. Chapter two mentioned that Eurojust was an institution set up in 2002 to facilitate the mutual legal assistance initiatives that were being set up at the time, including the EAW instrument. As a centralized actor it was furthermore suggested that it could perform the role of an NAO – a centralized network actor taking over coordination tasks for relatively complicated networks. Eurojust shares its coordinating function with the EJN, a network of contact points in the EU designed to facilitate cooperation, the exchange of information and foster mutual trust between Member State authorities. The differences between the tasks of the EJN and Eurojust was elaborated upon greatly by both interview participants, who noted that the primary role of Eurojust is to act in cases which have greater legal complexity and which cannot be effectively resolved by the Member States and the EJN. It is in particular suited to such tasks due to a large internal legal department and the presence of representatives from the Member States through the College of Eurojust and the various national desks. The EJN, on the other hand, is utilized by practitioners as a portal to contact points in order to reach the appropriate authorities or other information in counterpart Member States.

As Eurojust focuses on the coordination and facilitation of particularly complicated cases that the Member States are having difficulty with resolving themselves, the organization does not consistently fulfill the function of network coordinator, but acts as a specialized problem-solver and facilitator. For this reason the NAO concept does not seem adequate to fully describe the function of Eurojust within the EAW network. The interviews provide some indication that Eurojust's specialized function is also reflected in the limited effects it has on the larger EAW network. The employees noted that while Eurojust has been

successful in coordinating and helping to solve specific EAW cases, they could not say Eurojust also had a lasting effect on the general pattern of cooperation between Member States.

Both Eurojust employees were positive on the organization's performance with regard to the facilitation and coordination of specific cases, however. When a case encounters practical or legal difficulties and the assistance of Eurojust is requested, the national desks are quickly able to liaison with each other internally on the issue. The employees were furthermore of the opinion that cooperation between the various national desks performed well. In this regard, a large advantage of Eurojust according to the employees is that all national desks are located within the same building. This allows for informal and quick exchanges of information on the issue and facilitates a solution to the problem. Furthermore, the continued cooperation between national desk members does facilitate trust and working relations within Eurojust itself, often making it easier for Eurojust to solve a problem than it is for normal Member State prosecutors, which are faced with long distances, short-term contacts and impersonal interactions. The employees specifically noted that working together with prosecutors from other states grants an insight in and understanding of the differences between the Member States. This insight also offers a greater understanding to Eurojust employees as to why a specific EAW case has encountered a problem in a specific Member State. Such an understanding fosters a compassionate role on part of the various national desk members towards one another, leading to a more problem-solving culture.

The EJN is was also set up in order to decrease the complexity of the network for other member organizations. Instead of the classic centralized NAO model, it can be conceptualized better as a smaller network designed to facilitate communication for the larger EAW network. As a system incorporating more than 400 contact points, it is designed to be easily accessible to judicial authorities from the broader EAW network that are looking for help in a specific area or on a specific topic. With a database of contact persons which lists their specialty, region and spoken languages, prosecutors should in theory be able to quickly access the necessary information. The existence of easily accessible EJN access points in the various EU countries should therefore help build mutual trust and a mutual understanding of national legal systems between Member State authorities. Nevertheless, the coordinating function provided by the contact points is not perfect. The interviewed Eurojust employees note that the quality of EJN contact points can differ substantially between regions and Member States. For instance, while the EJN network database notes the languages that a contact point should be able to communicate in, in practice the language skills of the contact point turn out to be less extensive. In this context, the Eurojust employees have noted that further training opportunities for EJN personnel and other judicial authorities could provide a boost to the quality of the system. While this research was too limited to provide conclusive support for this claim, the role of the EJN as a facilitating network within the larger EAW network and the methods available to improve its role fulfillment would be interesting topics for further research to consider.

With regard to the coordination of the EAW instrument in general, the employees emphasized that a lack of an overview with the relevant and latest core national jurisprudence and sent EAW's was still a problem. Introducing such a system would allow for a quicker access to information and potentially reduce the problems occurring if information is not or inadequately transmitted by Member State authorities. Another issue is that Article 17(7) of the EAW Framework Decision obliges national authorities to inform Eurojust if it cannot meet the time limits of the Article and to give reasons for these breaches. Eurojust, however, does not entirely know what is expected of it with regard to the data it accumulates. This negates the efficacy of Article 17(7) EAW Framework Decision, as the provision clearly intends to establish

a control mechanism of some sort, but the data is not adequately processed and transmitted to a relevant set of actors.

6.16 Conclusions

This chapter examined both the dataset of 116 coded Amsterdam court EAW cases as well as the interview conducted at Eurojust. Both data resources indicated that, on the whole, the EAW system performs well within the Dutch context. The dataset indicated that the Amsterdam court in general applies an appropriate balance between the requirement of automatic surrender and the goal of appropriate judicial protection, even if its median and average turnover speed falls somewhat short of the time-limits enshrined in the EAW Framework Decision. Nevertheless, some specific attention points were detected, such as the double criminality abolition for list offences which is reintroduced by the Convention on the Transfer of Sentenced Persons and the relatively high rate of refusals for execution of sentence cases. The comparisons between the various surrender relationships towards other Member States showed that while differences exist with regard to for instance turnover times, the types of warrants issued by counterpart states and whether the cases were postponed or not, there was no substantial indication that the eventual ratio between surrenders and refusals was also affected. Nevertheless, some concerns for the future stability of the ratio of surrenders vs refusals were noted, such as the higher rate of execution cases which, as mentioned, are refused more often by the Amsterdam court. The next chapter, which will contain conclusions and recommendations, will build on these observations by providing potential solutions for the specific problems that were observed in the data-analysis. Furthermore, the interview with Eurojust shed light on the facilitating roles it and the EJN perform within the context of the EAW. It was noted that while the EJN does facilitate exchanges of information, it is too decentralized for a governing role. Conversely, Eurojust is too specialized in complicated legal issues to perform a coordinating function for the entire network. Thus, real NAO for the EAW network exists, even if both Eurojust and the EJN do perform very useful tasks with regard to the facilitation of mutual recognition. The next chapter will make some suggestions on how to improve the coordination of the EAW network.

7. Summary, research limitations and conclusions

7.1 Summary and discussion of results

In this final section of the report the various discussion points, conclusions and recommendations will be presented. The thesis has attempted to link the legal discussion of the functioning of the EAW instrument with a social science research approach. The aim of this crossover was to study whether the Dutch Amsterdam Court's performance differs between Member States and, if yes, to which this occurs and on which factors the difference is based. In order to appropriately study this issue a mixed-method case study of the Amsterdam court's surrender procedures towards 9 other Member States, as well as a study of the network coordinating activities performed by Eurojust and the EJN was set up. After an introduction into the EAW instrument in chapter 2, the thesis continued by suggesting several factors that could influence the execution of the EAW in chapter 3, which form the independent variables of the research. First of all it was suggested that cultural differences might play a role in the performance of the Amsterdam court towards various Member States. Cultural variations can result in differing expectancies in actors, which in turn could cause communication errors, mistrust and a lack of mutual identification to arise between EAW actors. Therefore it was hypothesized that greater cultural differences would result in a less well-performing surrender relationship between the Amsterdam court and the issuing authorities of that Member State. Furthermore, it was suggested that a relatively high degree of centralization of EAW authorities in a Member State would be conducive to a good performance on part of the Amsterdam Court, as centralized authorities would be able to gather more experience with the EAW and would be better integrated into the network. The third independent variable that was suggested is corruption. Building on the basis of earlier evaluations of the EAW framework, which mentioned corruption as an important source of mistrust between the authorities of the Member States, it was suggested that this mistrust could also generate differences in output such as the frequencies of allowed surrenders, turnover time, etc. Finally, the insights on the functions a network administrative organization – or NAO – can play in coordinating network activities and fostering mutual trust was added as the fourth independent variable for the research.

Subsequently, chapter three and four elaborated on the techniques and methods that would be utilized for the execution of the research. On the basis of the independent variables culture, centralization and corruption, three Member States that are substantially dissimilar to the Netherlands, three similar Member States and three intermediate Member States were selected. The similar Member States are Sweden, Finland and Germany, the dissimilar group is comprised of Bulgaria, Romania and Poland, and the intermediate group features Belgium, the UK and Spain. For the measurement of the surrender relationship of the Amsterdam court an organizational performance approach was chosen. The three EU policy goals of a high surrender speed, a high degree of automaticity with regard to the surrender of persons and an adequate judicial protection were distilled as main goals coinciding with the organizational performance aspects of external efficiency, external effectiveness and external fairness. Furthermore, Eurojust and the EJN were included in the study as a way of also investigating the coordination features of the EAW network.

A multi-method case study method was subsequently presented in order to adequately ascertain how the Amsterdam court performed and to what extent the coordination by Eurojust facilitated the performance of national authorities. Firstly, through a legal analysis the implementation of the EAW was considered in the various Member States. Legal analysis was also used to analyze the 116 sampled Amsterdam court

cases and provide in-depth country reports on the surrender speed, barriers and facilitating factors for automatic surrender and the appropriate judicial protection of requested persons. The insights from the analysis of the cases was then used for a discussion of several recurring issues. Some of these pertained to the Dutch executing side, while others pertained to the issuing Member State. A first example of the issues on the Dutch side are the relatively high median and average turnover times. While confirmation by a research which has access to the exact arrest dates would be beneficial in this regard,[172] the court turnover times considered in this research already show that often more time than the 60 day time limit passes before surrender occurs. Cases that have been postponed at least once are almost certain to breach the time limits laid down in the EAW. Recurrently, the Amsterdam court emphasizes that it had to extend the time limit from 30 to 60 days due to the heavy workload of the court.[173] This points to a capacity problem in the Amsterdam court, although it must also be emphasized that the time limits themselves are substantially strict. Another example of a Dutch issue, which should be resolved in the near future, is that for a long time the Amsterdam court did not invoke the residency refusal ground for acts it did not have jurisdiction on, the argument being that not allowing surrender would allow the indicted person to avoid justice. Nevertheless, this lead to a persistent discrimination between nationals and residents that have (allegedly) committed acts to which the Netherlands can apply jurisdiction on the one hand, and residents which have to be surrendered due to a lack of jurisdiction on the other. In 2014, a partial solution to this problem has been implemented in the form of new legislation implementing broader extraterritorial jurisdiction for several crimes. While extraterritoriality has its own controversial discussions (see for instance, Scott, 2014), this may partially alleviate the problem of discrimination against residents in the Netherlands in EAW cases. Furthermore, in 2013 the Amsterdam district court nuanced its earlier approach by stating that when an unequivocal return guarantee is provided, the jurisdiction criterion goes beyond what is necessary. Future research should keep these development in mind and analyze whether subsequent case law will continue this precedent. Other recurrent issues, in particular in the surrender relationships with Eastern European states, included low quality guarantees, insufficient information being provided, non-responses to additional information requests, etc. Furthermore, trial *in absentia* EAW's in which the issuing country no longer allows for the possibility for a retrial often lead to problems, as was noted in for instance the Belgian, Romanian and Polish reports. As retrial guarantees were often impossible to give out or insufficiently drafted, this lead to a relatively high number of refusals in the sampled cases.

After the various country reports and some observations on recurring legal trends, a quantitative approach was also presented. In this portion of chapter 6 substantial attention was devoted both to a comparison of the three country groups and a longitudinal analysis of the EAW instrument. An interesting result from the country group comparisons was that while the Amsterdam court's cases on surrenders towards more dissimilar countries did show a relatively higher turnover time, a somewhat higher amount of paragraphs of analysis and relatively more information requests, there was no substantial evidence to support the claim that the amount of surrenders versus the amount of refusals was also affected by these factors. It may be inferred from this that for cases involving the surrender of a person towards more dissimilar countries with regard to culture, the extent of corruption problems and the extent of

[172] It will be recalled that the EAW Framework Decision's time limits start running on the date a requested person has been arrested in the executing state.

[173] To mention only a few examples of relatively problem-free cases that received such a 30 day extension: Amsterdam district court, 13-04-2008, ECLI:NL:RBAMS:2007:BB0215; Amsterdam district court, 06-07-2012, ECLI:NL:RBAMS:2012:BX1729; Amsterdam district court, 28-02-2014, ECLI:NL:RBAMS:2014:949

centralization do encounter problems in the intermediate stages, but that the actors involved manage to solve these procedural problems in order to generate a consistent output of surrenders. This is certainly a positive point in the performance of the Amsterdam court, as it illustrates that the problems that do occur are eventually overcome for the most part.

Subsequently, the longitudinal analysis showed a remarkable amount of consistency in the period 2006-2014. While turnover times show no substantial increase or decrease, it is notable that both the median and average turnover times are higher in all periods than the 60 day time limits imposed by the EAW Framework Decision. Once again it must be emphasized that a more exact approximation can be made on the basis of arrest dates, but that the start date of the court stage – which initiatives after arrest already indicates that time breaches are consistently a problem for the Amsterdam court's surrender performance. While there is a small face value indication that the amount of surrenders versus the amount of refusals has slightly changed in favor of the latter, this was not so substantial that the difference formed a statistically significant result. While two of the main output indicators therefore remained substantially consistent, some developments were nevertheless noted in other criteria. One interesting development is the relative increase of execution of sentence cases in the sample, which is probably due to the higher amount of EAW cases from Bulgaria and Romania in recent years. Other samples or later studies may therefore find a more consistent number. Another development is the observed increase in the amount of cases in which a double criminality is necessary. This signals a shift in the type of requests made by issuing authorities to the Netherlands from list offences to non-list requests. Worrying from the perspective of the Amsterdam court's adherence to the time limits imposed by the EAW Framework Decision is the relative increase of postponed cases. As mentioned earlier, these cases often breach the time limits of the EAW, decreasing turnover times and surrender speed.

Finally, the role of the EJN and Eurojust in facilitating and coordinating interactions between Member State authorities was discussed. In chapter three it was suggested that Eurojust, considering its tasks and network position as a centralized actor functioning as an intermediary, could be able to fulfill the role of an NAO. Nevertheless, the interview conducted at Eurojust revealed that this suggestion was wrong. The role of Eurojust is more specialized, as it performs legal services for specifically complicated cases, and only performs a coordinating function in this context. The EJN other hand, while being organized as a network of contact points within the EAW system, does focus on information sharing, easier access for other network members and facilitating exchanges. It thus incorporates some of the activities that would be expected of an NAO, although its structure does not allow for a governing or coordinating role. Expanding upon the roles of either the EJN or Eurojust could therefore perhaps add to the coordination in the EAW network and indirectly add to the fostering of mutual learning and mutual trust. Parts of this role could be fulfilled by the establishment and adequate maintenance of databases of jurisprudence and warrants, as suggested by the interview respondents.

7.2 Limits and positive points of the research design: methodological considerations for similar future studies

The research design utilized by this project was to a large extent explorative in nature. A combination of social science literature and legal literature was used to generate several hypotheses on the performance of the Amsterdam court's in the context of the EAW instrument. Without much guidance due to a lack of former social science research into the topic, chapter 4 subsequently presented a multi-method framework which included coding of the Amsterdam court's cases, a purposive selection of Member

States on the basis of their culture, corruption and centralization differences to the Netherlands and an interview at Eurojust. This has led to several insights into the strong and weak points of the research design, which are also useful for similar future endeavors. First, the main positive aspect of the research design – its multi-method approach – will be discussed. Subsequently, several points left unaddressed or under-researched will be considered.

Combining qualitative and quantitative methods to correctly interpret performance indicators

One of the primary strong points of the research design was its combination of quantitative and qualitative research methods. A quantitative method on the basis of performance indicators provides an innovative way to research a traditionally legal problem and can garner valuable insights into surrender vs. refusal ratios, turnover times, differences in surrender relationships between several states, etc. However, using performance indicators has well-documented downsides. Output values may for instance at face-value misrepresent the preceding processes leading to that output. De Bruijn (2002) has for instance noted that this is particularly true for performance indicators which fail to capture all the values being strived for by an organization. The relevance of this argument is apparent in the data-analysis of chapter 6. An observer that is merely looking at output indicators on the differences in turnover times between similar and dissimilar country groups would probably draw a negative conclusion on the performance of the Amsterdam court. This could for instance be based on the observations presented in section 6.12 that turnover times for states which are dissimilar to the Netherlands on the culture, corruption and centralization factors have a relatively higher turnover time. One could easily interpret this result as an indication of mistrust on part of the Dutch authorities, which undermines automatic surrender and the principle of mutual recognition. Nevertheless, the legal analysis of the various cases in the beginning of chapter 6 yielded the additional insight that the Amsterdam court's postponements are often a result of the court having insufficient information on the warrant, guarantees, or the defendant's status. Adding these observations in the mix thus leads a different conclusion: the court does not necessarily show mistrust, but is rather weighing the values of appropriate judicial protection, surrender speed and automatic surrender. When it is confronted with, for instance, an insufficiently translated guarantee which is somewhat ambiguous, it often postpones a case and asks the Dutch prosecutor to gather additional information from the issuing authority. This is done to both ensure the defendant's position as well as strive for the surrender to be allowed, these values outweighing the added time it would cost to decide on surrender. Considering the nuanced nature of EAW surrender decisions, future studies utilizing quantitative methods to research the performance of courts in EAW matters should add some form of qualitative analysis of the court's motivations, in order to avoid wrongful interpretations of output indicators.

Lack of insight into the situation in the issuing state

While the combination of qualitative and quantitative research into the execution role of the Amsterdam court was argued to be a strong point of this research design, this argument immediately points to a weak point in the design as well. While in-depth qualitative research was performed with regard to the Dutch side of the surrender process, similar insight was not available for the activities of the issuing state's authorities. The research was therefore careful not to immediately implicate the performance of authorities issuing states, instead choosing when applicable to note the lower performance of the surrender relationship in general due to a particular result of an issuing countries' internal process. An example is when Bulgarian or Spanish authorities did not provide additional information on guarantees, leading to the refusal of several surrenders. While the result was noted to be negatively affecting

performance of the surrender relationship in chapter 6, the lack of insight into the process leading up to this result meant that no further statements on the level of performance of those authorities could be made. Future research could attempt to incorporate an approach that focuses both on the issuing side and the executing side of several cases. This would add insight for instance on why no additional information was sent to the Netherlands and whether this is an indication of bad performance or is caused by another factor.

Isolation of independent variables and potential spurious factors

One of the main weak points of this research design is that it is largely incapable of isolating which of the three independent variables used for the country selection – namely culture, corruption or centralization – is the main factor in determining the performance of a specific relationship. It has merely shown that the combination of these three factors predict differences in the Amsterdam court's output on indicators such as turnover time, postponements, ratio of execution vs. prosecution cases, while on other outcomes the Amsterdam court's performance is remarkably consistent. Adding to this problem is the issue that the independent variables corruption and culture seem to co-vary considerably. Future research should therefore include as one of its main points which of these independent variables is in particular a powerful explanatory factor of differences in surrender relationships. This could be done by changing the selection of studied Member States in order to for instance include two culturally dissimilar countries, but which vary on the centralization variable. Another method to ascertain which of the three variables is particularly important is through interviews with executing authorities.

Another matter is the potential co-variation of the variables used in the context of this research with accession dates of the various Member States. The dissimilar country group is for instance comprised out of Bulgaria, Romania and Poland. The former two Member States only acceded to the EU in 2007, while Poland is also relatively new with its 2004 accession. By contrast, the similar and intermediate country groups consist of older Member States. Therefore, EU membership duration may be a spurious factor, with older Member States potentially having aligned their criminal justice systems better to other EU members.

Ascertaining network coordination

In chapter 6 the results of the interview at Eurojust were described. In particular, attention was devoted to the limited capacity of current NAO literature to describe the facilitation and coordination provided by the combined activities of Eurojust and the EJN. While Eurojust holds a central network position, its function is too geared towards specialized legal advice in particularly complicated cases to perform a general coordinating and governing role for everyday network activities. Conversely, the EJN's position as a network of contact points with the EAW network allows it to facilitate exchange and foster trust, but does not allow it to govern the network. While the implications for the coordination of the EAW network will be discussed in the next section, it is necessary here to mention that future examinations of coordination in the EAW network should place a higher emphasis on the role performed by the EJN. In particular, the EJN is interesting from the perspective of fostering mutual trust and knowledge into other legal systems and work-methods. Thus, instead of focusing interviews solely at Eurojust, national authorities interacting with the EJN and EJN contact points should also be approached.

Generalizability to other Member States

Another limit of this research design is that its findings cannot readily be generalized to the executing judicial authorities of other Member States. In chapter five it was seen that the implementation of the EAW differs considerably between Member States, including what is required of local courts and the organization of the local EAW system. Furthermore, cultural differences, training differences, variations in the trust of local authorities in other Member States and varying language problems are just a few examples of the potentially limiting factors with regard to the generalizability of this research. Instead, it would be desirable to repeat a similar research in these Member States to determine whether the findings of chapter six are roughly consistent throughout the EU.

7.3 Recommendations with regard to the implementation of the EAW instrument on the Dutch level

The findings of the data analysis in chapter 6 have implications on two levels. The first level concerns recommendations to the Dutch implementation of the EAW instrument and will be discussed in this paragraph. Secondly, some recommendations pertain to the design of the EAW network on the European level, which will be discussed in section 7.4. With regard to the recommendations for the Dutch implementation of the EAW instrument, it is first of all helpful to remember that the data analysis indicated that, overall, the EAW instrument functions well in Dutch surrender relationships. The recommendations mentioned here, therefore, relate to several specific problems still existing in the EAW framework, but do not call the overall implementation into question.

Enhanced capacity of the Amsterdam court

From the perspective of the EAW instrument's aim to improve the speed of surrender in Europe, it would be beneficial if the Amsterdam court's capacity would be improved in the future. It was noted in chapter 6 that the Amsterdam court extends the standard 60 day time-limit by another 30 days due to its busy schedule, but that even then there are instances in which the secondary 90 day time-limit is not met. This does not only cause average and median turnover times to be above the regular 60 days limit, but also causes postponed cases to often breach EAW time limits significantly. Thus, to improve the Dutch implementation of the EAW system it would be conducive to heighten the amount of EAW cases that can be handled per time-period. This would at least allow the court to comply with the time-limits for relatively simple cases that do not require postponement. Currently, the EAW is integrated into a unit designated 'zittingteam 3' (hearing team 3) at the Amsterdam court (Rechtbank Amsterdam, 2013), while the other two units do not handle EAW cases. Expanding the total amount of teams or allowing the other two current teams to also handle EAW cases may provide a solution to the Amsterdam court's capacity problems, provided there is enough budget, training, space and support available for such a modification.

Continue the application of the return guarantee system for cases in which the Netherlands cannot exercise jurisdiction

At several points the issue of the forced discriminatory treatment of residents in the Netherlands to which the Netherlands cannot exercise jurisdiction was noted. There were several instances in which no jurisdiction was available for the Netherlands, leading the Amsterdam court to weigh the importance of the exercise of justice more important than the refusal of surrender on the basis of the fact that the Netherlands could not enforce the sentence. Additionally, the Amsterdam district court argued before 2013 that it cannot apply the Dutch Surrender Act *contra legem,* which lead the court to consistently apply the jurisdiction criterion of Article 6 of that act. However, it will be recalled that in the Kozlowski case the ECJ established that allowing residents to undergo their sentences in their country of residence would be

beneficial to their reintegration into that society.[174] Moreover, as nationals are normally always granted the right to undergo their sentence in the Netherlands – due to nationality being a source of jurisdiction – the difference in treatment between residents and nationals could be seen as discriminatory in nature. In a 2013 case the Amsterdam court made a very important change in its jurisprudence, however, in which an unambiguous return guarantee that was certain to be provided by the Belgian authorities would be able to set aside the jurisdiction requirement of article 6(5) of the Dutch Surrender Act. The court defended its new position by stating that the prohibition on discrimination is enshrined in primary EU law, requiring the court to set aside national provisions which cannot be interpreted in accordance with this principle.[175] Continuing this line of jurisprudence seems beneficial as the court rightly states that a return guarantee would allow the sentence to be carried out as well as facilitate the reintegration of the requested person into the Dutch society. Amending the Dutch Surrender Act in order to codify this jurisprudence is also recommended.

Solve conflict in double criminality requirements between EAW instrument and Convention on the Transfer of Sentenced Persons

In the sample of studied cases an exceptional conflict between the EAW and the Convention on the Transfer of Sentenced Persons was noted in two cases.[176] It will be recalled that the first case concerned a drugs offence, as well as weapons possession. For the purposes of German law, the weapons possession element was considered an aggravating circumstance instead of a separate offence, leading the German issuing authority to only send out a request for what it considered the main drug-related offence. In the context of its ruling on EAW provisions the Amsterdam court did not find this joint request problematic. However, due to the person's Dutch nationality a return guarantee was also necessary, which is requested on the basis of the Convention on the Transfer of Sentenced Persons and its implementing Dutch legislation. In accordance with Article 3(d) of this legislation,[177] the court has to check for double criminality. The consequence was that weapons possession, not being a part of Dutch narcotics laws, was considered under the Dutch weapons law instead. Subsequently, the court noted that the penalty for the possession of weapons under that law was not sufficient for EAW thresholds. While the court's position given the provisions in force is understandable, this contradiction between the Convention's implementation and the EAW's implementation seems undesirable. The law on the transfer and execution of criminal penalties can potentially defeat the purpose of the list-offences of the EAW Framework Decision. As many of the requests on the basis of list offences would also pass a double criminality test, this is not a regularly occurring problem. Nevertheless, for exceptional cases this is an issue to solve in the near future, as it does provide a threat to the consistent application of one of the core elements of the EAW.

Accept German as an official language for EAW's

Translation issues are one of the problems that have been mentioned as affecting the performance of surrender relationships in the EU. It was seen that in for instance Spanish, Bulgarian and Romanian cases several problems arose due to lacking translations. Conversely, countries which consistently delivered native or near-native level guarantees and information seemed to lack such problems. It was also seen in a German case that the court was willing to interpret the German warrant due to its suspicion that a few

[174] C-66/08 – Kozlowski [2008] ECR I-06041, p.45-46
[175] Amsterdam district court, 23-07-2013, ECLI:NL:RBAMS:2013:4914, p.23-36
[176] ECLI:NL:RBAMS:2014:5767
[177] Law transfer execution of criminal penalties

elements in the English translation were wrong. While German is not a language which is currently an official language for EAW's in the Netherlands (it only officially accepts English and Dutch warrants), the option to also accept German warrants and information could be explored further to reduce translation issues. If implemented, this could reduce linguistic problems in cases with native German countries such as Germany and Austria, as well as provide an additional option for judicial authorities in other countries which do not have significant amounts of English expertise available. Whether accepting German information and warrants officially is feasible would depend *inter alia* on the current skills of prosecutors, Amsterdam court judges and defense lawyers. Considering the consequences the addition of German as a major working language would have for these parties, a feasibility study incorporating the views of stakeholders would be beneficial. It is worth mentioning, finally, that the change would not require a revision of Dutch law, as article 2 of the Dutch Surrender Act only specifies that a warrant has to be translated into one of the official languages of the executing state. Only a new declaration noting the addition of German as an official language to the EU is therefore needed to implement the change.

Reduce amount of postponed cases by working on contacts before court stage

In the longitudinal analysis a slight trend towards the increase in the ratio of postponed cases was noted. It has also repeatedly been emphasized that postponed cases often substantially breach the EAW's time limits. Furthermore, the issue that a defendant is left in uncertainty for a prolonged period of time may be noted as an additional argument to reduce the amount of times such a postponement occurs. Since many postponements seem to result from inadequate information, insufficient information, guarantees that have not yet been provided, etc., a part of the problem may be alleviated through additional efforts by Dutch prosecutors to gather all relevant information before the court stage. However, due to the fact that this study has not examined the internal processes of either the issuing authorities or the Dutch prosecutors, it is unclear to what extent this would be a good option to reduce postponements. It is nevertheless an avenue worth exploring further.

7.4 Recommendations with regard to the coordination of the EAW instrument on the European level

Eurojust/EJN coordinating unit

It was noted on the basis of the interviews conducted at Eurojust that neither the EJN nor Eurojust itself truly performs the role of an NAO. It will be recalled that the EJN's decentralized organization seems particularly suited to the facilitation of information exchanges, while the Eurojust national desks and legal service are used mainly for the assistance in particularly complicated cases. While both thus perform a useful role in facilitating network performance, there is currently no central coordinating entity for EAW cases and other mutual recognition instruments. While a true governing role for an EU network actor seems both politically far-fetched and would be difficult to reconcile with the focus of Articles 82 and 84 TFEU on mutual recognition, facilitation, minimum rules and EU supportive action, a more subtle version of an NAO might be possible. As the EJN Secretariat is already incorporated into Eurojust, its functions may be expanded upon to move beyond the maintenance and promotion of the network itself to form a central contact point for Member States. The EJN secretariat's integration into Eurojust would allow an expanded form of it easy access to the latter's legal department and language assets. Furthermore, its network position in both the smaller EJN and the larger EAW networks would allow it to quickly liaise with the relevant authorities. The secretariat's maintaining role over the EJN's information systems would also allow it to quickly access and distribute relevant information. Such a central contact point would offer Member State authorities an additional option to the national EJN contact points or other Member State

authorities. This can be useful in situations where a Member State authority is unsure which counterpart to address in another Member State, or when the authorities in the counterpart Member State are perceived to cooperate insufficiently. Its nature as a European contact point instead of a national contact point would also reduce the chance that it acts in the national interest instead of the interest of the network's goals. Thus, such a unit would be well placed to fill the missing gap between the facilitating decentralized role of the current EJN contact points and the specialized legal advice of the current Eurojust legal department. Such an expansion of the EJN and Eurojust's tasks does not seem to run counter to the Treaties. First of all, the new unit's role would remain limited to requests from the Member States. This means that the unit would for instance fit within the scope of Article 84 TFEU, under which the EU may establish promoting and supporting measures for Member State action. Alternatively, the unit could be established on the legal basis of Eurojust provided by Article 85, as paragraph 1(b) provides that Eurojust's tasks may include 'the coordination of investigations and prosecutions'. The latter option would, however, mean formal incorporation of the EJN within Eurojust, while at this point their integration remains limited to sharing accommodations and a privileged working relationship.[178]

Improve the comprehensiveness of the EJN's Judicial Library

Another recommendation related to the coordination of the EAW network is for the EJN's website to provide additional information on national jurisprudence, warrants, and national requirements of guarantees, information, etc. Currently, the EJN lists information about the main ECJ cases in the field of the EAW and European criminal law, a set of relevant ECHR cases and a small number national cases. Furthermore, the EJN site notes the relevant authorities of the various Member States, provides standard EAW forms in national legislation, notes the status of implementation of several important developments in European legislation and several EAW handbooks. However, an additional effort could be made to clarify which conditions a Member State has for incoming warrants and information. For instance, providing standard return and retrial guarantees which would be accepted by the Netherlands could reduce both the amount of translation mistakes in guarantees as well as problems with the level of unambiguousness and exactness required by the Amsterdam court.

Furthermore, information on the implementation of the EAW, including conditions of pretrial detention, mandatory grounds for refusal, optional grounds for refusal, rights of the defendant, etc. would be interesting to add. Due to language barriers it is currently necessary to have recourse mainly to scientific literature on the implementation of the EAW Framework Decision on these issues in the various Member States. A good example is the oversight provided by the Asser Institute's Eurowarrant project. As these documents only provide a snapshot of legislation and jurisprudence at the time of writing of the publication in question, a more structured approach through the EJN database would seem beneficial for not only Member State authorities, but also defence lawyer's, requested persons, NGO's and academia.

Provide clarity on Eurojust's tasks under Article 17(7) of the EAW Framework Decision

It will be recalled that Member States are obliged to transmit their breaches of EAW time limits to Eurojust under Article 17(7) of the EAW Framework Decision. Eurojust employees have indicated that it is currently unclear what exactly should be done with these numbers and for whom. Article 17(7) also adds that in repeated delays on part of another Member State, the issuing state may inform the Council of this structural problem. This research has furthermore indicated that at least for the Dutch Amsterdam court delays and time-limit breaches are a frequent occurrence. Should this finding also be applicable to other

[178] See Article 25a and preamble 19 of the Eurojust Decision

Member States, the EU could employ country comparisons through a naming and shaming tactic. Similar to the method used to analyze turnover times in this analysis, median and corrected averages could be utilized in order to ascertain which Member State courts do not meet the requirements of the EAW Framework Decision. Nevertheless, it must also be emphasized that in some cases a longer duration is not necessarily a problem caused by the executing Member State. The executing authority may for instance be waiting on additional information from other Member States, additional information from domestic authorities on the status of the defendant, additional information from the defendant required to for instance show a flagrant human rights breach, answers to preliminary reference questions brought before the ECJ under Article 267 TFEU, etc. Failing to recognize these legitimate causes for cases of a longer duration when drafting reports pursuant to Article 17(7) could cause Eurojust and the EU to stimulate blind trust, which is contrary to the goal of appropriate judicial protection as enshrined in for instance preamble 8 and Article 1(3) of the EAW Framework Decision. See on this topic also the discussion on the proper usage of performance indicators of section 3.7.

Training of Member State judicial authorities

A suggestion by both interviewed EAW employees is to offer national authorities (including EJN contact points) more opportunities for legal and linguistic training. Strategic support from the European Union to facilitate such training projects in countries where a specific skill could receive a quality boost could be a good option to implement this suggestion, in particular when this is coupled with proper analyses where the weak points of cooperation in the current EAW system lie. One problem enhanced training could perhaps mitigate is the communication problems occurring between the judicial authorities of Member States. It was for instance noted that the Amsterdam court encountered some difficulties in its communication with Spanish and eastern European Member States. Regardless of whether this problem is due to the Dutch authorities or their counterparts in these other Member States, additional training on how to communicate with members from other cultures and legal systems and on EAW procedures could reduce these types of problems. In particular problems such as sending out insufficient information or neglecting to reply to information requests at all could be combated through such a method. Moreover, training EJN contact points may allow them liaise better with other relevant judicial actors when such communication problems are encountered. As insufficient communication is an issue that led to some avoidable refusals in the dataset, an additional investment in communication trainings may be worth the costs of such an initiative.

7.5 Providing context to performance indicators

In addition to the aforementioned recommendations for the EAW system, the research has theoretical implications for the literature on the study of performance indicators as well. It will be recalled that chapters 3 and 4 devoted substantial attention to the benefits, downsides and pitfalls that are associated with the usage of performance indicators in the public sector. It was mentioned that the potential contribution of performance indicators in making data comparable and providing learning and evaluation opportunities was an important benefit for this study. It was also noted, however, that output indicators, in particular when applied wrongfully, can induce a misleading interpretation of the output of an organization. One way in which such a wrongful interpretation may occur, according to de Bruijn (2002), is if output indicators are not reflective of the process that lead to the output – a seemingly bad result of an organization may be perfectly explainable due to obstacles in the throughput stage which are not captured by the output indicator. Secondly, a quantitative indicator may not take into account all the values an organization strives for when generating its output. It was argued that these issues of

performance indicators could also be applicable to the Amsterdam district court's EAW output, as the court is faced with difficult to quantify normative appraisals, which make a purely quantitative approach undesirable.

Therefore, qualitative analyses were added to provide more context to the quantitative indicators. Furthermore, some of the quantitative indicators included in the research focus on the input the court receives and throughput issues during the court stage. The heavily legalized nature of the EAW means that many of these input and throughput factors can relatively easily be identified and coded on the level of individual cases – as was done in the context of this research. By coding input and throughput factors such as the necessity of additional information requests, whether postponements occurred, double criminality tests, etc., it thus becomes possible to go beyond a face-value judgment on whether a long turnover time or a refusal is a sign of insufficient performance. An observer can filter through the output data to notice either divergent individual cases or divergent surrender relationships with another Member State and then turn to input and throughput indicators to see whether this is likely caused by a factor external to the court or whether it can be considered a sign of an internal performance issue. This may reveal, for instance, that a lack of a reply to a request for a guarantee by the issuing authority lead to both a high turnover time and a refusal of surrender. Subsequently, this evaluation may be further strengthened through performing a qualitative analysis of a case for the specific reasons and considerations the court has given for an input value to lead to the eventual output value. Including qualitative analysis adds to the previous process that organizational values which cannot effectively be measured by quantitative indicators can be recognized before passing judgment on the performance of the court. For instance, it was seen that refused cases in which a guarantee was provided by other authorities were still refused due to the guarantee being too ambiguous to effectively safeguard the return or retrial of a requested person. Thus, the tiered process employed by this research – which includes input and throughput data as well as qualitative analysis – may provide a complement to the traditional use of output indicators in circumstances where the input can easily be coded, qualitative analyses of output are feasible and output is relatively easy to compare.

7.6 Topics for further research

While section 7.2 already mentioned several ways in which future research similar to this thesis project could be conducted, it is also worth mentioning several related topics of inquiry which would require differently structured research projects altogether. It was noted in chapter 6 that the new Member States seem to transmit execution of sentence EAW's relatively often, but that this type of EAW does have a slightly higher chance of being refused. It would be interesting to see to what extent this development is recognizable in other European countries and whether other executing judicial authorities also have a tendency to refuse execution of sentence warrants more than prosecution warrants. If both answers are in the positive this would be a worrisome development for the EAW network in general as the amount of surrenders relative to the amount of refusals would decrease.

Another interesting topic for further research would inquire to what extent the cooperation between prosecutors in Europe performs smoothly. The project could focus on the differences in mutual trust between these authorities and how this affects their performance. In the initial phases of this thesis project a similar set-up was considered, but this proved unfeasible with the means available. Nevertheless, such a project would both answer questions on the extent to which inter-organizational trust is a relevant factor in a highly legalized network, as well as how the EAW's performance is affected by an essentially non-legal issue.

As this research has not been fully capable of isolating the variable for centralization and decentralization, a future study mainly comparing the knowledge, expertise and performance of centralized versus decentralized EAW actors would also be useful. The suggestion that a more centralized actor is capable of providing higher quality output and is better at fostering relationships with other EAW actors seems plausible and would have large implications for the decentralized EAW systems in the EU. Countries such as Estonia and Finland, which include a centralized authority for the issuing of execution of sentence warrants and a decentralized organization of prosecution warrants may provide good case studies. Alternatively, several Member States varying in their degree of centralization could be investigated. Important is that the distinction between the issuing and executing tasks is well maintained and that no generalizations are drawn too easily on the performance of a Member State on both tasks.

Finally, it is worth mentioning that NAO's on the national level may also have a part to play in the performance of judicial authorities in decentralized system. Similar to the centralization and European-level NAO arguments presented in chapter 3, an EAW central authority may be able to specialize itself in EAW matters and assist decentralized actors in the fulfilment of their roles. Furthermore, where this central authority is capable of improving the level of issued warrants, performing translating roles, etc., this may impact the surrender relationship with a third country. Finland's NBI seems to be an example of a central authority that performs such a function. In chapter 5 it was mentioned that the NBI for instance translates and checks warrants drafted by decentralized prosecutors. Whether decentralized countries that include such an authority in their system perform better and generate higher amounts of trust in their foreign counterparts is another topic for further study.

7.7 Closing remarks

The surrender system set up by the EAW Framework Decision after the terrorist attacks of 9/11 provides a fascinating study subject. This thesis has shown that the social sciences can provide valuable contributions to the research into international legal cooperation systems. By providing an empirical take on the performance of the Amsterdam court as an executing judicial authority under the EAW, the assertion by several EU evaluations that the EAW generally functions well has been supported further (see, for instance: European Parliament, 2009, p.2-3; European Council, 2009a, p.6-7). From the perspective of the EAW Framework Decision's objectives the Amsterdam court should strive for the objectives of fast surrender, automatic recognition of the decisions of other Member States and an appropriate level of judicial protection. As the latter two objectives are somewhat in tension with one another, it is in particular impressive how the court consistently manages to balance both interests in an appropriate manner. Only a few of the 116 cases examined in chapter 6 have raised questions on whether the court could have ruled otherwise, with its decisions on whether to refuse surrender or to trust its counterpart Member State authorities generally being sound.

This does not mean that the Amsterdam court's performance was not lacking in any area at all, however. On several specific topics issues were detected that could be resolved for a higher level of performance. First and foremost the project has emphasized at several points that the Amsterdam court is often not in compliance with the time-limits imposed by the EAW Framework Decision. Furthermore, legal issues such as the reintroduction of double criminality to EAW list offences through the Convention on the Transfer of Sentenced Persons is an issue to be resolved.

The thesis has also shown that mutual recognition cannot be taken for granted, as the differences between Member States can be substantial. The indications that cultural, corruption and centralization

related differences of counterpart Member States were reflected in several output measures such as surrender speed and the types of cases suggests that merely basing a measure on mutual recognition and expecting a good performance will not work. Luckily, the EU has implicitly already recognized this necessity and invested significantly in the adoption of Framework Decisions on minimum rules and support by Eurojust and the EJN. By focusing more on training of professionals in the future, improving the coordination provided by EU actors and making information accessible to practitioners the EU could improve the quality of the judicial cooperation, but this would also require an adequate evaluation of the level of output of the various Member States which is not only based on the application of legal principles, but also focuses on issues such as communication skills, timely responses, organizational expertise and inter-organizational trust. After all, behind the criminal law nature of the EAW network a substantial dimension of inter-organizational cooperation and administration is also essential to the smooth performance of the surrender system. When applied correctly, performance indicator values supported with sufficient in-depth information on how these numbers were achieved can aid in this endeavor.

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Annexes

Annex 1: Operationalization table

Operationalization table			
Variables	**Variable type**	**Indicators**	**Data measurement/utilized data**
Corruption	Independent	Perceived corruption in Member States	**WGI indicators (control of corruption); see Annex 2;**
			Special Eurobarometer 374: Corruption – Question QC4 and Question QC9; see Annex 2
Culture	Independent	Scores on Hofstede's cultural dimensions	IBM survey data; see Annex 1
Centralization	Independent	Degree in Member States to which extent EAW activities are focused in a low or high number of judicial authorities	Content analysis country reports on EAW implementation, in particular reports on fourth round of mutual evaluations of the European Council
Network coordination	Independent	Perceptions of employee's on the influence of coordination	Semi-structured interview Eurojust
Performance	Dependent	Surrender Speed	**(Statistical) comparison of turnover times per surrender relationship**
		Automaticity of surrender	content analysis of EAW court cases and ranking of the amount of paragraphs devoted to an in-depth analysis of a surrender case in the Netherlands
		Appropriate judicial control	content analysis of EAW court cases and information requests; additional information gained in in-depth interviews with Eurojust.

Annex 2: Cultural dimensions of Hofstede (2001)

	PDI	IDV	MAS	UAV
Netherlands	38	80	14	53
Estonia	40	60	30	60
Bulgaria	70	30	40	85
France	68	71	43	86
Austria	11	55	79	70
Belgium	65	75	54	94
Czech rep	57	58	57	74
Denmark	18	74	16	23
Croatia (2013)	73	33	40	80
Finland	33	63	26	59
Germany	35	67	66	65
Greece	60	35	57	112
Hungary	46	80	88	82
Ireland	28	70	68	35
Italy	50	76	70	75
Latvia	44	70	9	63
Lithuania	42	60	19	65
Luxembourg	40	60	50	70
Malta	56	59	47	96
Poland	68	60	64	93
Portugal	63	27	31	104
Romania	90	30	42	90
Slovakia	104	52	110	51
Slovenia	71	27	19	88
Spain	57	51	42	86
Sweden	31	71	5	29
UK	35	89	66	35
Cyprus	Na	Na	Na	Na

Table 1: Cultural Dimension scores per Member State

Data accessible at: http://geert-hofstede.com/dimensions.html

	PDI	IDV	MAS	UAV	Total difference
Netherlands	38	80	14	53	Na
Latvia	6	-10	-5	10	31
Finland	-5	-17	12	6	40
Lithuania	4	-20	5	12	41
Estonia	2	-20	16	7	45
Sweden	-7	-9	-9	-24	49
Denmark	-20	-6	2	-30	68
Luxembourg	2	-20	36	17	75
Germany	-3	-13	52	12	80
UK	-3	9	52	-18	82
Ireland	-10	-10	54	-18	94
Italy	12	-4	56	22	94
France	30	-9	29	33	101
Czech rep	19	-22	43	21	105
Spain	19	-29	28	33	109
Hungary	8	0	74	29	111
Belgium	27	-5	40	41	113
Malta	-18	-21	43	43	125
Slovenia	33	-53	5	35	126
Austria	-27	-25	65	17	134
Croatia (2013)	35	-47	26	27	135
Bulgaria	32	-50	26	32	140
Poland	30	-20	50	40	140
Portugal	25	-53	17	51	146
Romania	52	-50	28	37	167
Greece	22	-45	43	59	169
Slovakia	66	-28	96	-2	192
Cyprus	Na	Na	Na	Na	Na

Table 2: Difference between Member State cultural dimension scores and cultural dimension scores of the Netherlands

Annex 3: Corruption indexes

	2004	2004	2005	2005	2006	2006	2007	2007	2008	2008	2009	2009	2010	2010	2011	2011	2012	2012	2013	2013
Country/Territory	Estimate	StdErr	Estimate	StdErr	Estimate	StdErr	Estimate	StdErr	Estimate	StdErr	Estimate	StdErr	Estimate	StdErr	Estimate	StdErr	Estimate	StdErr	Estimate	StdErr
AUSTRIA	2,15	0,18	1,96	0,18	1,99	0,19	2,10	0,19	1,92	0,19	1,76	0,18	1,63	0,19	1,44	0,17	1,35	0,16	1,51	0,16
BELGIUM	1,35	0,19	1,34	0,18	1,25	0,19	1,30	0,20	1,32	0,19	1,43	0,18	1,49	0,19	1,56	0,17	1,55	0,16	1,63	0,16
BULGARIA	0,10	0,15	0,06	0,14	-0,10	0,13	-0,23	0,13	-0,30	0,12	-0,25	0,13	-0,21	0,13	-0,23	0,12	-0,24	0,12	-0,29	0,13
CROATIA	0,20	0,15	0,14	0,14	0,09	0,14	0,08	0,14	-0,04	0,13	-0,10	0,14	-0,03	0,13	0,01	0,13	-0,04	0,12	0,11	0,13
CYPRUS	0,89	0,23	0,89	0,21	1,09	0,23	1,08	0,24	1,24	0,23	0,93	0,21	1,00	0,21	0,89	0,20	1,24	0,19	1,24	0,19
CZECH REPUBLIC	0,38	0,14	0,46	0,14	0,30	0,14	0,23	0,13	0,27	0,13	0,33	0,14	0,26	0,13	0,30	0,13	0,23	0,12	0,19	0,13
DENMARK	2,51	0,18	2,31	0,18	2,55	0,19	2,53	0,19	2,47	0,19	2,52	0,18	2,41	0,19	2,45	0,18	2,39	0,16	2,41	0,16
ESTONIA	0,92	0,14	0,97	0,13	0,96	0,14	0,91	0,13	0,87	0,13	0,91	0,14	0,86	0,13	0,93	0,13	0,98	0,12	1,11	0,13
FINLAND	2,53	0,18	2,35	0,18	2,55	0,19	2,47	0,19	2,41	0,19	2,30	0,18	2,18	0,19	2,22	0,18	2,22	0,16	2,19	0,16
FRANCE	1,34	0,18	1,35	0,18	1,46	0,16	1,44	0,17	1,38	0,17	1,42	0,18	1,44	0,19	1,52	0,17	1,42	0,16	1,30	0,16
GERMANY	1,86	0,18	1,86	0,18	1,79	0,16	1,70	0,17	1,73	0,17	1,72	0,18	1,74	0,19	1,71	0,17	1,78	0,16	1,78	0,16
GREECE	0,49	0,18	0,37	0,18	0,35	0,16	0,25	0,17	0,10	0,17	0,01	0,18	-0,16	0,18	-0,18	0,18	-0,25	0,16	-0,11	0,15
HUNGARY	0,65	0,14	0,62	0,14	0,61	0,13	0,56	0,13	0,38	0,12	0,34	0,13	0,25	0,13	0,32	0,13	0,28	0,12	0,29	0,13
IRELAND	1,30	0,18	1,57	0,18	1,71	0,16	1,75	0,17	1,76	0,17	1,77	0,18	1,70	0,19	1,54	0,18	1,45	0,17	1,54	0,18
ITALY	0,38	0,18	0,40	0,18	0,46	0,16	0,31	0,17	0,25	0,17	0,13	0,18	0,00	0,18	0,08	0,17	-0,03	0,16	-0,04	0,15
LATVIA	0,14	0,15	0,32	0,14	0,29	0,16	0,25	0,16	0,13	0,15	0,13	0,15	0,13	0,13	0,19	0,14	0,15	0,14	0,27	0,14
LITHUANIA	0,32	0,15	0,22	0,14	0,07	0,15	0,04	0,13	0,04	0,12	0,12	0,14	0,27	0,13	0,24	0,13	0,31	0,13	0,36	0,14
LUXEMBOURG	1,90	0,20	1,66	0,19	1,90	0,19	2,01	0,19	2,02	0,19	1,99	0,19	2,06	0,20	2,17	0,19	2,12	0,18	2,11	0,19
MALTA	0,93	0,28	0,86	0,24	1,05	0,23	1,06	0,24	1,04	0,23	0,83	0,21	0,86	0,21	0,83	0,20	0,96	0,20	0,99	0,19
NETHERLANDS	2,02	0,18	1,97	0,18	2,08	0,19	2,22	0,19	2,16	0,19	2,17	0,18	2,18	0,19	2,16	0,17	2,13	0,16	2,05	0,16
POLAND	0,11	0,14	0,22	0,13	0,17	0,13	0,19	0,13	0,35	0,12	0,37	0,13	0,41	0,13	0,49	0,12	0,59	0,12	0,55	0,13
PORTUGAL	1,12	0,18	1,06	0,18	0,97	0,16	0,96	0,17	1,00	0,17	1,04	0,18	1,03	0,19	1,08	0,18	0,93	0,16	0,92	0,16
ROMANIA	-0,26	0,13	-0,21	0,13	-0,15	0,13	-0,17	0,13	-0,16	0,12	-0,27	0,13	-0,22	0,13	-0,19	0,12	-0,27	0,12	-0,20	0,13
SLOVAK REPUBLIC	0,39	0,14	0,49	0,14	0,40	0,15	0,30	0,14	0,30	0,14	0,23	0,14	0,24	0,13	0,24	0,13	0,07	0,13	0,06	0,14
SLOVENIA	1,02	0,15	0,89	0,14	1,02	0,15	0,98	0,14	0,91	0,14	1,02	0,14	0,85	0,13	0,90	0,14	0,81	0,12	0,70	0,13
SPAIN	1,34	0,18	1,29	0,18	1,12	0,16	0,99	0,17	1,11	0,17	1,00	0,18	1,01	0,19	1,05	0,17	1,05	0,16	0,81	0,16
SWEDEN	2,20	0,19	2,01	0,18	2,20	0,16	2,24	0,17	2,23	0,17	2,29	0,18	2,32	0,19	2,22	0,17	2,31	0,16	2,29	0,16
UNITED KINGDOM	1,96	0,18	1,90	0,18	1,79	0,16	1,72	0,17	1,66	0,17	1,60	0,18	1,56	0,19	1,58	0,17	1,64	0,16	1,68	0,16

Table 1: Control of corruption (Worldwide Governance Indicators)

Data accessible here: http://info.worldbank.org/governance/wgi/index.aspx#doc-cross

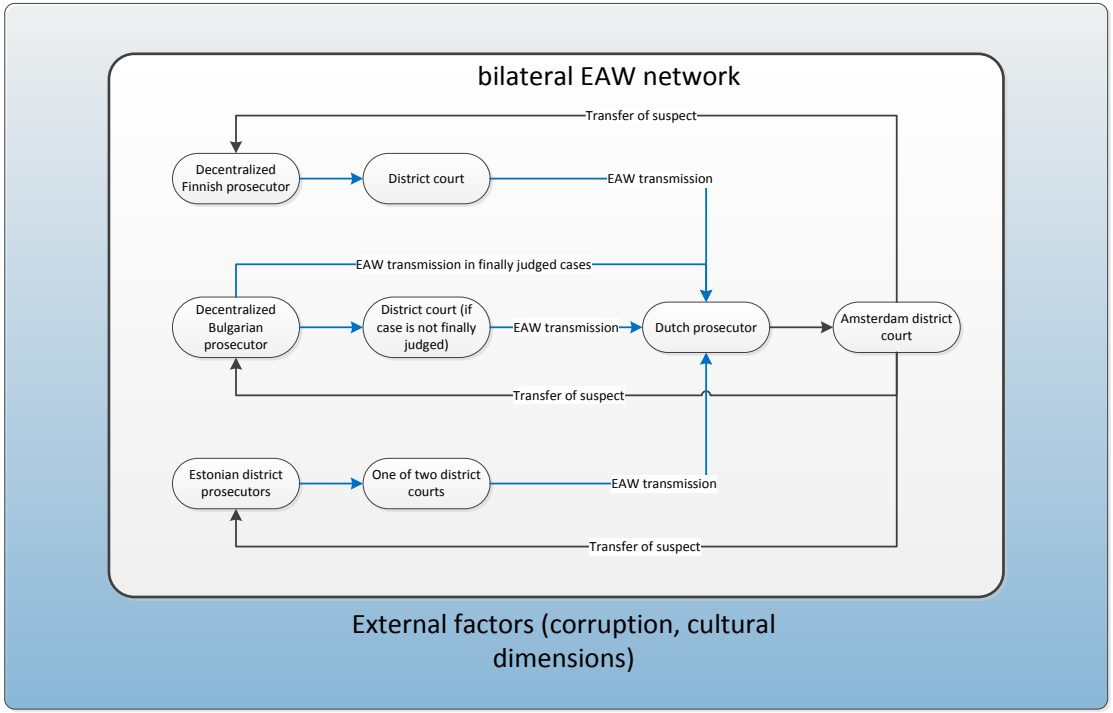
Country	score	Country	score
Finland	6	Portugal	40
Denmark	9	**Estonia**	40
Netherlands	16	**Spain**	41
Luxembourg	19	**Latvia**	49
Germany	19	**Malta**	49
Sweden	19	**Cyprus**	53
Ireland	21	**Romania**	55
UK	21	**Greece**	58
Austria	27	**Slovakia**	60
France	29	**Czech Republic**	60
Belgium	32	**Lithuania**	64
Poland	32	**Slovenia**	65
Hungary	34	**Bulgaria**	76
Italy	38		

Special Eurobarometer 374: Corruption – Question QC4: In (Country), do you think that the giving and taking of bribes, and the abuse of positions of power for personal gain, are widespread among any of the following? [People working in the judicial services] (TNS Opinion and Social, 2012, p.45)

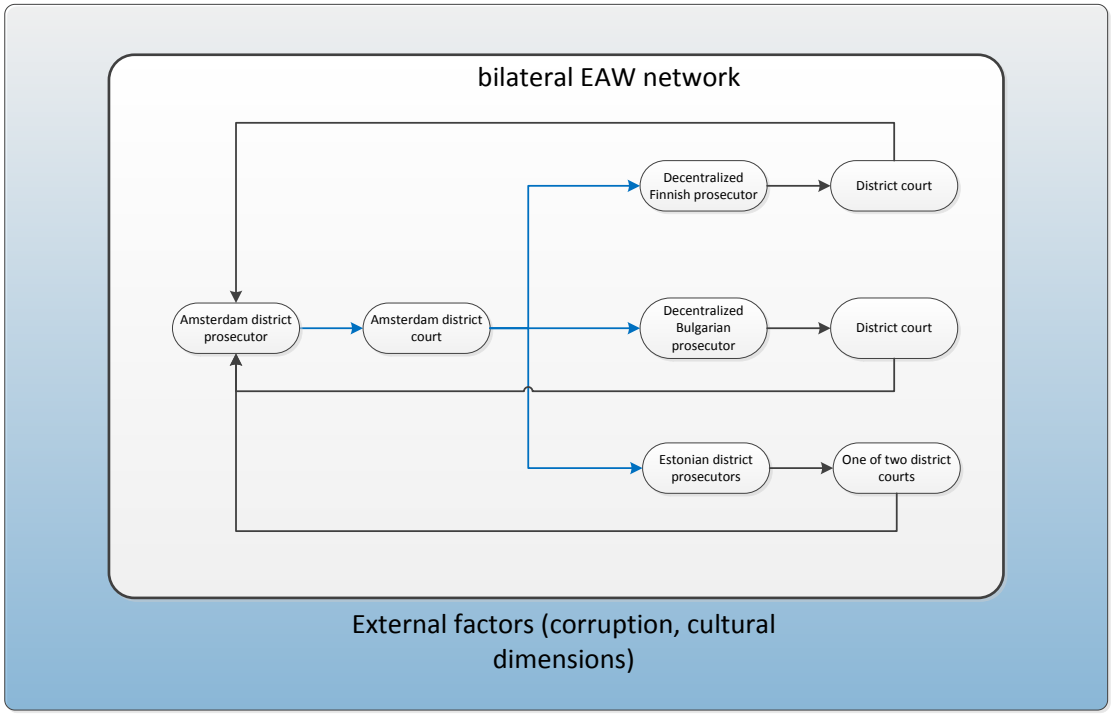
Country	score	Country	score
Denmark	62	**Spain**	36
Germany	59	**Romania**	35
Austria	57	**Latvia**	34
Luxembourg	53	**Lithuania**	34
Sweden	53	**Poland**	34
Netherlands	53	**Cyprus**	29
France	52	**Ireland**	27
Finland	51	**Bulgaria**	26
Belgium	49	**Slovakia**	26
Hungary	40	**United Kingdom**	23
Greece	39	**Malta**	22
Portugal	38	**Slovenia**	21
Italy	37	**Czech Republic**	20
Estonia	36		

Special Eurobarometer 374: Corruption – Question QC9: Imagine that you have been a victim in a particular corruption case, and you want to complain about it. Which institutions/bodies would you trust most to provide a solution for your case? (Max 2 answers) (table only shows answers for 'The judicial system (prosecutions services and courts)') (TNS Opinion and Social, 2012, p.103).

Annex 4: Visual representation of EAW Networks



Bilateral EAW network with Dutch actors performing their executing roles and Finnish, Bulgarian and Spanish actors performing their issuing roles; own work



Bilateral EAW network with Dutch actors performing their issuing roles, with Finnish, Bulgarian and Spanish actors performing their executing roles; own work

Annex 5: Dataset EAW court cases

Sweden

Nr	Nr MS	Date judg-ment	ECLI nr	Case nr	Purpose	Days until surrender	Paragraphs content	Paragraphs foreign law	Paragraphs adequacy EAW	Paragraphs total	Surrender approved?	Surrender decision postponed by court?	Guarantees required?	Adequate guarantees provided?	Extra info required beyond guarantees?	Double crimi-nality test?	Description of main problem(s)
1	1	20-01-2006	ECLI:NL:RBAMS:2006:AV0495	13.497520-2005	Pros	64	2	0	0	2	Yes	No	Return	Yes	No	No	Defence unsuccessfully argued innocence, court trusts Swedish suspicions. Return guarantee necessary and given. Health concerns not substantial enough to prevent surrender.
2	2	30-05-2006	ECLI:NL:RBAMS:2006:AX8631	13.497.228-2006	Pros	70	0	0	0	0	Yes	Once	No	-	No	No	Acts partially committed on Dutch territory. Swedish nationality of person and arguments by prosecutor that Swedish legal order is more affected mean that Amsterdam court will not apply territoriality refusal ground
3	3	08-10-2008	ECLI:NL:RBAMS:2008:BF8942	13.497.398-2008	Pros	48	0	0	2	2	Yes	No	Return	Yes	No	No	Defence argument that dates contained in the warrant were inaccurate not succeeding due to Amsterdam court's trust in Swedish authorities. Retrial necessary and provided. Refusal and Dutch prosecution argued for by defence, not necessary according to court since return guarantee provides enough safeguards.
4	4	28-05-2010	ECLI:NL:RBAMS:2010:BM6381	13.706150-10	Pros	47	1	0	0	1	Yes	No	Return	Yes	No	No	Person resident of Netherlands, therefore return guarantee necessary. Defence argues flagrant breach of ECHR rights due to alleged misleading by Swedish authorities that witness hearing was in fact hearing of requested person as suspect. Court dismisses argument.
5	5	05-07-2011	ECLI:NL:RBAMS:2011:BV0505	13/706674-10	Pros	197	4	1	0	5	Yes	Once	No	-	Yes	No	Condition of requested person leads to fear that temporary custody with restrictions of will inflict psychological damage, constituting a breach of human rights. Swedish reply to questions notes that no restrictions will be present and that local court will

																	swiftly decide on further detention of person.
6	6	06-07-2012	ECLI:NL:RBAMS:2012:BX1729	13.706375-12	Pros	74	0	0	0	0	Yes	No	No	-	No	Yes	While requested person is a resident of the Netherlands, Netherlands has no jurisdiction over offence. Thus, article 6 OLW does not apply.
7	7	03-10-2012	ECLI:NL:RBAMS:2012:BY2001	13.706.477-12	Exec	59	0	5	2	7	Partially (4/5)	No	No	-	No	Yes	Wrong box checked in English EAW translation, corrected by Dutch authorities. While maximum minimum sentence of Swedish law strictly read does not conform to requirements of EAW Framework Decision (FD), the Amsterdam court states that the indefinite duration forensic medical care custodial sentence overrides this problem.
8	8	25-07-2014	ECLI:NL:RBAMS:2014:4514	13-751380-14	Exec	85	0	0	0	0	Yes	Once	No	-	No	Partially (1/2)	Defence argues the national police board cannot be considered a judicial authority for the purposes of the EAW. Court disagrees and refers to website of Swedish authorities listing the police board as EAW authority.

Germany

Nr	Nr MS	Date judg-ment	ECLI nr	Case nr	Purpose	Days until surrender	Paragraphs content	Paragraphs foreign law	Paragraphs adequacy EAW	Paragraphs total	Surrender approved?	Surrender decision postponed by court?	Guarantees required?	Adequate guarantees provided?	Extra info required beyond guarantees?	Double crimi-nality test?	Description of main problem(s)
9	1	17-03-2006	ECLI:NL:RBAMS:2006:BD2943	13.497.557-2005	Pros	93	0	0	0	0	Yes	Yes	No	-	No	No	Court examines whether return guarantee necessary for resident in light of prohibition on discrimination. States that discrimination of Dutch Surrender Act is objectively justified by the goal of reintegration in society and that person is not rooted in Dutch society. Guarantee not necessary. Case postponed due to court considering questions to Dutch immigration service necessary.
10	2	16-05-2006	ECLI:NL:RBAMS:2006:AX8466	13.497.102-2006	Pros	61	1	0	0	1	Yes	No	Return	Yes	No	No	Return guarantee necessary and sufficient. Facts partially occurred in the Netherlands, but Germany

																	better placed to prosecute. Defence disputes the checks for fraud and scam, court notes no difference in Germany exist between both concepts and considers EAW adequate.
11	3	06-06-2006	ECLI:NL:RBAMS:2006:AX9436	13.497.223.2006	Pros	71	0	0	1	1	Yes	No	No	-	No	Yes	The Amsterdam court considers German authorities wrongly checked the sexual exploitation box, as there is no economic interest involved in current facts. Therefore, double criminality test was necessary.
12	4	20-10-2006	ECLI:NL:RBAMS:2006:BD3834	13.497.374-2006	Pros	124	0	0	0	0	Yes	No	No	-	No	No	Netherlands has no jurisdiction, resulting in refusal ground for residency of article 6 Dutch Surrender Act not being applicable. No return guarantee necessary
13	5	21-11-2006	ECLI:NL:RBAMS:2006:BD4475:	13.497.529-2006	Exec	47	0	0	0	0	Yes	No	No	-	No	No	None
14	6	29-12-2006	ECLI:NL:RBAMS:2006:AZ7485	13.497.5992-2006	Pros	46	1	1	0	2	Yes	No	Return	Yes	No	No	Return guarantee necessary and sufficient. German authorities reasonably checked box for fraud instead of considering the dispute as civil in nature, according to the court. Facts partially took place in Netherlands, Germany better placed.
15	7	13-04-2007	ECLI:NL:RBAMS:2007:BB0215	13.497.023-2007	Pros	78	0	0	0	0	Yes	No	Return	Yes	No	Yes	Return guarantee necessary and sufficient
16	8	24-08-2007	ECLI:NL:RBAMS:2007:BB7953	13.497345-2007	Pros	60	1	0	3	4	Yes	No	No	-	No	No	Defence argues translation provides unclear description of place of facts. Court decides to investigate since original German warrant is linguistically accessible to it. Does not follow defence in argument eventually.
17	9	20-06-2008	ECLI:NL:RBAMS:2008:BF0149	13.497.141.2008	Pros	71	0	0	0	0	Yes	No	Return	Yes	No	No	Return guarantee necessary and sufficient. Defence argues offences should be prosecuted in NL, even if a third person did take the drugs to Germany. Germany also has no objection to a Dutch prosecution of the case. Court nonetheless considers request by prosecutor to surrender due to the prosecution in Germany as sufficient , due to its marginal role under

																	Article 13 Dutch Surrender Act.
18	10	15-10-2008	ECLI:NL:RBAMS:2008:BG0981	13/497416-2008	Pros	55	0	0	0	0	Yes	No	No	-	No	No	Facts partially in NL, Germany better placed. Person argues that unlawful arrest occurred and that there is some unclarity with regard to a mutual legal assistance procedure between Germany and NL. Court disagrees and establishes that the legal assistance and alleged unlawful arrest took place in a case against person considering separate facts.
19	11	22-07-2009	ECLI:NL:RBAMS:2009:BJ4248	13/497335-2009	Pros	42	0	0	0	0	Yes	No	No	-	No	No	Defence fears breach of speciality rule, but court trusts German authorities. Person cannot be considered a resident for purposes of Surrender Act.
20	12	29-04-2010	ECLI:NL:RBAMS:2010:BM6364	13.706080-10	Pros	58	8	0	0	8	Partially (159/185)	No	Return	Yes	No	No	Return guarantee necessary and sufficient. Court considers whether facts in Germany were time-barred according to Dutch law, having regard to when warrants for persons' arrest were drafted in Germany. This leads to a partial refusal.
21	13	17-09-2010	ECLI:NL:RBAMS:2010:BN8268	13.706108-10	Pros	53	0	0	0	0	Yes	No	Return	Yes	No	No	Return guarantee necessary and sufficient. Defence argues that requested person might also be prosecuted for second offence after surrender. Amsterdam court that this is not allowed under EAW speciality rules.
22	14	17-05-2011	ECLI:NL:RBAMS:2011:BQ9520	13.706.202-2011	Exec	64	3	1	0	4	No	No	No	-	No	-	Refused on the basis that requested person will not have the opportunity to apply for a retrial (article 12 Dutch Surrender Act). Earlier written objection to court order was received too late according to German authorities. Amsterdam court states that since person does not have a chance to apply for a retrial after surrender, there was no hearing and there is no extra opportunity to appeal, surrender cannot be allowed.

23	15	17-10-2011	ECLI:NL:RBAMS:2011:BU9244	13/706701	Exec	47	0	0	1	1	Partially (2/3)	No	No	-	No	Partially (1/3)	The defence managed to prove that German authorities had sent wrong information on the person fleeing from a mental institution. Subsequent information from German authorities clarified that person was indeed discharged, however, and that a subsequent decision formed the basis of the warrant. Furthermore, a partial surrender followed from the fact that sentences in the Netherlands were too low to pass the double criminality thresholds.
24	16	13-03-2012	ECLI:NL:RBAMS:2012:BW0086	13.706.084-12	Pros	48	1	0	0	1	No	No	No	-	No	-	Requested person was found to be innocent of facts listed by EAW in earlier Dutch judgment. As the prosecution could not gain access to the persons' Dutch criminal procedure file, no more specific assessment than that he was judged for the same facts in the same time period in the Netherlands could be made. It was not possible to discern whether EAW (partially) concerned separate facts after all. Amsterdam court uses available data, however, and assumes *ne bis in idem* refusal ground should be applied.
25	17	18-07-2012	ECLI:NL:RBAMS:2012:BX9621	13/706416-12	Pros	71	0	0	0	0	Yes	No	No	-	No	Yes	No issues
26	18	11-10-2013	ECLI:NL:RBAMS:2013:6944	13.737.795-13	Exec	74	1	0	0	1	Yes	No	No	-	No	No	The fact that the person has requested asylum does not necessitate refusal. Germany takes over asylum request and ECHR right to a fair trial does not apply to asylum procedures.
27	19	05-09-2014	ECLI:NL:RBAMS:2014:5767	13-751660-14	Pros	50	1	0	0	1	Partially (1/2)	No	Return	Partially (1/2)	No	No	Amsterdam court allows that German law sees carrying a weapon as an aggravating circumstance in addition to main offence, and as such this part of the fact complex does not necessitate a double criminality test. Amsterdam court rules differently for Convention on the Transfer of Sentences Persons, however. Under this

																	convention the double criminality must be checked for both parts of the fact complexes since Dutch Opium law does not know the aggravating offence weapon possession and the penalties for weapon possession itself are too low. Thus, surrender for this portion of the fact complex is still refused.
28	20	12-12-2014	ECLI:NL:RBAMS:2014:8403	13-752019-14	Pros	18	2	0	1	3	Partially (4/5)	No	Return	Yes	No	No	A mistake in the EAW caused the warrant to list 254 instead of the 25 offences described. Corrected by Amsterdam court. Partial refusal on basis of Article 13 Dutch Surrender Act as drugs kept in the Netherlands could not be assumed to be destined for the German market.

Finland

Nr	Nr MS	Date judg-ment	ECLI nr	Case nr	Purpose	Days until surrender	Paragraphs content	Paragraphs foreign law	Paragraphs adequacy EAW	Paragraphs total	Surrender approved?	Surrender decision postponed by court?	Guarantees required?	Adequate guarantees provided?	Extra info required beyond guarantees?	Double crimi-nality test?	Description of main problem(s)
29	1	9-04-2010	ECLI:NL:RBAMS:2010:BM6337	13.706096-10	Pros	57	0	0	0	0	Yes	No	Return	Yes	No	No	Return guarantee necessary and sufficient, Defence argued territoriality refusal ground infringes EAW FD as a facultative refusal ground has been implemented as a mandatory one. Court disagrees and states discretion was left to the Member States in this regard.
30	2	18-07-2012	ECLI:NL:RBAMS:2012:BX9620	13/707070-11	Pros	76	0	0	2	2	Yes	No	Return	Yes	No	Partially (2/4)	Defence argues that offences would fall under civil law in the Netherlands. Court disagrees and finds that Finnish request pertains to fraud, a criminal offence. Defence also unsuccessfully contests the EAW's description of criminal intent.
31	3	04-09-2012	ECLI:NL:RBAMS:2012:BY2647	13.706.513-12	Pros	83	0	0	0	0	Yes	No	Return	Yes	No	No	Requested person wants intermediate decision in order to receive documents from Arnhem court allegedly proving his innocence. Court does not honour request, as waiting to balance reasonable suspicion of Finnish authorities against future

																	documents goes beyond the task of surrendering court.
32	4	28-02-2014	ECLI:NL:RBAMS:2014:949	13/751236-13	Pros	71	2	0	1	3	Yes	No	No	-	No	Partially (1/2)	Box for fraud in EAW not ticked in English version. Corrected after Finnish clarification. Defence argues offences are civil in nature, but court finds Finnish authorities reasonably established criminal offence of fraud.
33	5	28-02-2014	ECLI:NL:RBAMS:2014:953	13/751040-14	Pros	39	0	0	0	0	Yes	No	No	-	No	No	Acts person is requested for partially took place in the Netherlands, Finland better placed to prosecute.

Spain

Nr	Nr MS	Date judg-ment	ECLI nr	Case nr	Purpose	Days until surrender	Paragraphs content	Paragraphs foreign law	Paragraphs adequacy EAW	Paragraphs total	Surrender approved?	Surrender decision postponed by court?	Guarantees required?	Adequate guarantees provided?	Extra info required beyond guarantees?	Double crimi-nality test?	Description of main problem(s)
34	1	26-05-2006	ECLI:NL:RBAMS:2006:AX7836	13.497473-2005	Exec	52	0	0	1	1	No	No	No	-	No	-	EAW lacking in several regards, such as description of facts and dates on which facts occurred. Dutch prosecutor had not yet received additional information from Spanish counterpart. Even though both defence and prosecutor requested postponement of the case, court decided to refuse altogether due to insufficient warrant.
35	2	24-10-2006	ECLI:NL:RBAMS:2006:BD4819	13.497.455.06	Pros	76	1	0	0	1	No	No	No	-	No	No	Since person became Dutch, Netherlands has jurisdiction, making time-bars relevant to the case. Court concludes that facts have been time-barred under Dutch law, as Netherlands did not pursue any prosecution of facts since 1983.
36	3	06-03-2007	ECLI:NL:RBAMS:2007:BA0993	13.497.648.2006	Pros	61	3	0	0	3	Yes	No	Return	Yes	No	No	Return guarantee necessary and sufficient. Court determined territoriality refusal ground applicable, thereby going against reasoning of prosecutor.
37	4	06-07-2007	ECLI:NL:RBAMS:2007:BB2690	13.497.255.2007	Pros	59	2	1	1	4	No	No	Return	No	No	-	Return guarantee not sufficient. While Spanish authorities submit person will be returned, they did not add the guarantee that the Netherlands could adapt the sentence, even after explicit request from Dutch prosecutors. Furthermore, defence manages to convince court

																	that the provision under Spanish law the request is based on was not in force when the acts took place, leading to a second ground for refusal. Spanish authorities were approached by Dutch counterparts for clarification, but received no reply. Finally, EAW not sufficient due to provisions of Spanish law not being included in warrant and not supplemented after repeated requests.
38	5	01-08-2008	ECLI:NL:RBAMS:2008:BF1897	13.497253-2008	Pros	59	4	0	0	4	No	No	Return	No	No	-	Return guarantee not given after repeated requests from Dutch prosecutor. Issuing prosecutor merely responds by stating that only Spanish court is competent to give such a guarantee, without requesting the guarantee from the Spanish court. Request to postpone from Dutch prosecutor not granted due to Amsterdam court's position that it is the responsibility of the issuing authority to give a guarantee before the hearing takes place.
39	6	06-08-2008	ECLI:NL:RBAMS:2008:BG1498	13-497313-08	Pros	55	0	0	0	0	Yes	No	No	-	No	No	Requested person filed application to the Hague court in order to be prosecuted in the Netherlands. Defence argues this request should lead to postponement until results are clear. Court finds it unnecessary to take potential result of the Hague procedure into consideration. Dutch Minister of Justice ordered cancellation of prosecution in Netherlands if Spain prosecutes. Therefore no *ne bis in idem*.
40	7	04-03-2009	ECLI:NL:RBAMS:2009:BH6183	13.497.004.09	Pros	38	0	0	0	0	Yes	No	Return	Yes	No	No	Return guarantee necessary and sufficient. Defence argues EAW disproportionate and that surrender would lead to breach of human rights. Referring to the Handbook on how to issue a EAW, the court states that such arguments can only succeed in exceptional cases. The severity of the crime leads

																	the court to decide that an EAW cannot be considered disproportionate. Court also states that term of Spanish prosecution is reasonable and that there is no flagrant breach of human rights.
41	8	03-01-2012	ECLI:NL:RBAMS:2012:BV1112	13/706607-11	Pros	120	3	0	0	3	Yes	Once	Return	Yes	No	No	Defence argues that EAW does not provide adequate description of facts, time and involvement of person. Court disagrees and states that aside from the requirement that the EAW requires appropriate information on these points, it is up to the Spanish authorities to determine whether the person actually committed the alleged acts. Defence argues imminent breach of human rights, court states that arguments not supported by evidence specific to risk of breach for requested person. Facts partially on Dutch soil, Spain better placed.
42	9	04-10-2013	ECLI:NL:RBAMS:2013:6584	13.737355-13	Exec	170	3	0	0	3	Yes	Once	No	-	Yes	No	Postponement due to the necessity to ask additional questions to issuing authority on remaining duration of sentence. Additional information provided clarity. Wolzenburg criteria for residency not applicable since requested person not an EU citizen. Therefore, return guarantee not necessary.

Belgium

Nr	Nr MS	Date judg-ment	ECLI nr	Case nr	Purpose	Days until surrender	Paragraphs content	Paragraphs foreign law	Paragraphs adequacy EAW	Paragraphs total	Surrender approved?	Surrender decision postponed by court?	Guarantees required?	Adequate guarantees provided?	Extra info required beyond guarantees?	Double crimi-nality test?	Description of main problem(s)
54	1	07-07-2006	ECLI:NL:RBAMS:2006:AY2631	13.497.300.2006	Pros	66	0	0	0	0	Yes	No	Return	Yes	No	No	Return guarantee necessary and sufficient. Facts partially occurred on Dutch soil, Belgium better placed. Defence notes that Belgium has never answered questions as to why Belgium would be better placed, but court considers this irrelevant in light of prosecutors' arguments.
	2	19-12-	ECLI:NL:RBAMS:2007:	13.497.552-2006	Pros	92	0	0	0	0	Yes	No	No	-	No	No	Defence argues person was insufficiently informed by Dutch prosecutor.

		2006															Prosecutor agrees, but states that this did not harm interests of requested person. Court sides with prosecutor. Facts partially occurred on Dutch soil, Belgian authorities better placed.
54	3	23-02-2007	ECLI:NL:RBAMS:2007:BA2067	13.497.685-2006	Pros	57	1	0	2	3	Partial (1/2)	No	Return	Yes	No	No	Car used by requested person is Dutch, but as it has no direct connection with the crime the court considers this irrelevant for the purposes of the territoriality refusal ground. Partial refusal for the organized crime request, due to warrant not containing adequate information on this request. As retrial is already applied for by requested person, court treats case a request for prosecution purposes
55	4	31-07-2007	ECLI:NL:RBAMS:2007BB8746	13.497.275-2007	Exec	79	5	4	0	9	No	Twice	Retrial	No	Yes	No	Amsterdam court fears that Belgian authorities will use the date the Dutch surrender procedure started as the date on which the 15 day time limit for a retrial application starts. Court bases this on previous extradition law cases, although the Belgian guarantee seems to indicate otherwise. Court demands additional, second guarantee that if the person after surrender turns out not to be able to receive a retrial, he will be deported by Belgium instead of detained. Belgian authorities cannot agree to this, leading to refusal.
56	5	11-04-2008	ECLI:NL:RBAMS:2008:BD5990	13/497468-06	Pros	555	1	0	1	2	Yes	Once	Return	Yes	Yes	No	Questions asked to Belgium whether there might be a confusion with regard to the requested person and the true suspect. This was also the reason the case was postponed. Answers clarified Belgian request and court accepted the EAW as adequate even though some minor mistakes (such as nationality of person) were present. Facts partially in NL, Belgium better placed.
57	6	15-10-	ECLI:NL:RBAMS:2008:BG0986	13/497365-2008	Pros	90	0	0	0	0	Yes	No	Return	Yes	No	No	Return guarantee necessary and sufficient. Court finds that facts occurred entirely

		2008															in Belgium, making territoriality refusal ground not applicable.
58	7	24-04-2009	ECLI:NL:RBAMS:2009:BJ0779	13.497.170-2009	Pros	54	0	0	0	0	Yes	No	Return	Yes	No	No	Defence states that surrender should be refused due to Dutch prosecution of facts. Court states that investigative acts by Dutch authorities cannot be classified as a prosecution.
59	8	26-01-2010	ECLI:NL:RBAMS:2010:BL2899	13.487.785.2009	Pros	72	0	0	0	0	Partially (1/2)	No	Return	Yes	No	Partially (1/2)	Incidental case of stalking (second fact) not punishable under Dutch law. Furthermore, court does not follow prosecutor in the latter's argument that parts of second fact constitute unlawful threat, as threat of mere wrecking an object not punishable under Dutch law. Return guarantee necessary and sufficient.
60	9	10-12-2010	ECLI:NL:RBAMS:2010:BO8108	13/706396-10	Exec	66	0	1	1	2	Yes	No	Retrial	Yes	No	Partially (1/2)	Retrial guarantee necessary. Amsterdam court considers that Belgian retrial application procedure deadline is not triggered by Dutch surrender procedure. Furthermore, court considers that Belgian criminal law does not need to be exactly the same as Dutch law for double criminality test, but that both provisions need to protect, in essence, the same legal good.
61	10	01-04-2011	ECLI:NL:RBAMS:2011:BQ7168	13.706264-11	Pros	9	2	0	0	2	Partially (2/3)	No	No	-	No	Yes	'Gang forming' can neither be considered the list offence organized crime according to the Belgian prosecutor nor the Dutch offence criminal organization according to the Dutch court. Surrender refused for this part of the request. Court considers Belgium best placed for prosecution, no refusal on territoriality ground.
62	11	24-05-2011	ECLI:NL:RBAMS:2011:BQ9517	13.706.293-2011	Pros	49	0	0	0	0	Yes	No	Return	Yes	No	No	Defence argues *ne bis in idem* refusal ground applicable, but court states that current case concerns a different set of facts. Conditions of temporary surrender to Belgium (due to current sentence being carried out in NL) is a competence of the Minister of Justice, therefore court does not carry out request

																	of requested person to be returned within two days.
63	12	16-08-2011	ECLI:NL:RBAMS:2011:BR5751	13/706953-10	Pros	106	3	0	1	4	Partially (1/3)	Once	Return and retrial	Yes	No	Yes	Belgian authorities guarantee that person will be able to apply for a retrial 15 days after surrender, court finds guarantee sufficient. As previous sentence is invalidated upon surrender, Dutch court finds that EAW is in fact for the purposes of a prosecution. EAW does not specify involvement of person in a criminal organization, which is one of the three requests. For this request the EAW is found inadequate. Court finds that list offence box for drugs trade has been unreasonably checked. Furthermore, list offence of removing confiscated goods is found to not exist, leading to a refusal for this part of the EAW.
64	13	20-12-2011	ECLI:NL:RBAMS:2011:BV1065	13/706882-11	Pros	62	0	0	0	0	Yes	No	Return	Yes	No	No	Return guarantee necessary and sufficient. Facts partially on Dutch soil, prosecutor sufficiently argues Belgium better placed. EAB sufficient according to court. Mode of participation in a crime not part of consideration whether request can reasonably be made on the basis of a list offence check box. No unlawful arrest of requested person. Acts of investigation by Dutch police not a prosecution for the purposes of *ne bis in idem* refusal ground.
65	14	17-04-2012	ECLI:NL:RBAMS:BW3410	13.706.132-2012	Pros	69	1	0	0	1	Yes	Once	Return	Yes	No	No	Defence argues that EAW does not concern a request for a prosecution since trial stage has commenced in Belgium. Court considers trial stage a part of the prosecution and does not follow defence. Return guarantee necessary and sufficient.

66	15	28-06-2012	ECLI:NL:RBAMS:2012:BY2654	13.706.576-12	Exec	72	2	0	1	3	Partially (2/3)	No	No	-	No	Yes	Requested person confirms that summons were handed to him and that he did not use his defence rights. Therefore, no retrial guarantee necessary. Request for weapons possession not explained in warrant and not punishable under Dutch law by a sentence of more than 12 months, leading to a partial refusal. Other prosecution ongoing in NL is not a reason for the court to declare surrender inadmissible, but a reason for the prosecutor to (temporarily) prevent factual surrender. Court trusts Belgian authorities to adapt sentence to partial refusal.
67	16	02-11-2012	ECLI:NL:RBAMS:2012:BY6805	13/706731-12	Exec	54	2	0	0	2	Yes	No	No	-	No	No	Belgian authorities request surrender for the execution of the remaining 176 days for several sentences. Furthermore, several of these sentences were subject to another EAW request from the Belgian authorities. Court notes that under these circumstances it cannot determine the remaining sentence that should be carried out under the authorized surrender, trusting Belgian authorities to limit the execution of the sentence to the facts surrender was authorized for.
68	17	23-07-2013	ECLI:NL:RBAMS:2013:4914	13.737.142-13	Pros	121	1	0	0	1	Yes	Once	Return	Yes	No	No	Court nuances its jurisprudence for cases in which a resident in the Netherlands cannot count on a return guarantee or refusal as the lack of Dutch jurisdiction would result in lawlessness. It states that discrimination on the basis of nationality cannot go further than is necessary for the aim of avoiding lawlessness, as such discrimination infringes article 18 TFEU. The court states that if the issuing state provides a return guarantee, the risk of lawlessness will be avoided, meaning that applying the jurisdiction requirement

																	would go beyond what is necessary to achieve its goals. As a return guarantee is provided by the Belgian authorities, the jurisdiction criterion laid down in Article 6 of the Dutch Surrender Act is left unapplied.
69	18	06-06-2014	ECLI:NL:RBAMS:2014:3643	13.751267-14	Pros	64	0	0	0	0	Yes	Once	No	-	No	Partially (1/2)	Part of the request concerns the forming of a gang, which cannot be classified as organized crime under Belgian law (as no structured form), but is punishable. DC test necessary, and court determines that a Dutch rule that in essence protects the same legal good should be regarded as necessary for passing the test. Court determines there is such a rule in Dutch criminal law: partaking in an organization aimed at committing offences. Acts partially on Dutch soil, prosecutor convincingly argues Belgium better placed.
70	19	26-08-2014	ECLI:NL:RBAMS:2014:5341	13.737.292-13	Exec	144	0	0	0	0	No	Once	No	-	No	No	Postponed to allow the Dutch prosecutor to check whether requested person would lose residence permit in the Netherlands due to prison sentence. Dutch immigration service stated they would not retract residence permit. Court faced with the question whether Netherlands has jurisdiction over offence, in order to determine whether to refuse the warrant. As new Dutch legislation has implemented extraterritoriality rules pertaining to Dutch jurisdiction over residents committing crimes abroad that were punishable, at that time, in the country concerned and in the Netherlands, the Netherlands does have jurisdiction. As article 6 only leaves room for return guarantees in prosecution cases, Dutch jurisdiction leads to refusal.

71	20	05-12-2014	ECLI:NL:RBAMS: 2014:8235	13-751824-14	Pros	61	2	0	0	2	Yes	No	Return	Yes	No	No	Belgian authorities guarantee that requested person will receive the opportunity to apply for a retrial. Dutch court therefore sees the case as a request for the purposes of a prosecution. Return guarantee necessary and sufficient.

United Kingdom

Nr	Nr MS	Date judg-ment	ECLI nr	Case nr	Purpose	Days until surrender	Paragraphs content	Paragraphs foreign law	Paragraphs adequacy EAW	Paragraphs total	Surrender approved?	Surrender decision postponed by court?	Guarantees required?	Adequate guarantees provided?	Extra info required beyond guarantees?	Double crimi-nality test?	Description of main problem(s)
74	1	15-12-2006	ECLI:NL:RBAMS:2006:BC1645	13.497.589-2006	Exec	57	0	0	0	0	Partially (1/2)	No	No	-	No	No	No return guarantee necessary for resident as Netherlands has no jurisdiction (requirement of article 6 Dutch Surrender Act). Refusal for confiscation order as this is no criminal investigation or measure. Defence argues flagrant breach of human rights, not followed by court.
75	2	06-03-2007	ECLI:NL:RBAMS:2007:BA7314	13/497.700-2006	Pros	62	1	0	0	1	Yes	No	Return	Yes	No	No	Return guarantee necessary and sufficient. Medical situation should be taken into consideration by Dutch prosecutor with regard to whether factual surrender is possible.
76	3	05-12-2007	ECLI:NL:RBAMS:2007:BD3825	13.497.543-2006	Pros	68	2	0	2	4	Yes	No	Return	Yes	Yes	No	EAW not convincing with regard to involvement of requested person according to defence. Court does not follow defence, instead states that separate letter by Crown prosecutor provides enough information. Return guarantee necessary. Facts partially took place in Netherlands but UK is better placed for prosecution.
77	4	24-04-2009	ECLI:NL:RBAMS:2009:BJ0726	13.497.180-2009/09/1597	Pros	47	1	0	1	2	Partially (12/14)	No	No	-	No	Partially (4/14)	Double criminality test for four facts. Two facts for no return after bail not punishable under Dutch law7and refused. Several facts under consideration by Dutch court for specific period. Surrender for these facts is only allowed for period not covered by Dutch investigations/sentences. Offences partially occurred

																	on Dutch soil, UK better placed for prosecution.
78	5	18-05-2010	ECLI:NL:RBAMS:2010:BM6294	13/706100-10	Pros	63	0	0	0	0	Yes	No	No	-	No	No	As person already in temporary custody when EAW was received, case law states start date for EAW time limits should be reception date of warrant. Exceptionally court sets aside this case law due to special circumstances of case. Two transmitted EAW's partially overlap. Facts partially committed on Dutch soil.
79	6	02-07-2010	ECLI:NL:RBAMS:2010:BN1442	13/497921-2009	Pros	78	1	0	0	1	Yes	Yes	Return	-	No	No	Intermediate decision due to defence not having full dossier. Return guarantee necessary and sufficient. Defence argues threat of breach of human rights due to person having depression and suicidal tendencies from impending surrender. Court disagrees: No external circumstances attributable to UK or Netherlands cause the problems and UK facilities sufficient.
80	7	02-11-2010	ECLI:NL:RBAMS:2010:BO2888	13-706.316-10	Exec	69	1	0	2	3	Yes	Yes	No	-	Yes	No	Defence argues sentence should be shorter than the person is requested for. UK allegedly added duration for escape, which is not a criminal offence in the Netherlands and thus contrary the specialty rule. Court does not accept argument, states EAW is clear. Extra information considered adequate. Seizure and transfer of evidence not authorized due to lack of relevance for purposes of execution sentence.
81	8	27-05-2011	ECLI:NL:RBAMS:2011:BQ7972	13.706233-11	Pros	71	0	0	0	0	Yes	No	Return	Yes	No	No	Return guarantee necessary and sufficient. Defence requests return of seized goods, court does not follow request as these goods are part of a separate legal assistance request.
82	9	01-07-2011	ECLI:NL:RBAMS:2011:BR0807	13/706344-11	Exec	74	2	0	0	2	Yes	No	No	-	No	No	Application to Wolzenburg case law not grounded according to court. Person did not prove he has been a

																	resident of the Netherlands for 5 years.
83	10	25-10-2011	ECLI:NL:RBAMS:2011:BU2123	13/706731-2011	Pros	70	0	0	0	0	Partially (17/18)	No	Return	Yes	No	Yes	Facts time-barred for prosecution in the Netherlands according to defence. Amsterdam court rules that in light of a Dutch revision of criminal laws in 2002, providing for the prosecution of offences that took place outside of the Netherlands, surrender for the offence that could have been prosecuted by Dutch authorities but are now time-barred must be refused. As1the Netherlands had no jurisdiction over other 17 offences, surrender for these must be allowed.
84	11	18-05-2012	ECLI:NL:RBAMS:2012:BX3381	13.706.843-12	Pros and exec	30	1	0	0	1	Yes	No	No	-	No	Yes	Defence argues lifelong sentence poses risk of flagrant breach of human rights in absence of penalty review. Court states there is a penalty review and trusts the UK to adhere to ECHR requirements. Acts partially committed on Dutch soil, UK better placed. All offences also punishable in Netherlands, double criminality test successful.
85	12	14-08-2012	ECLI:NL:RBAMS:2012:BY2010	13.706.438-12	Pros	84	1	0	0	1	Yes	No	Return	Yes	No	No	Return guarantee necessary and sufficient. Element required in Dutch criminal code (act has to be committed with profit as an aim) had to be indirectly derived from facts described in EAW. While double criminality test did not apply for surrender, the Convention on Transfer of Sentenced Persons required double criminality for the adaption of the sentence.
86	13	27-05-2014	ECLI:NL:RBAMS:2014:5190	13.737.537-13	Pros	72	0	0	0	0	Yes	Yes	Return	Yes	Yes	No	Initial guarantee provided by British authorities could be interpreted as not acknowledging Dutch requirement to adapt sentence. Further information necessary to clarify that British authorities agreed to requirement.

87	14	30-04-2014	ECLI:NL:RBAMS:2014:3283	13-751229-14	Pros	303	0	0	4	4	Yes	No	Return	Yes	No	No	Convergence of transfer of prosecution and EAW surrender to the UK. Defence argues rights of the defence threatened as surrender decision not postponed until objection against transfer of prosecution has been decided upon. Court finds that refusal for this reason can only occur if objection will be ruled in favour of defendant beyond reasonable doubt. Current case does not meet this threshold.
88	15	24-10-2014	ECLI:NL:RBAMS:2014:7037	13/751781-14	Pros	50	0	4	1	5	Yes	No	No	-	No	Partially (2/3)	Defence argues that surrender would create the risk of a flagrant breach of human rights due to the possibility of lifelong imprisonment being present. English Crown Prosecutor emphasizes that penalties are often more mild than lifelong sentence, but cannot completely exclude the possibility. Court relies upon English membership of the ECHR and states that it cannot presume what decision will be made by English court, and subsequently allows the surrender.

Bulgaria

Nr	Nr MS	Date judg-ment	ECLI nr	Case nr	Purpose	Days until surrender	Paragraphs content	Paragraphs foreign law	Paragraphs adequacy EAW	Paragraphs total	Surrender approved?	Surrender decision postponed by court?	Guarantees required?	Adequate guarantees provided?	Extra info required beyond guarantees?	Double crimi-nality test?	Description of main problem(s)
89	1	16-10-2009	ECLI:NL:RBAMS:2009:BK6551	13.497.394-2009	Exec	162	0	0	0	0	No	Yes	No	-	Yes	Yes	Turkish resident liable to be surrendered without return guarantee due to jurisdiction exception for residency refusal ground. Court requests application of transfer of sentence procedure by Bulgarian authorities. As such, surrender is no longer necessary.
90	2	13-11-2009	ECLI:NL:RBAMS:2009:BL5781	13.497555-2009	Exec	60	0	5	0	5	Partially (1/2)	No	Retrial	No	No	Yes	Bulgarian authorities repeatedly only refer to article 423 CPC for their retrial guarantee. They do not send out a guarantee specifically tailored to the requested person. Furthermore, ambiguous translation of article 423

																	CPC leaves court unable to definitively ascertain whether retrial is possible. Surrender therefore only allowed for offence which does not require retrial guarantee.
91	3	18-05-2010	ECLI:NL:RBAMS:2010:BM6284	13/706178-10	Exec	54	0	2	0	2	Partially (1/2)	No	No	-	No	Yes	Mistake in EAW: 6 month sentence should not have been listed according to Bulgarian authorities, removed by Dutch court. Probationary sentence refused as not a prison sentence in sense of Dutch surrender act.
92	4	26-10-2010	ECLI:NL:RBAMS:2010:BO7896	13.706710-10	Exec	55	0	3	0	3	No	No	No	-	No	Yes	EAW drafted for execution of sentence for an act which is not punishable with a custodial sentence of at least 12 months in Bulgaria. As such, EAW fails the double criminality test and surrender is refused.
93	5	13-03-2012	ECLI:NL:RBAMS:2012:BV9401	13.706.008-12	Exec	54	4	0	0	4	No	No	Retrial	No	No	- (court did not reach DC test point)	No unambiguous and specific retrial guarantee provided by Bulgarian authorities. They only referred to the criteria of article 423 CPC and stated that the current request was such a case, which did not satisfy the Dutch court.
94	6	17-08-2012	ECLI:NL:RBAMS:2012:BY1996	13-706397-11	Pros	129	2	0	1	3	Yes	Yes	No	-	No	No	Postponed due to translations not being available to defence yet. Defence argues threat of flagrant human rights breach due to Bulgarian corruption. Prosecution allegedly meant to silence requested person on his knowledge of sensitive information. Person allegedly tortured by Bulgarian authorities. Court considers arguments unsubstantiated and trusts Bulgarian authorities and authorizes surrender.
95	7	16-10-2012	ECLI:NL:RBAMS:2012:BZ0385	13.706.713-12	Exec	43	2	0	0	2	Partially (1/2)	No	No	-	No	Partially (1/2)	Traffic offence not punishable under Dutch law with a sentence of at least 1 year, surrender refused for this sentence. Presence of requested person at hearing where decision to adapt probation sentence to prison sentence not a hearing in for Dutch Surrender Act surrender

																	refusal ground purposes. However, person was aware of subsequent hearings which did fall under the scope of the Dutch Surrender Act retrial clauses and authorized a lawyer. Therefore no retrial guarantee necessary.
96	8	28-02-2014	ECLI:NL:RBAMS:2012:5184	13.751.191-13	Pros	60	1	1	1	3	Yes	No	No	-	No	Yes	Defence argues requested person is innocent but court considers evidence insufficient. Defence argues that surrender should be refused to Bulgarian CPC implying that only a probation sentence should be imposed in minor cases. Court states that this is irrelevant since 1. Court should follow Bulgarian authorities and 2. EAW FD only requires minimum maximum sentences is criterion.
97	9	01-10-2014	ECLI:NL:RBAMS:2014:5530	13-751359-14	Exec	100	5	0	0	5	Yes	Yes, twice	Retrial	Yes	Yes	Yes	Retrial guarantee necessary and sufficient. Person present at parts of second trial, no guarantee needed. Defence argues human rights infringements, but court considers them unsubstantiated for this specific case.

Poland

Nr	Nr MS	Date judg-ment	ECLI nr	Case nr	Purpose	Days until surrender	Paragraphs content	Paragraphs foreign law	Paragraphs adequacy EAW	Paragraphs total	Surrender approved?	Surrender decision postponed by court?	Guarantees required?	Adequate guarantees provided?	Extra info required beyond guarantees?	Double crimi-nality test?	Description of main problem(s)
98	1	27-07-2007	ECLI:NL:RBAMS:2007:BC0870	13.497.325	Exec	50	1	0	0	1	Partially (2/3)	No	No	-	No	Yes	One of the sentences person is requested for concerns retraction of drivers' license by Polish authorities. As not a prison sentence, surrender must be refused. As person was present at first hearings and authorized a lawyer to represent him.
99	2	06-02-2009	ECLI:NL:RBAMS:2009:BH2341	13.497233-08	ExecR	264	0	0	0	0	Yes	Twice	No	-	No	No	Netherlands has no jurisdiction to prosecute a person who is resident in the Netherlands, meaning the exception that residents can be surrendered should be applied. Court repeats that while criterion is discriminatory and contrary to European law, the court cannot apply the Dutch Surrender Act *contra legem*

																	and there is an justification for the discrimination.
100	3	03-07-2009	ECLI:NL:RBAMS:2009:BJ1772	13.497.470-2008	Exec	328	2	0	0	2	Yes	Twice	No	-	Yes	Yes	Jurisdiction requirement for a return guarantee and/or refusal of surrender for residents justified due to Netherlands not having jurisdiction over non-Dutch nationals. Court notes that Dutch provision wrongfully implements EAW FD by not including option for transfer of sentence, but cannot apply law *contra legem*
101	4	05-01-2010	ECLI:NL:RBAMS:2010:BK9117	13/497.127-06	Pros	453	0	0	0	0	Yes	Twice	No	-	No	No	Case postponed until Wolzenburg decision by ECJ. Requested person cannot prove 5 years uninterrupted stay in the Netherlands, meaning he cannot be considered a resident for Dutch Surrender Act purposes.
102	5	18-05-2010	ECLI:NL:RBAMS:2010:BM6291	13/706235-10	Exec	51	1	0	2	3	Partially (3/4)	No	No	-	No	Partially (1/4)	Surrender refused for offence for which double criminality test was required; not punishable under Dutch law with a sentence of at least 12 months. Breach of ECHR alleged by defence considered unsubstantiated.
103	6	12-10-2010	ECLI:NL:RBAMS:2010:BO7881	13.706706-10	Exec	41	2	0	0	2	No	No	Retrial	No	No	-	After being asked for a retrial guarantee, the Polish authorities informed the Netherlands that sentence had become final and that no retrial was possible. Therefore refused. Court did not reach the stage where it should consider whether a double criminality test is necessary.
104	7	21-01-2011	ECLI:NL:RBAMS:2011:BP2315	13.706900-10	Exec	66	0	0	1	1	Partially (1/2)	No	No	-	No	Partially (1/2)	Dutch court ascertains that Polish authorities did not reasonably conclude that second request of EAW concerned a list offence. Therefore Dutch court applies DC test, which second request fails. As the first sentence concerned a probation sentence which had become definitive, retrial refusal ground not applicable. Amsterdam court leaves to Polish authorities which part of the sentence should be executed in light of refusal for second request.

105	8	06-07-2011	ECLI:NL:RBAMS:2011:BR4144	13/497233-05	Pros/exec	94	2	0	2	4	Partially (4/7)	No	No	-	No	Yes	Partial refusal due to time and place of several acts not being accurately specified in the EAW.
106	9	21-02-2012	ECLI:NL:RBAMS:2012:BV6450	13.706.349-2011	Exec	177	2	0	0	2	Yes	Once	No	-	Yes	Partially (5/10)	Question whether retrial guarantee necessary. Requested person not summoned personally, but summon handed to adult relative. Court finds summon by Polish authorities sufficient, however, meaning there is no trial *in absentia*.
107	10	27-04-2012	ECLI:NL:RBAMS:2012:BW8962	13.706.083-12	Exec	88	6	0	0	6	Yes	Once	No	-	Yes	Yes	Confusion on whether summon for hearing was presented personally to suspect, as Polish authorities sent two differing dates to Dutch authorities. Subsequent clarification by Polish authorities corrected misunderstanding.
108	11	28-08-2012	ECLI:NL:RBAMS:2012:BY2016	13/706.369-12	Exec	65	0	0	0	0	Yes	No	Retrial	Yes	No	Yes	Retrial guaranty necessary. Polish authorities submit that sentence will be served to person immediately after surrender, after which he has 30 days to apply for a retrial. Defence argues surrender is disproportionate, but court does not agree as exceptional circumstances are not present.
109	12	16-11-2012	ECLI:NL:RBAMS:2012:BZ0837	13.706.929-11	Pros/exec	73	4	0	0	4	Yes	Once	No	-	No	Yes	Postponement due to person wrongfully not being transported to court room. Offence not entirely clearly defined in EAW but discernible from description of facts in warrant.
110	13	22-02-2013	ECLI:NL:RBAMS:2013:BZ9861	13.706.466-11	Exec	57	0	0	0	0	Yes	No	No	-	No	Yes	While requested person conforms to the Wolzenburg residency criteria, he fails the jurisdiction criterion of article 6(5) Dutch Surrender Act as the Netherlands cannot prosecute him. As person did not flee Poland, sentence can also not be transferred.
111	14	04-06-2013	ECLI:NL:RBAMS:2013:CA3810	13.737401-13	Pros	58	0	0	0	0	Yes	No	No	-	No	No	None
112	15	30-08-2013	ECLI:NL:RBAMS:2013:5379	13.737474-13	Exec	78	0	0	0	0	Yes	No	No	-	No	Yes	Defence argues that an exception to the 5 year residency requirement for equal treatment as a Dutch national should be granted.

																	Court disagrees, states that such an exception would be *contra legem.*
113	16	08-10-2013	ECLI:NL:RBAMS:2013:6651	13.737.393-13	Pros	155	0	0	0	0	Yes	Once	No	-	No	No	Person received opportunity from Amsterdam court to prove he was a resident of the Netherlands for 5 years, but could not prove uninterrupted stay, meaning no return guarantee was necessary.
114	17	17-01-2014	ECLI:NL:RBAMS:2014:1303	13.737.838-13	Pros	155	2	4	0	6	Yes	Once	Return	Yes	No	No	Return guarantee necessary and sufficient. Defence argues that Polish authorities did not pursue prosecution within a reasonable amount of time. Amsterdam court trusts judgment of Polish authorities and Polish compliance with ECHR.
115	18	30-05-2014	ECLI:NL:RBAMS:2014:3251	13-751041-14	Exec	123	2	0	0	2	No	Once	No	-	Yes	-	Postponement necessary due to EAW not containing adequate information on maximum sentences and the information Polish authorities provided to the requested person on sentences. As the latter issue remained unclear after asking questions to Polish authorities, surrender was refused.
116	19	23-09-2014	ECLI:NL:RBAMS:2014:6826	13-751448-14	Exec	89	1	3	0	4	No	Once	Retrial	No	No	-	Polish authorities unable to guarantee a retrial as this is subject to a time limit of one month after the requested person becomes aware of the sentence under Polish law. As person became aware of sentence during surrender proceedings, retrial option was already time-barred. In addition, the discretion of Polish courts in considering evidence submitted by requested person did not know of original sentence means that no unambiguous retrial guarantee could be given.
117	20	12-12-2014	ECLI:NL:RBAMS:2014:8405	13-751882-14	Exec	53	1	0	0	1	Yes	No	None	-	No	Partially (1/2)	Person not aware of execution of previously probationary sentence in Poland. This is considered irrelevant by Amsterdam court. The reason for execution does not need to be included in EAW.
Romania																	

Nr	Nr MS	Date judg-ment	ECLI nr	Case nr	Purpose	Days until surrender	Paragraphs content	Paragraphs foreign law	Paragraphs adequacy EAW	Paragraphs total	Surrender approved?	Surrender decision postponed by court?	Guarantees required?	Adequate guarantees provided?	Extra info required beyond guaran-tees?	Double crimi-nality test?	Description of main problem(s)
118	1	29-04-2010	ECLI:NL:RBAMS:2010:BM6344	13.497738-09	Exec	57	2	0	0	2	Yes	No	No	-	No	No	Defence unsuccessfully argued that there was a trial *in absentia*
119	2	01-10-2010	ECLI:NL:RBAMS:2010:BO7714	13.706565-10	Exec	68	0	1	0	1	No	Once	Retrial	No	No	No	retrial guarantee insufficient
120	3	27-05-2011	ECLI:NL:RBAMS:2011:BQ7984	13.706984-10	Exec	82	1	0	0	1	Yes	No	No	-	No	No	None
121	4	07-09-2011	ECLI:NL:RBAMS:2011:BX9011	1358.706279-11	Exec	154	0	3	0	3	Yes	Twice	Retrial	Yes	Yes	No	Necessary retrial guarantee
122	5	19-10-2011	ECLI:NL:RBAMS:2011:BX9003	13.706.605-11	Exec	91	2	3	0	5	Partially (1/2)	Twice	Retrial	Partially	Yes	No	(1) No info transmitted whether there was a trial *in absentia for* first sentence. (2) retrial guarantee necessary for second offence
123	6	04-09-2012	ECLI:NL:RBAMS:2012:BY2649	13.706.579-12	Exec	62	4	0	0	4	Yes	No	Retrial	Yes	No	No	Defence unsuccessfully argued that the retrial guarantee was ambiguous
124	7	06-11-2012	ECLI:NL:RBAMS:2012:BY6638	13-706480-2012	Exec	69	1	0	0	1	Partially (1/4)	Once	No	-	Yes	Yes	EAW for a joint sentence for 4 acts. Three refused. 2 acts were not punishable under Dutch law with a minimum sentence of 12 months. 1 act concerned a conditional sentence. One act did pass double criminality test, for which surrender was thus allowed. Amsterdam court leaves discretion to Romanian authorities to decide how to execute combined sentence.
125	8	22-01-2013	ECLI:NL:RBAMS:2013BZ0687	13.707.040-12	Exec	62	2	0	0	2	Yes	No	No	-	No	No	Person only present at two hearings in Romania. Trial *in absentia* refusal ground not applicable since court considered defendant did have possibility to exercise his rights to defence and could rely on an attorney for the other hearings
126	9	26-03-2013	ECLI:NL:RBAMS:2011:CA3776	13-737033-13	Exec	58	0	0	0	0	Yes	No	No	-	No	No	Defence unsuccessfully argued that person was potentially underage under Romanian law
127	10	07-11-2014	ECLI:NL:RBAMS:2014:7415	13-751770-14	Exec	68	1	2	0	3	Yes	Once	No	-	No	No	Defence unsuccessfully argued that checked EAW box for murder did not correspond to

																	manslaughter; Defence unsuccessfully argued that sentence was disproportionate

Annex 6: Questionnaire Eurojust (Dutch)

Questionnaire

Geanonimiseerde aanduiding respondent 1 in rapport en transcript	Eurojust employee 1 (EJ1)
Geanonimiseerde aanduiding respondent 2 in rapport en transcript	Eurojust employee 2
Datum	26-02-2015
Tijd	10:30
Duratie	1 uur
Locatie	Eurojust – Maanweg 174, Den Haag
Interviewer	Bjorn Kleizen
Contactinformatie interviewer	Telefoon: 06-53587749 E-mail: b.kleizen@student.utwente.nl

Introductie vragenlijst

U ontvangt deze vragenlijst naar aanleiding van een masterthesisonderzoek naar het functioneren van het Europees Aanhoudingsbevel (hierna EAB) in Nederland. In het onderzoek wordt gekeken naar de relatie tussen Nederlandse justitiële organisaties en hun tegenhangers uit andere EU lidstaten. Specifiek wordt bezien welke onderdelen van het EAB goed functioneren en welke factoren van belang zijn voor een effectieve toepassing van het EAB. Aangezien de coördinatie van Eurojust in het kader van het EAB bedoeld is om de samenwerking tussen lidstaten te bevorderen is uw ervaring van groot belang voor een goed antwoord op mijn onderzoeksvragen.

De vragenlijst is opgedeeld in zeven hoofdonderdelen. De eerste zes onderdelen bevatten circa 5 á 6 open vragen. Het zesde onderdeel is optioneel en komt alleen aan de orde als er na het bespreken van de eerste vijf onderdelen nog tijd over is. Het zevende onderdeel betreft de afsluiting van het interview en biedt gelegenheid voor eventuele vragen en opmerkingen van uw kant.

Algemene informatie over zaken als geheimhouding, anonimiteit, aantekeningen en opnamemateriaal kunt u vinden in het document ‘Inleiding Interview 26-2 - Eurojust’.

I. Bilaterale coördinatieverzoeken aan Nederland
Eerst wil ik een aantal vragen stellen over coördinatieverzoeken aan Eurojust om EAB zaken met Nederland te coördineren. Het gaat in alle vragen van deze sectie dus over verzoeken van andere lidstaten aan Eurojust.

1. Kunt u aangeven met welke onderwerpen coördinatieverzoeken gericht aan Nederland te maken hebben?

2. Welke motieven hebben buitenlandse justitiële autoriteiten om verzoeken voor EAB coördinatie met betrekking tot Nederland in te dienen?

3. Kunt u aangeven of er een patroon is wat betreft de oorsprong van coördinatieverzoeken aan Nederland?

3a. Indien er inderdaad een patroon is, welke lidstaten lijken veel verzoeken in te dienen voor coördinatie met Nederland en waarom?

4. Kunt u omschrijven hoe de samenwerking tussen Nederland, Eurojust en de verzoekende lidstaten in dergelijke EAB zaken functioneert?

II. Bilaterale coördinatieverzoeken uit Nederland
Vervolgens wil ik een aantal vragen stellen over de EAB coördinatieverzoeken die uit Nederland komen.

1. Kunt u aangeven welke onderwerpen aan de orde komen bij coördinatieverzoeken uit Nederland?

2. Welke motieven hebben Nederlandse justitiële autoriteiten om verzoeken voor EAB coördinatie in te dienen?

3. Kunt u aangeven of er een patroon is wat betreft de landen waar Nederland haar coördinatieverzoeken aan adresseert?

3a. Indien er inderdaad een patroon is, welke lidstaten lijken vaak onderwerp te zijn van verzoeken uit Nederland en waarom?

4. Kunt u omschrijven hoe de samenwerking tussen Nederland, Eurojust en de verzochte lidstaten in dergelijke zaken functioneert?

III**. Effecten van bilaterale coördinatie door Eurojust**
Onder deze sectie wil ik u een aantal vragen voorleggen wat betreft het functioneren en de effecten van bilaterale coördinatie in het kader van de EAB. Tenzij specifiek aangegeven gaat het hierbij niet per definitie om Nederland.

1. Welke effecten heeft coördinatie via Eurojust op de verdere overleveringsprocedure?

2. Kunt u aangeven hoe coördinatie op lange termijn effect heeft op de relaties tussen lidstaten?

2a. Kunt u wellicht voorbeelden noemen van lange termijn effecten op de relaties tussen lidstaten?

3. Herkent u verschillen tussen lidstaten met betrekking tot de mate waarin coördinatie de overleveringsprocedure beïnvloedt?

3a. Zo ja, kunt u vertellen hoe lidstaten onderling verschillen?

4. Welke problemen doen zich voor tijdens de coördinatie tussen lidstaten?

4a. Kunt u wellicht voorbeelden noemen van problemen tijdens de coördinatie tussen lidstaten?

5. Kunt u aangeven welke rol Eurojust vervult bij het vertalen van stukken tijdens de coördinatie tussen Nederland en een andere lidstaat?

5a. Kunt u aangeven welke verschillen er zijn tussen lidstaten wat betreft het belang van vertalingen door Eurojust?

Stel Eurojust geeft advies aan Nederland en een andere lidstaat over welke lidstaat het best geplaatst is voor vervolging.

6. In hoeverre zijn lidstaten naar uw mening bereid om het advies van Eurojust op te volgen?

6a. In hoeverre is specifiek Nederland bereid adviezen van Eurojust op te volgen?

IV. Multilaterale coördinatie

In deze sectie wil ik kort met u multilaterale coördinatie in het kader van het EAB bespreken. Tenzij specifiek aangegeven gaat het hierbij niet per definitie om Nederland.

1. Zijn er EAB zaken geweest waarin multilaterale coördinatie met onder andere Nederland verzocht werd (u hoeft niet in te gaan op de kenmerken van deze zaken)?

2. Kunt u aangeven in hoeverre deze Nederlandse zaken naar uw mening soepel verliepen?

3. In hoeverre zijn lidstaten die conflicterende EAB's uitvaardigen of ontvangen bereid samen te werken met elkaar en Eurojust?

3a. In hoeverre verschilt de bereidheid samen te werken per lidstaat?

4. Kunt u uitleggen hoe coördinatie door Eurojust invloed heeft op de verdere overleveringsprocedure?

5. Welke problemen doen zich voor tijdens de coördinatie tussen lidstaten?

5a. Kunt u wellicht voorbeelden noemen van problemen tijdens de coördinatie tussen lidstaten?

V. Ontwikkelingen sinds de introductie van het EAB en Eurojust

Deze sectie betreft de ontwikkelingen die het EAB heeft doorgemaakt sinds de introductie van het systeem in 2004. Ook zijn vragen inbegrepen over de ontwikkeling van de coördinatie verricht door Eurojust sinds de introductie van het EAB.

1. Kunt u aangeven op welke manieren de coördinatie van Eurojust zich sinds 2004 heeft ontwikkeld?

2. In hoeverre heeft de communicatie tussen lidstaten zich sinds de introductie van het EAB en Eurojust ontwikkeld?

3. Kunt u aangeven in hoeverre de kennis van andere rechtssystemen bij justitiële autoriteiten in Nederland en andere lidstaten zich sinds de introductie van het EAB en Eurojust heeft ontwikkeld?

4. Kunt u de ontwikkelingen in de mate van wederzijds vertrouwen tussen Nederland en andere lidstaten sinds de introductie van de EAB en Eurojust beschrijven?

5. Tot slot, kunt u aangeven hoe het functioneren van het EAB systeem zich sinds 2004 naar uw mening heeft ontwikkeld?

VI. Nederlandse implementatie van het EAB (indien tijd over)
Deze sectie komt aan de orde indien er tijd over is. Graag wil ik u een aantal vragen stellen over uw mening wat betreft de Nederlandse implementatie van het EAB Kaderbesluit in de Overleveringswet en in de jurisprudentie van de Rechtbank Amsterdam.

1. Hoe functioneert naar uw mening de terugkeergarantie uit de Overleveringswet?

2. Hoe functioneert naar uw mening de terugkeergarantie voor vreemdelingen die voldoen aan de criteria voor een verblijfsvergunning van onbepaalde tijd?

3. Hoe functioneert naar uw mening het garantiestelsel met betrekking tot nieuwe procesmogelijkheden in het geval van een verstekvonnis?

4. Hoe functioneert naar uw mening de Nederlandse territorialiteitsweigeringsgrond in het licht van zaken waarbij ook een andere lidstaat jurisdictie over hetzelfde feitencomplex heeft?

5. Hoe functioneert naar uw mening het Nederlandse specialiteitsbeginsel in het geval van (executie)overleveringen?

6. Hoe functioneert naar uw mening de balans tussen wederzijds vertrouwen en een geschikte mate van rechtsbescherming in het Nederlandse systeem?

7. Hoe functioneert de Nederlandse toets voor flagrante mensenrechtenschendingen (concrete omstandigheden die leiden tot een gegrond vermoeden) naar uw mening?

VII. Afsluiting
Dit is het einde van het interview. Graag wil ik u hartelijk bedanken voor uw deelname en de informatie die u gegeven heeft. In deze sectie is ruimte voor vragen en opmerkingen van uw kant.

1. Heeft u naar aanleiding van het interview nog vragen of opmerkingen?

2. Ontbraken er naar uw mening belangrijke gespreksonderwerpen in het interview?

Een transcript van het interview wordt u zo spoedig mogelijk, in elk geval voor 05-03-2015 toegestuurd. De openbare finale versie van het rapport zal u tevens toegestuurd worden zodra deze beschikbaar is. Vragen en opmerkingen achteraf zijn altijd mogelijk met behulp van de contactinformatie die u bovenaan de vragenlijst vindt.

2. Interview protocol

Inleiding interview 26-2

Inleiding bij het interviewproces
Als onderdeel van mijn masterthesis Bestuurskunde aan de Universiteit Twente onderzoek ik het vertrouwen tussen justitiële organisaties bij het gebruik van het Europees Aanhoudingsbevel (EAB). Door uw functie bij Eurojust beschikt u over waardevolle informatie voor het onderzoek. Ik wil daarom uw medewerking vragen voor een interview. Het interview zal met name gaan over de factoren die van invloed zijn op de effectiviteit van de samenwerking tussen de betrokken organisaties bij de toepassing van het EAB. De nadruk van het interview zal daarbij liggen op de coördinatie verricht door Eurojust.

Tijdens het interview krijgt u een aantal open vragen voorgelegd over uw ervaringen met het EAB. Daarnaast gaan een aantal vragen over uw ervaring met justitiële organisaties in de lidstaten, met name Nederland. Verder worden een aantal vragen gesteld over uw ervaring en mening wat betreft het functioneren van Eurojust. Tot slot zijn een aantal vragen opgenomen over de Nederlandse implementatie van het EAB Kaderbesluit. In alle gevallen gaat het om algemene vragen naar denkbeeldige situaties, zonder referenties naar specifieke zaken of personen.

Het interview duurt ongeveer één uur. Het interview is zo ontworpen dat één onderdeel optioneel is, hetgeen verzekert dat het interview niet veel zal uitlopen.

Vertrouwelijkheid en gevoelige gegevens
Antwoorden die u geeft in het kader van het onderzoek zullen behandeld worden als uw mening over uw professionele werkervaring. De antwoorden worden dus nooit als een officieel standpunt van Eurojust aangehaald.

Bovendien worden uw antwoorden volledig anoniem gerapporteerd, dat wil zeggen: De uitgewerkte interviews, meerkeuzevragen en eventuele geluidsopnames zullen niet in de openbare versie van het rapport opgenomen worden en uw antwoorden worden niet letterlijk geciteerd. Het rapport zal door middel van geanonimiseerde verwijzingen naar interviewdata niet herleidbaar zijn naar individuele personen. Onderdelen van het rapport die niettemin gevoelige verwijzingen bevatten zullen alleen in een vertrouwelijke, niet openbare versie van het rapport opgenomen worden.

Verder zult u in staat gesteld worden zo snel mogelijk de uitgewerkte versie van uw interview in te zien. Daarbij kunt u ervoor kiezen om een antwoord waar u niet langer achter staat te verwijderen uit het transcript.

Zoals eerder aangegeven wordt tijdens het interview nooit naar een specifieke zaak of persoon gevraagd. Het gaat altijd om algemene vragen en hypothetische situaties.

Praktische informatie voor tijdens het interview
Indien u hiervoor toestemming geeft worden uw antwoorden opgenomen door middel van een geluidsrecorder, aangevuld met schriftelijke notities. Het gebruik van een geluidsrecorder heeft als voordeel dat er geen interviewdata verloren gaat. Indien u bezwaar heeft tegen het gebruik van een geluidsrecorder dan kunt u dit aangeven. In dat geval zullen uw antwoorden alleen door middel van schriftelijke notities geregistreerd worden.

Om privacy en geheimhouding te garanderen worden alle interviews in een aparte kamer gehouden. Naast de participanten en de interviewer is hierbij niemand aanwezig.

Na het interview
Na het interview is er ruimte voor eventuele opmerkingen en vragen. Binnen 3 dagen wordt het transcript van het interview naar u opgestuurd. U kunt dan eventuele onjuistheden doorgeven, die vervolgens verwijderd zullen worden uit het transcript. Zodra de finale openbare versie van het rapport beschikbaar is zal u een kopie toegestuurd worden, tenzij u aangeeft hier geen belangstelling voor te hebben.

Alvast bedankt voor uw deelname,

Met vriendelijke groet,

Bjorn Kleizen
Masterstudent Bestuurskunde aan de Universiteit Twente