

**Social Fieldwork Research (FRANET)**

European Arrest Warrant proceedings – safeguards for requested persons  
Perspective of requested persons

**Spain,**

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## **EXECUTIVE SUMMARY**

The European Arrest Warrant (EAW) procedure in Spain is governed by a regulation that reflects the standards established by European Union (EU) legislation. However, the transposition of such legal standards into the national legal system and their application by the relevant practitioners has not prevented a review of the practice on this procedure from revealing the existence of potential areas for improvement.

This report examines the practice of the EAW procedure through the experience of the requested persons, either as described by themselves or by their lawyers. These views have shown that certain aspects need to be implemented in order to ensure the full effectiveness of the procedure. In particular, existing good practices and challenges to overcome are presented in relation to each of the fields discussed. Namely, the right to information, the right to interpretation and translation, the right to access to a lawyer and the factors considered in the execution of the EAW.

### **Right to information**

This section illustrates that, in the realm of the right to information, the legal standards are observed. However, some aspects may prevent a full enjoyment of this right in practice.

Overall, the experience of the requested persons confirms that the provision of information is highly standardised, both in relation to information on rights and the reason for the arrest, i.e., the existence of an EAW. Nonetheless, some shortcomings are revealed. Among them, it is highlighted that the information provided at the police station on the content of the EAW is very brief, because they do not have it in full. Additionally, it is noted that the defendants sign the Letter of Rights –as any other detainee– but will not necessarily keep the document with them during the entire time of detention. Moreover, in cases of EAWs for prosecution, the extent of the information contained within the EAW itself may be notably insufficient. Furthermore, the information on consenting to surrender and on the implications of waiving the principle of speciality may be inconsistent. Finally, a number of factors seem to be hindering the understanding of such information. Namely, the sometimes uneven quality of the interpretation; potential confusing comments from the police about the functioning of the procedure; and the fact that lawyers involved in EAW proceedings are not always specialists in the matter.

### **Right to interpretation and translation**

The experience of the requested persons shows that the right to interpretation is generally fulfilled. This section, however, reveals that some barriers have been found in practice to the realisation of this right and the right to translation.

In the field of interpretation, it is stressed that the quality of the interpreting service is not consistent and that some interpreters do not have the capacity to fulfil the interpretation needs of a judicial proceeding. In addition, it is noted that interpretation is provided only at the police station or at the court, but the service is not made available until the requested person's surrender. Subsequently, it is emphasised that if the defendant is in pre-trial detention, they cannot benefit from the possibility of free of cost interpretation in the event that judicial officers come to the prison to notify procedural matters, or for private consultations with their lawyer. In this sense, this right is recognised when the legal requirements met.

With regard to the translation of documents, the law provides, as a rule, for the translation of the essential documents of the file. Nonetheless, in practice these documents are provided in Spanish. Their interpretation –foreseen as an exception– is applied as the standard.

## **Right to access to a lawyer**

The practice in the field of the right to a lawyer is consistent with the legal standards in many aspects, although some obstacles are identified to its effective implementation. This section addresses them, both in relation to information on and access to legal representation in the executing and in the issuing State.

With regard to the provision of information on this right, according to law, the requested person is informed of their right to access to a lawyer in Spain, as the executing State, as any other detainee. This information includes the free of cost access to a lawyer. Moreover, the law establishes that once the requested person is brought before the judge, they shall be informed of their right to appoint a lawyer in the State issuing the EAW. However, in practice, the provision of this information follows an uneven pattern so far.

The access to legal assistance in Spain, as an executing State, follows an established procedure to provide the defendant with a lawyer, either *ex officio* or a private one –only in the event that they have already one. Beyond these formalities, neither the police nor any other authority helps the requested person to make arrangements to contact a lawyer. Likewise, the defendants cannot specify certain wishes. They are not given access to the internet or to the telephone to contact a lawyer, no list of contact details of lawyers is provided for this purpose. In this regard, it is pointed out that neither the police nor the court can recommend a lawyer. Additionally, lawyer-client consultations have been identified as causing potential frictions. Notably, the duration of private conversations before the authorities question the requested person, may present as an obstacle to the full realisation of the right to a lawyer.

In relation to the access to legal assistance in the issuing State, it is highlighted that the requested person is not assisted in contacting a lawyer in the country of issuance, nor are they provided with contact details of available lawyers or access to a phone or internet for this purpose. In the context of dual representation, the value of the different ways in which lawyers from both countries can cooperate with each other has been noted.

## **Execution of the EAW – factors considered**

This section explores an assessment of the factors considered in practice when executing an EAW and reveals some good practices and some challenges.

In particular, some barriers are identified regarding the objection to the execution of the EAW. On the one hand, the requested persons have sometimes received information that confuses them about basic aspects of the EAW procedure, i.e., the possibility of objecting to surrender. On the other hand, some difficulties have been found with respect to the consideration given to the factors put forward to support the objection to surrender.

In this respect, it is pointed out that, on occasions, the solid ties in Spain of the requested person have not been taken into account when deciding on the surrender. Additionally, it is stressed that there is no mechanism in place in Spain, as an executing State, to verify compliance by the issuing State with the principle of speciality or with the conditions of surrender, and to take action in the event of non-compliance. On another note, it is commented that, exceptionally, the objection to surrender on the grounds of proportionality issues with regard to the severity of the penalty has been taken into account. Lastly, the interviewees find that, in practice, the objection to surrender on the grounds of fair trial and condition of detention will be probably unsuccessful in the context of an EAW, where it is understood that there is mutual trust between the EU States.

## **INTRODUCTION**

The following country report describes the practice of the EAW procedure in Spain, as the executing State, according to the experience of the requested persons, either as described by themselves or by their lawyers. Their experience is contrasted with the applicable legal standards in order to assess whether the practice in the different areas under analysis is consistent with the law or a deviation from it. In doing so, good practices and obstacles in the EAW procedure are identified.

In total, **five eligible interviews** were carried out in the timeframe of 1<sup>st</sup> March 2023 to 29<sup>th</sup> March 2023. The interviews were conducted individually and through telephone, electronic means of communication and, exceptionally, one of them by mail.

### **○ PREPARATION OF FIELDWORK, IDENTIFICATION AND RECRUITMENT OF PARTICIPANTS**

The recruitment and identification of interviewees necessary to produce this report was challenging. The process of contacting and selecting the requested persons consisted of contacting key actors who are in contact with them, in order to introduce them to the project and to allow them to decide on their participation. However, none of these contacts were successful except for the lawyers. In general, the key actors consulted considered it not possible to contact requested persons for this purpose.

Among these actors, a large number of lawyers who have worked with EAWs in Spain as an executing State were contacted. Some of them agreed to communicate the information to their clients, the requested persons, who were in Spain. A large number of requested persons did not consent to the lawyer providing their contact information in order to conduct an interview. Nevertheless, some of them did consent and wanted to communicate their experience and how they felt during the EAW procedure. In these cases, interviews were conducted by telephone and mail.

In addition, lawyers with a notable practice in EAW proceedings were selected to be interviewed about the experience of requested persons during this procedure. The aim has been to obtain additional information on how the requested persons experience the procedure and to add further context to the information facilitated by the requested persons themselves. In these cases, the interviews were conducted via videoconference.

### **○ DATA ANALYSIS**

The data has been analysed section by section. For this purpose, a comparison has been made between the EAW regulation in the Spanish legal system and the practice on how all the issues under examination are implemented. This practice is based on the experience of the requested persons, either as described by themselves or by their lawyers.

The different sections have been completed following a systematic comparison of the regulation and practice. The questions contained in the interview template have served as a guide to give internal structure to each of the general parts of the report. Once the fundamental issue was defined in each of the questions, the responses of all the requested persons and lawyers on that specific question were collected. The outcome has been a dialogue between the requested persons and their lawyers that illustrates the practices established on each of the topics, the obstacles encountered and the needs identified in their experience with the EAW procedure.

## ○ **BRIEF OVERVIEW OF THE REPORT'S CONTENTS**

This report seeks to reflect the current status in Spain of the EAW procedure by comparing legal regulation and practice in specific areas. The examined practice is based on the experience of the requested persons, either as described by themselves or by their lawyers. This experience has been mainly gathered from five EAW cases between Spain, as the executing State, and Italy, Romania, Portugal and Bulgaria, as the EAW issuing States. In this report, four domains are analysed and some findings will be identified from each of them.

First, the law and practice of the right to information of a person requested under an EAW is reviewed. There, questions such as when, how and who informs the requested person, what rights they are informed about and to what extent, what is the content and procedure of the information provided about the EAW, and whether they understand such information, will be addressed.

Second, the right to interpretation and translation is examined. This section discusses when and how the requested person can be assisted by an interpreter and evaluates the effectiveness of this service. Moreover, the practice of the translation of documents is evaluated.

Third, the report focuses on the right to access to a lawyer. This part includes questions on the provision of information on legal assistance in Spain, as the executing State, and on information on dual legal representation. Furthermore, it analyses the access to that legal assistance, both in Spain and in the issuing State, reviewing the assistance provided to the requested person in the appointment of both lawyers, the context in which private consultations with lawyers occur and how they develop, and the access to free legal aid.

Fourth, the report addresses the execution of the EAW. The practice in this section will highlight the factors that judicial authorities take into account in the execution of an EAW and the extent to which they are considered when deciding on the surrender. In particular, reference will be made to the treatment of objections to surrender based on the personal situation of the requested person, the proportionality in regard to the severity of the penalty, the right to a fair trial and the conditions of detention in the issuing State.

Finally, the report outlines the conclusions drawn from the comparison between law and practice, presenting the latest challenges, practices and needs identified by requested persons and their lawyers in Spain in the EAW procedure.

## RESEARCH FINDINGS

### 1. Right to information

#### a. Provision of information (when, how by whom)

"The police informed me of my rights. They told me that I could make a call, that I had the right to an *ex officio* lawyer, but I don't remember much more.

I was so surprised, I had no idea. I have been in Spain for thirteen years, legally working. The police came to the hotel when I was on holiday and told me I had an EAW. I was 'stunned'".

*Requested person, Spain.*

"La policía me informó de mis derechos. Me dijeron que podía hacer una llamada, que tenía derecho a un abogado de oficio, pero no recuerdo más. Fue una sorpresa, no tenía ni idea. Llevo en España trece años, trabajando legalmente. La policía vino a la puerta del hotel estando de vacaciones a decirme que tenía una EAW. Me he 'quedado de piedra'".

In Spain, the legal standards governing the European Arrest Warrant are enshrined –in regard to what is to be discussed here– in two legal bodies, namely, the Criminal Procedure Act (hereinafter, LECrim)<sup>1</sup> and the specific law regulating the EAW, the Law 23/2014 on the mutual recognition of criminal decisions in the European Union (LRM)<sup>2</sup>.

In the realm of provision of information, the law establishes that rights set forth in Article 520 LECrim<sup>3</sup> are applicable to any person under investigation or accused who is deprived of liberty and so to the requested person. According to the second paragraph of that provision, the requested person shall be informed in writing of the facts attributed to them and the reasons for their deprivation of liberty, as well as of the rights to which they are entitled, in a language they understand and immediately. In all cases the detainee shall be allowed to keep the written Letter of Rights in their possession during the entirety of their detention.

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<sup>1</sup> Real Decreto de 14 de septiembre de 1882 por el que se aprueba la Ley de Enjuiciamiento Criminal. At: <https://www.boe.es/buscar/act.php?id=BOE-A-1882-6036&p=20210702&tn=1#tx>

<sup>2</sup> Ley 23/2014, de 20 de noviembre, de reconocimiento mutuo de resoluciones penales en la Unión Europea. At: <https://www.boe.es/buscar/act.php?id=BOE-A-2014-12029>

<sup>3</sup> The requested person is informed, like any other detainee, of the following rights:

(a) Right to remain silent by not testifying, to not answer, or to state that they will only testify before the judge.

b) Right not to testify against themselves and not to confess guilt.

c) Right to appoint a lawyer and to be assisted without undue delay. In the event that, due to geographical distance, the assistance is not immediately possible, the detainee shall be provided with telephone or videoconference communication, unless such communication is impossible.

d) Right to access the elements of the proceedings which are essential to challenge the legality of the detention or deprivation of liberty.

e) Right to inform a relative or person of their choice, without undue delay, of their deprivation of liberty and the place of custody at any given moment. Foreigners shall have the right to communicate these circumstances to the consular office of their country.

f) Right to communicate by telephone, without undue delay, with a third party of their choice. This communication shall take place in the presence of a police officer or, where appropriate, of the officer designated by the judge or the public prosecutor.



In practice, there is agreement among all the interviewees on the fact that the requested person receives information about these rights at two points in time. First at the police station and later on at the *Audiencia Nacional* (hereinafter, National Court) –the Spanish court where the execution of EAWs is centralised.

Thus, initially, following the arrest under the European Arrest Warrant, the police tell the requested persons what their rights and the reason for their arrest are.

"When I was arrested, the police treated me well and respectfully".

*Requested person, Spain.*

"Cuando me detuvieron, la policía me trató bien y con respeto".

With regard to information on rights, a lawyer comments that this is something that is nowadays respected in Spain and that, at the police station, everyone is informed about their rights. In accordance with legal standards, the rights they are informed of are those contained in the general rights template that is used to inform any arrested person. Namely, the rights enshrined in Article 520 LECrim. On this point, a lawyer of one of requested persons is of the opinion that "there should be a specific reading of rights for EAWs. The requested person should not be treated as a normal detainee, because they are not. This reading of rights should include special rights, such as the right to contact a lawyer in the issuing State, the right to have an interpreter in pre-trial detention, and a complete explanation of what the principle of specialty is".

Regarding the provision of information on the reason for detention, a lawyer stresses that it would be very rare to find a case where the requested person has not been told the reasons for their arrest or the charge against them. Practitioners affirm that the police inform the requested persons in a very brief way, as it is on the form, about which country is requesting them and the fact that the arrest is conducted under an EAW. It is stated that, if the police do not give much information about the content of the EAW, it is simply because they do not have it in full. However, although no exhaustive information is given, the lawyer will be able to consult the proceedings, later on, in court.

Subsequently, once in court, the requested person will again be informed of what their rights are and the reason as to why they are there. Practitioners explain that the court clerk always reads them their rights as any other detainee and tells them they are there under an EAW issued by another country in order to serve a sentence or for prosecution. Normally, the requested person will first learn about the content of the EAW from their lawyer. Afterwards, the judge informs them as well. Throughout this process, both at the police station and in court, an interpreter may assist the requested person if necessary.

#### b. Information about rights

As has just been seen, requested persons are informed of their rights at two different points in time, first at the police station and then in court. The legal standard guiding the provision of this information –Article 520 LECrim– specifies that the requested person shall be informed in writing of the rights to which they are entitled and shall be allowed to keep the written Letter of Rights in their possession during the entire time of detention. In practice, the application of this standard is respected, although certain nuances are found.

Consistent with the legal requirements, practitioners point out that at the police station the information about rights is provided orally and in writing, given that the requested person signs the

Letter of Rights that contains the common rights to all detainees –rights contained in Article 520 LECrim. The document is available in several languages. However, although the information of rights is provided this way, some lawyers have highlighted that the requested person will sign the Letter of Rights, but will not necessarily keep the document with them. In this regard, one requested person claims to have been informed of their rights for the first time at the police station, orally, and another defendant states not remembering “whether everything was additionally explained in a written document”. Nevertheless, this does not exclude that later on, among the documents given to the requested person in court, the declaration of rights will be included –see, section 2.b.

The information on rights, common to all defendants, takes place again in court. As to how this happens, a requested person explains that an official informed them of their rights before entering the courtroom before the judge. A Romanian interpreter was present providing simultaneous interpretation. In line with this, lawyers explain that, in their experience, once in court, defendants are informed orally and sign a Letter of Rights. If available, this document will be in their language. They will be also assisted by an interpreter. Another lawyer points out that, in court, a Letter of Rights is given to the requested person.

"I don't think the judge took into account that I was objecting to the surrender, they just wanted to hand me over".

*Requested person, Spain.*

“Yo creo que el juez no tuvo en cuenta que me oponía a la entrega, simplemente querían hacer la entrega”.

While the defendant is informed of the same rights as any other detainee, both in police custody and in court, the requested persons have only claimed to recall that they were informed of their rights to make a phone call and the right to an *ex officio* lawyer if the person did not have one, they trusted. However, the circumstances in which this situation develops may explain this. In this regard, a requested person emphasises that they were informed of their rights and that, if they do not recall any other information given, “it is due to the fact [they were] too surprised at the time”. According to them, they “had no idea that there was a proceeding against [them]”. The requested person has been in Spain for more than a decade, working in a regular administrative situation and the arrest took place while on vacation, when the police arrested them at the hotel under an EAW. In their words, “it came as a shock”. Likewise, another defendant commented that, after the arrest, the transfer from the Spanish region where they were to Madrid, where the National Court is located, took place in conditions that caused them great discomfort. Specifically, during the long transfer of hours between these regions, the defendant reports having travelled with the cold air at full power in winter and refers to it as an experience in which they “felt mistreated”.

Notwithstanding these circumstances, the requested persons have highlighted that during the time of the arrest the police treated them with respect. The lawyers corroborate this experience and comment that, based on their knowledge, the police treat the detainees well in EAW proceedings, as well as in extradition proceedings. A lawyer comments that the performance of the police in these proceedings, where the crime has not even been committed in Spain, is professional and appropriate. Nevertheless, two lawyers stress that, on occasions, the police joke, in the presence of the requested person, saying that nothing can be done about the procedure, because it is already known that the person is going to be handed over to the issuing country.

**Table 1: Were the requested persons informed about their procedural rights?**

<b>Spain</b>	<b>Requested person 1</b>	<b>Requested person 2</b>	<b>Requested person 3</b>	<b>Requested person 4</b>	<b>Requested person 5</b>	<b>Total</b>
<b>YES</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>5</b>
In writing (Letter of Rights)						
Orally				<b>X</b>		<b>1</b>
In writing (Letter of Rights) and orally	<b>X</b>	<b>X</b>	<b>X</b>		<b>X</b>	<b>4</b>
<b>NO</b>						
<b>Don't know/remember</b>				<b>X</b>		<b>1</b>
<b>Did not answer</b>						

c. Information about the EAW – content and procedure

As mentioned above, according to the second paragraph of Article 520 LECrim, the applicable legal standard establishes that the requested person shall be informed in writing of the facts attributed to them and the reasons for their deprivation of liberty in a language they understand and immediately. The LECrim regulation is complemented by the specific law regulating the EAW, the LRM. Article 50.3 LRM specifies that, once the arrested person is brought before the court, they shall be informed of the existence of the EAW and its content. In practice, consistent with these provisions, the requested person receives information about the EAW at two points in time. First, when they are arrested, by the police, and subsequently in court.

“The police have told the requested persons that ‘this cannot be sorted out and that they will be handed over’”.

*Lawyer, Spain.*

“La policía ha dicho a las personas reclamadas que ‘esto no se puede arreglar y que serán entregadas’”.

Thus, the defendant is informed by the police of the reason for their arrest, namely, that they have been requested by another country under an EAW. Specifically, a requested person states that, at this stage, the police explained to them that they were arrested under an EAW issued by Italy, the type of offence they were being accused of having committed and they were told, through an interpreter, that they would appear before a magistrate the next day. Highlighting how brief this first provision of information is, a requested person affirms having been orally told by the police “some information” about the offence suspected to have been committed. In the same vein and as previously indicated, the lawyers confirm from their experience that this information is always succinct, no exhaustive information is given because the police do not have the EAW in full.

With regard to the way in which this information is provided, two lawyers explain that, on the occasion of the reading of rights, the police gives the information orally and that, in addition, the Letter of Rights signed by the defendants contains a small section specifying the criminal offence for which they are being arrested.

Once in court, the defendant is informed again. Two lawyers explain that the person is informed orally that they have been requested under an EAW, for prosecution or enforcement of sentence, and for what offence. Moreover, in court, prior to the hearing, the lawyer has access to the case file and can discuss all these questions with the requested person.

A requested person confirms this dynamic by stating that in court they were first given information orally and, before leaving, they received “written documentation with information about the offence of which they were accused”, in particular “an email with the European Arrest Warrant”. Likewise, another requested person indicates having received the information about the EAW in a written document. However, three lawyers point out that the full content of the EAW is not directly given to the requested person, but through their lawyer, as in any other procedure. It is the lawyer who would provide a copy to their client, not the court.

Nevertheless, despite the fact that the defendant will learn about the terms of the EAW, shortcomings have been reported regarding the content of the EAW itself. Concerning the extent of this information, a lawyer comments that it may vary and that, in cases of EAWs for prosecution, it may be notably insufficient. The practitioner argues that, in general, if the person has been convicted, the issuing State usually provides the sentence. When the EAW is for prosecution, the fact that there is a great disparity in penalties between the different countries of the European Union can lead to situations of uncertainty. This being the case, some offences have low penalties in Spain but a more severe penalty in other countries. For this reason, in cases in which the EAW is for prosecution, the practitioner maintains that it should be better explained what the crime consists of, so that the lawyer, the requested person, the prosecutor and the judge know exactly what crime they are dealing with. This is because “sometimes the EAW only contains the number of the article of the criminal code of the other country under which the surrender is requested. In such cases, it would be good if the content of the article could be translated into Spanish”.

**Table 2: Were the requested persons informed of the contents of the EAW against them?**

<b>Spain</b>	<b>Requested person 1</b>	<b>Requested person 2</b>	<b>Requested person 3</b>	<b>Requested person 4</b>	<b>Requested person 5</b>	<b>Total</b>
<b>YES</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>5</b>
In writing						
Orally						
In writing and orally	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>5</b>
<b>NO</b>						
<b>Don't know/remember</b>						

Did not answer						
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d. Information on consenting to surrender

“I was told about the possibility to waive the principle of speciality and the consequences of doing so by my lawyer”.

*Requested person, Spain.*

"Mi abogado me informó de la posibilidad de renunciar al principio de especialidad y de las consecuencias de hacerlo".

Under the law, the Central Preliminary Examining Judge at the National Court will verify whether the consent to surrender has been given freely and with full knowledge of its consequences, especially its irrevocable nature. The same shall apply to the waiver of the principle of speciality –Article 51 paragraphs 1-3. At the time of surrender, the court clerk shall inform the issuing judicial authority whether or not the detainee waived the principle of specialty –Article 58.6 LRM. In this regard, the experience of the interviewees highlights the desirability of going into greater detail when providing this information.

Thus, regarding how the provision of information on consenting to surrender has developed in practice, a requested person notes that the judge “simply” asked them whether they would accept being handed over or not. Another defendant recalls that, prior to entering the courtroom before the judge, the officer who informed them about their rights also told them that they could either agree or refuse to agree to being surrendered. The requested person does not believe that they explained what consenting to surrender would mean. Three lawyers commented that in all EAWs in which they have participated, the judge in the courtroom always explained to the requested person that they have the right to consent to their surrender or to object. As for the scope of such an explanation, according to their professional experience, it merely implies telling the requested persons that if they consent, they will be handed over.

With regard to the provision of information on the principle of speciality, a lawyer has pointed out that judges always ask the person both whether or not they consent to the surrender, and whether or not they waive this rule. However, three lawyers stress that the implications of waiving this rule are not explained in court. Defendants are just asked if they waive it or not.

Two lawyers emphasise that the principle of speciality is explained by the defendant’s lawyer. One lawyer says that in court “they go fast” and “sometimes, the requested person is not asked whether or not they waive the principle of speciality and, other times, they are just asked if they waive it, without further explanation”. The lawyer does not believe that the requested person understands this question. However, the practitioner comments that “the courts act to safeguard the interests of the requested person and, generally, what they do is to put straight on record that the requested person does not waive it”.

“The personal or family situation of the requested person is not usually taken into account when deciding on their surrender”.

*Lawyer, Spain.*

"La situación personal o familiar de la persona reclamada no suele tenerse en cuenta a la hora de decidir su entrega".

In line with this, two requested persons recall that the judge, through the interpreter, told them that once they were surrendered to the issuing State, they could be tried only for the offence mentioned in the EAW. Nonetheless, in both cases, they claim that, in the courtroom, they were not told about the possibility of waiving the application of this rule or its consequences, meaning that if they waive the rule, they might be prosecuted or detained for previous offences not specified in that EAW. In the experience of one defendant, the information about the possibility to waive the application of the principle of speciality and the consequences of doing so was provided by their lawyer. However, even where the defendant has been duly informed, the potential defencelessness of the requested person when the issuing State fails to respect the principle of speciality has been highlighted. In particular, as will be seen –see, section 4.a–, there is no mechanism in place in the executing State to verify compliance with this rule by the issuing State and to take action in the event there is none.

**Table 3: Were the requested persons informed about what consenting to their surrender entailed?**

	Requested person 1	Requested person 2	Requested person 3	Requested person 4	Requested person 5	Total
<b>YES</b>	X	X	X	X	X	5
<b>NO</b>						
<b>Don't know/remember</b>						
<b>Did not answer</b>						

e. Understanding of information

“I only understood what the interpreter was telling me”.

Requested person, Spain.

“Únicamente entendí lo que me decía el intérprete”.

When assessing whether defendants in EAW proceedings understand the information that the police, the prosecutor, or the judge give them, requested persons indicate that they understand what they are told or that they "believe" they do. Lawyers reach the same interpretation based on their experience. In addition, two requested persons express that the person who gave them the information was respectful towards them, particularly in their tone of voice, and that they never felt wronged in this respect. Likewise, the lawyers comment that requested persons have never reported or referred to feeling disrespected by the officials giving the information and they do not believe there is negative treatment of EAW detainees.

However, specifically regarding the understanding of the information, several factors appear to have to come together to facilitate such understanding by requested persons.

On the one hand, three lawyers have highlighted that the quality of interpretation provided by interpreters is not always good. According to these practitioners, this is more noticeable in languages such as English, but may not be as apparent in other languages –see, section 2.c. In this sense, the quality of the interpretation is directly linked to the degree of understanding of the

information by the defendant. Highlighting this fact, a requested person has stressed that they “could only understand what the interpreter was saying” to them and that they “only engaged with the interpreter, as [they] did not understand Spanish”.

On the other hand, three lawyers reiterate that the role of the lawyer is essential in order to clarify certain aspects, such as the principle of speciality or the way the procedure works. In the latter sense, a practitioner comments that sometimes requested persons are told at the police station that this is an automatic procedure and that they are going to be handed over. As a result, the lawyer reports that, in these cases, the defendants sometimes do not understand why they have a lawyer appointed as they have been told that “there is nothing to be done in the proceedings and do not know they have the right to object the surrender”. The practitioner maintains that the role of the lawyer in explaining the procedure to the requested person is therefore crucial.

For the same reason, another lawyer highlights the need for all lawyers involved in EAW proceedings to be specialists, pointing out that this is not always the case and that the defendants have sometimes expressed that they were not aware of important information about the particularities of the EAW procedure. Directly related to these claims, a requested person who reports not having had the opportunity to speak to their *ex officio* lawyer in private before the hearing –see, section 3.b.ii– also states that they do not feel that the police or anyone else did anything in particular to make sure that they were understanding their rights.

Finally, two lawyers are of the opinion that this is a stressful situation, particularly because the EAW procedure is a process that people sometimes do not expect or know about, which can influence how the requested person receives the information. However, all practitioners agree that the police do not necessarily provide much information and do not necessarily ensure that the person understands the information, although they also point out that this is not the primary role of the police. In court, conversely, emphasis is placed on the requested persons understanding their rights, although the depth in which some information is given could be improved.

#### f. Discussion of findings

In the realm of information on rights, the findings demonstrate that the law is implemented in practice as all interviewees agree that the legal requirements are observed. In some of the areas examined, there are practices to be highlighted and, in others, barriers to be overcome.

- On the provision of information

In Spain, the legal standard in the area of provision of information establishes that the requested person shall be informed of the facts attributed to them, as well as of the rights to which they are entitled –rights common to all detainees set forth in Article 520 LECrim–, in a language they understand and immediately.

According to these legal standards, in practice, **the requested person receives information about general rights, as any other detainee**, and about the EAW at two points in time, first at the police station and, later on, at the National Court.

The police tell the requested persons what their rights and the reason for the arrest are, namely, the existence of an EAW. However, at this stage, **the information on the content of the EAW is very brief, because the police do not have the EAW in full.**

In court, the requested person will again be informed about these rights by the court clerk and about the fact they are there under an EAW issued by another country for the purpose of serving a sentence or facing prosecution. Additionally, the defendant will learn about the content of the EAW, first from the lawyer and, afterwards, from the judge.

- On the provision of information on rights

In accordance with legal standards on the provision of information, **the requested persons shall be informed in writing of the same rights as any other detainee and shall be allowed to keep the written Letter of Rights in their possession during the entire time of detention.**

In practice, the application of this standard is respected, although certain nuances are found:

On the one hand, the requested persons are informed of these rights both at the police station and in court. This provision of information occurs both orally and in writing, given that they sign the Letter of Rights that contains the common rights to all detainees.

On the other hand, **the requested person shall be allowed to keep the written Letter of Rights in their possession during the entire time of detention. However, some lawyers have highlighted that the defendant will sign the Letter of Rights, but will not necessarily keep the document with them.** This could explain why defendants do not identify having been informed of their rights in writing or have no recollection of being so. Nevertheless, **this does not exclude that the requested persons confirm having the Letter of Rights among the documents provided to them in court.**

- On the provision of information about the EAW

The law specifies that the defendant shall be informed in writing of the facts attributed to them and the reasons for their deprivation of liberty in a language they understand and that, once the arrested person is brought before the court, they shall be informed of the existence of the EAW and its content.

The practice is consistent with these provisions. **Nevertheless, some shortcomings have been raised with regard to the content of the EAW itself.**

Thus, the requested person receives information about the EAW from the police when they are arrested, and subsequently in court.

In the police station, **no exhaustive information is given because the police do not have the EAW in full.** The information is given orally and, in addition, the Letter of Rights signed by the defendants contains a small section specifying the criminal offence for which they are being arrested.

In court, the person is informed orally of the fact that they have been requested under an EAW, for prosecution or enforcement of sentence, and for what offence. Their lawyer has access to the case file and can discuss all these questions with the requested person before the hearing. Additionally, requested persons indicate having received the information about the EAW in a written document before leaving the court.

**However, concerning the extent of the information within the EAW itself, a lawyer stresses that, in cases of EAWs for prosecution, it may be notably insufficient.** Sometimes, the EAW only contains



the number of the article of the criminal code of the issuing State under which surrender is requested.

- On information on consenting to surrender

According to law, the Central Preliminary Examining Judge at the National Court will verify whether the consent to surrender has been given freely and with full knowledge of its consequences, especially its irrevocable nature. The same shall apply to the waiver of the principle of speciality.

The experience of interviewees highlights that, **in practice, the detail in which this information is provided is inconsistent.**

Thus, on the one hand, the judge in the courtroom always explains to the requested person that they have the right to consent or to object to surrender. However, it has been pointed out that **this explanation merely implies telling the requested persons that if they consent to surrender, they will be handed over.**

On the other hand, generally speaking judges ask the defendant whether or not they waive the principle of speciality. However, it has been stated that **the implications of waiving this rule are not explained in court, but by the lawyer.**

- On the understanding of information

Requested persons indicate that they understand the information that the police, the prosecutor, or the judge, give them, or that they "believe" they do.

All practitioners agree that the police do not provide much information and do not necessarily ensure that the person understands such information, although they also point out that this is not the primary role of the police. In court, conversely, emphasis is placed on the requested persons understanding their rights, although the depth in which some information is given could be improved.

**However, a number of factors can hinder the understanding of information:**

- The **quality of the interpretation** is not always good.
- The defendants **sometimes do not understand why they have a lawyer appointed or their options in the procedure, as they have been told that by the police that "there is nothing to be done in the proceedings** and do not know they have the right to object the surrender". Thus, the role of the lawyer is essential in order to clarify certain aspects of the proceedings.
- **Lawyers involved in EAW proceedings are not always specialists** in the matter.

## **2. Right to interpretation and translation**

### **a. Provision of interpretation (decision and means)**

In Spanish law, the standards for interpretation in EAW proceedings establish, *grosso modo*, that when the requested person does not speak or understand Spanish or the official language, they have

the right to be assisted by an interpreter using a language which they understand during all proceedings in which their presence is required, including questioning by the police or by the Public Prosecutor and all court hearings. This right includes being assisted by an interpreter in conversations with their lawyer that are directly related to their subsequent questioning or taking of a statement, or which are necessary for the lodging of an appeal or for other procedural applications. The costs of interpretation and translation arising from the exercise of these rights shall be borne by the Administration, irrespective of the outcome of the proceedings –Article 123.1 letters a), b), and c) LECrim.

“Nobody asked if I needed interpretation, but was automatically provided”.

*Requested person, Spain.*

"Nadie me preguntó si necesitaba interpretación, sino que me la proporcionaron automáticamente".

Consistent with that, in practice, interpretation is provided to follow the EAW proceedings. Defendants affirm that they have had an interpreter present and lawyers confirm that, when necessary, an interpreter will always be present. A lawyer explains that this process is automatic. If the person does not understand, they are asked what language they speak and an interpreting company is contacted from the moment of arrest and an interpreter of the chosen language comes.

As to how often the assistance of an interpreter is required, a lawyer comments that, usually, requested persons who have been in Spain for a long time do not need interpretation to follow the procedure and do not ask for it. Regardless, practitioners indicate that the appointment of an interpreter is often automatic and based on the nationality of the requested person. In line with this experience, a requested person recounts how, although not needing interpretation due to their excellent knowledge of Spanish, interpretation was provided automatically. When the defendant arrived at the court, an interpreter of their nationality was already present, without asking whether they needed one, and the interpreter provided interpretation automatically while information was being provided.

With regard to when interpretation is available during the EAW proceedings, practice confirms the legal requirement according to which this service can be provided either at the police station or in court. A lawyer gives a detailed account of their experience with the interpretation service and notes never having seen a failure to provide interpretation when necessary, making every effort to ensure that the person is assisted in a language they understand. At the court, an interpreter is provided immediately, along with a lawyer, so that they can communicate and so that the defendant can understand the EAW proceedings. Equally, according to the experience of a requested person, interpretation was provided from the moment they were brought to the National Court. The interpreter was physically present with them while the official explained their rights and later on in the courtroom before the judge.

“If the requested person is in pre-trial detention, they are not provided with an interpreter when receiving notifications, nor for private consultations with their lawyer. The requested person will have to pay for an interpreter”.

*Lawyer, Spain.*

“Si la persona reclamada está en prisión preventiva, no se le proporciona intérprete cuando recibe notificaciones, ni tampoco para las consultas

privadas con su abogado. La persona reclamada tendrá que pagar un intérprete”.

Other than in these two cases, i.e., at the police station or at the court, no interpretation is provided and the regulation only foresees the provision of such services if the legal premises are met. Practitioners explain that the service is not made available until the requested person’s surrender. Therefore, when the person is subsequently, and if applicable, in pre-trial detention, they cannot benefit from this possibility. In this respect, it is emphasised that in the event that judicial officers come to the prison to notify procedural matters, the requested person will not have the assistance of an interpreter and will have to pay for one that can be found through their lawyer or look for an alternative. Likewise, no interpreter is provided for private consultations with their lawyer while in prison, as the prison does not have any interpreters and no such service is provided. Similarly, requested persons highlight they did not have an interpreter after leaving the court. Summarising the whole process, a defendant comments “[they were] provided with interpretation immediately after the arrest and before the judge but, after that, never saw an interpreter again”.

Regarding the language in which the interpretation is provided, a lawyer explains that the person is not normally asked to choose the language in which they want to be interpreted, but that the appointment of the interpreter is automatically made according to the nationality of the requested person. In the same vein, a defendant confirms that the interpreter was automatically provided in the language of their nationality, without prior questioning. Another defendant confirms that the interpretation provided, both at the police and in court, was in their mother tongue. This, however, does not mean that the language of interpretation is imposed on the person. In this regard, one lawyer points out that sometimes, “in cases where the defendant comes from countries where there are different dialects, the appointed interpreter may not be the right one and, in such cases, another one will be selected”. Meanwhile, two lawyers point out that, “at the National Court, they have a very good staff of interpreters, people who are very professional and polite”, so “there is no problem in providing interpretation, the problem sometimes exists in the quality of the interpretation” –see, section 2.c.

#### b. Translation of documents

"They gave me documents in Spanish. I could understand them because I speak Spanish. I was given the record of arrest and information of rights and the essential elements of the proceedings to challenge the police arrest; an email with the EAW; a court order containing the facts, the arrest and the release".

Requested person, Spain.

“Me dieron documentos en español. Los podía entender porque hablo español. Me dieron las diligencias de detención e información de derechos y de los elementos esenciales de las actuaciones para impugnar la detención de la policía; un correo electrónico con la EAW; un auto de la sala que contenía los hechos, la detención y la puesta en libertad”.

In Spain, the law establishes that the requested person who do not speak or understand Spanish or the official language of the proceedings shall have the right to written translation of the documents that are essential to guarantee their right to defence –Article 123.1 d) LECrim. The law also provides

that the translation of documents may be dispensed with if, in the judge's opinion, they are not necessary for the requested person to know the facts with which they are charged. Additionally, exceptionally, the written translation of the documents may be replaced by an oral summary of their contents –Article 123.3 LECrim. Consistent with these standards, interviewees agree on the fact that the requested persons receive documents. Nonetheless, the translation standard has not been the rule, the documents are provided in Spanish. In practice, the interpretation of the documents – envisaged as an exception– has been more commonly applied as the ruling standard.

"I don't think it is possible to get the court to translate the documents of the file given in Spanish to the requested person".

*Lawyer, Spain.*

"No creo que sea posible conseguir que el juzgado traduzca los documentos del expediente entregados en español a la persona reclamada".

In practice, a lawyer explains that, once in court and prior to the hearing, the requested person's lawyer has access to the case file and they inform the defendant of its content. The requested person does not get a copy of all the forms that constitute the file. The experience of the requested persons reveals that the documents provided to them are in Spanish and are therefore not translated. When listing these documents, a defendant names: the detention order and information of rights and the essential elements of the proceedings to challenge the police detention; an email with the EAW; a court order containing the facts, the detention and the release. In this sense, the interviewees report having received the documents but not being able to assess, as laypersons, whether any relevant documents were missing.

"They gave me documents of the case-file that were not translated, they were only in Spanish".

*Requested person, Spain.*

"Me facilitaron documentos del expediente que no estaban traducidos, sólo estaban en español".

In the same vein, lawyers explain that, in their experience, requested persons are given a copy of the reading of rights; the order of surrender or non-surrender to the issuing State; and the order of release or pre-trial detention. These documents are in Spanish, not translated, and a practitioner indicates that "obviously they don't understand them". In this regard, a lawyer points out that the only document that is given to the defendant in a language they can understand is the EAW – assuming that they speak the language of the country of issuance of the EAW. Moreover, the only document that practitioners have seen translated was the EAW and into Spanish.

However, lawyers stress that, although these documents are not translated, as they will be served in the presence of an interpreter while in court, the interpreter will be able to assist them in this respect. Thus, as introduced above, the translation of documents does not seem to have been established as the standard. On the contrary, interpretation of documents has been more commonly applied as a rule, although it is a possibility provided for by law but on an exceptional basis. Despite this premise, no interviewee –neither requested persons nor lawyers– has requested such a translation to the authorities. Furthermore, on the possibility of doing so, one lawyer emphasises they do not believe that it is possible to get the court to translate these documents.

c. Interpretation of consultations with lawyers

“There is no problem in providing interpretation. The problem sometimes exists in the quality of the interpretation”.

Lawyer, Spain.

“No existe problema en proporcionar interpretación. El problema existe a veces en la calidad de la interpretación”.

As introduced above, the law establishes that requested persons have the right to be assisted by an interpreter in conversations with their lawyer that are directly related to their subsequent questioning or taking of a statement, or which are necessary for the lodging of an appeal or for other procedural applications. The costs of such an interpretation shall be borne, in all cases, by the Administration –Article 123 letter b) LECrim. In this regard, it has been found that the right of the requested person to have an interpreter in their consultations with a lawyer is respected in the terms established by law, as well as the fact that they do not have to pay for this service. However, the effective enforcement of this right seems to be hampered by the uneven quality of the interpretation provided at times.

In practice, as a practitioner puts it, “in cases where the defendant needs an interpreter for the proceedings, the interpreter is also used to communicate with the lawyer”. Thus, if the requested person does not speak Spanish, the interpreter is available to speak to their lawyer. However, two lawyers comment that if their client speaks English, they prefer to communicate with them directly.

“I had an interpreter at the time of arrest and later before the judge. After that, I never saw an interpreter again”.

*Requested person, Spain.*

“Tuve un intérprete en el momento de la detención y después ante el juez. Después de eso, nunca volví a ver a un intérprete”.

It has already been seen –*supra*, section 2.a– that the provision of this service has been described as, at times, quite automatic in order to ensure that the defendant has an interpreter available for when it is needed. Accordingly, a defendant commented that an interpreter in the language of their nationality was always present, although interpretation was not required to communicate with their lawyer, since they are fluent in Spanish, and they did not request it. Conversely, another defendant who does not speak Spanish explains that interpretation was needed to communicate with their lawyer and that, to that end, they had an interpreter present at the police station when arrested, and the day of the hearing before the judge.

All interviewees agree that, when necessary, this service has been provided both in the police station and at the court, and that –as established by law– the requested person does not have to pay for these services. Conversely, a practitioner points out that if an interpreter is needed at a later stage to speak to their lawyer, if the person is placed in pre-trial detention while awaiting surrender, then they will have to pay for this service. In this respect, the legal wording of this right –see above– only recognises this right in relation to conversations with the lawyer that are directly related to the questioning or taking of a statement, or that are necessary for the lodging of an appeal or for other procedural applications. Therefore, only if such requirements are met could the application of the right be claimed under this provision.

On how the interpretation service is provided, a lawyer explains that at police station, the police call the interpreting service. At the court, the interpreter is scheduled to come to the court at an exact time. Usually, the same interpreter who has gone to the police station is also appointed for the next day at the court. A practitioner explains how the possibility for defendants to expressly state that they want an interpreter for the court proceedings works in practice. In this regard, when the requested person is read their rights, they just have to say that they want an interpreter. Once in court, they accompany the lawyer to the court cells to talk to them before going up to the hearing in front of the judge.

As a general rule, when needed, the interpreter is physically present in the room with the requested person while interpreting, either the conversation with the lawyer, at the police station or at the hearings. Exceptionally, a lawyer recalls a case of a fellow lawyer after the COVID pandemic when they wanted to provide the interpreter over the phone but the lawyer refused. Overall, there is no criticism regarding this aspect of the implementation of the right. However, the same cannot be said of the quality of the interpreters.

In effect, the professionals interviewed emphasised that the quality of the interpreting service is not consistent. A lawyer explains that, on some occasions, the interpretation provided by the staff from the interpreters' service is very poor and that there are interpreters who do not have the capacity to fulfil the interpretation needs of a judicial proceeding, even in English. The lawyer points out that "it should be required that the agreements reached with the interpreting companies demand a higher standard from the people they hire", because they have seen "more than one case where the interpretations have not been as accurate as they should be". For this reason, another lawyer recalls having had to intervene in the courtroom to amend incomplete interpretations. The practitioner emphasises that the quality of the interpreters in this service is related to the conditions under which these professionals are recruited, which are not good and, as a result, providing this service is not attractive to the most experienced interpreters. In assessing the quality of the interpretation provided, a requested person considered –given their knowledge of Spanish and, therefore, being able to compare the accuracy of the interpretation– that it was a good interpretation.

The latter is certainly not a trivial issue. As all practitioners stress that, when interpretation is necessary, this service is what helps the defendant to understand the procedure. Illustrating this assertion, a requested person stresses that it was the interpretation that allowed them to follow what the police or the judge was explaining, as they could only understand what the interpreter was saying.

#### d. Discussion of findings

There is consensus among interviewees that, in practice, requested persons under an EAW are provided with interpretation and translation where needed. However, some barriers to the effective implementation of this right have been identified.

- On the provision of interpretation

The legal standard for interpretation in EAW proceedings establishes that the requested person has the right to be assisted by an interpreter in a language they understand during all proceedings. This includes the conversations with their lawyer that are directly related to their subsequent questioning or taking of a statement, or which are necessary for the lodging of an appeal or for other

procedural applications. The costs of such interpretation and translation shall be borne by the Administration.

Consistent with the law, **in practice, free of cost interpretation is provided**, if needed, from the moment of the arrest and in court. The process is considered automatic. The interpreter will be present with the requested person either at the police station, at the hearings or in conversations with the lawyer.

However, two main obstacles to the effectiveness of this right have been identified:

On the one hand, a practitioner points out that, **other than in these two scenarios, i.e., at the police station or at the court, no interpretation is provided and the regulation only foresees the provision of such services if the legal premises are met**. Practitioners explain that **the service is not made available until the requested person's surrender**, so that when the person is subsequently, and if applicable, in pre-trial detention, they cannot benefit from this possibility. In this respect, it is emphasised that in the event that judicial officers come to the prison to notify procedural matters, the requested person will not have the assistance of an interpreter and will have to pay for one. Likewise, no interpreter is provided for private consultations with their lawyer while in pre-trial detention.

On the other hand, **the quality of the interpreting service is not consistent**. It has been stressed that some interpreters do not have the capacity to fulfil the interpretation needs of a judicial proceeding, not even in English. Explaining the reason behind, it was pointed out that the quality of the interpreters in this service is linked to the conditions under which these professionals are hired, which are not good, making the provision of this service unattractive to more experienced interpreters.

- On the translation of documents

The law establishes that the requested persons who do not speak or understand Spanish have the right to written translation of the documents that are essential to guarantee their right to defence. The translation may be dispensed with if, in the judge's opinion, the documents are not necessary for the requested persons to know the facts with which they are charged. In addition, exceptionally, the written translation of the documents may be replaced by an oral summary of their contents.

Consistent with these standards, interviewees agree on the fact that the requested persons receive documents. The defendant is given a copy of some of the forms that constitute the file, namely: The detention order and information of rights and the essential elements of the proceedings to challenge the police detention; an email with the EAW; a court order containing the facts, the detention or the release.

Nonetheless, **translation is not the rule. These documents are provided in Spanish**. The only document that is given to the defendant in another language is the EAW. **In practice, the interpretation of the documents –envisaged as an exception– has been more commonly applied as the ruling standard**.

On the possibility of requesting the translation of these documents, no interviewee has requested such a translation to the authorities, and some practitioners do not believe it is possible to get the court to translate them.

- On interpretation of consultations with lawyers

The law establishes that requested persons have the right to be assisted by an interpreter in conversations with their lawyer that are directly related to their subsequent questioning or taking of a statement, or which are necessary for the lodging of an appeal or for other procedural applications. The costs of such an interpretation shall be borne by the Administration.

In practice, the right of the requested person to have an interpreter in their consultations with a lawyer, both in the police station and at the court, is respected, as well as the fact that they do not have to pay for this service.

However, **the effective implementation of this right seems to be hampered by the at times uneven quality of the interpretation provided.**

Additionally, a practitioner points out that **if an interpreter is needed when the person is placed in pre-trial detention while awaiting surrender, then they will have to pay one.** In this respect, **the legal standard only recognises this right in relation to conversations with the lawyer that are directly related to the questioning or taking of a statement, or that are necessary for the lodging of an appeal or for other procedural applications.** Therefore, only if such legal requirements are met could the application of the right be claimed under this provision.

### 3. Right to access to a lawyer

#### a. Information about legal assistance (including on dual representation)

"In court, there is pressure on the lawyer about the amount of time they talk to their client, in order to keep it short. Sometimes the lawyer has to meet the client in a corner in the corridor of the court to be able to talk to the person before the hearing".

Lawyer, Spain.

"En sede judicial se presiona al abogado sobre la cantidad de tiempo que puede hablar con el cliente, para que sea breve. A veces, el abogado se tiene que reunir con su cliente en una esquina en el pasillo del juzgado para poder hablar con la persona antes de la vista".

#### *i. Information on the right to access a lawyer in the executing State*

As previously explained –see, section 1–, the requested person receives information about their rights at two points in time, at the police station and at the court. In this general reading of rights –rights enshrined in Article 520 LECrim– the arrested person is informed of their right, among others, to be assisted by a lawyer in Spain.

Consistent with the findings revealed when examining the practice on the provision of information about rights, there is agreement that the defendant receives information about their right to a lawyer from the moment of arrest. In effect, a requested person explains how the police informed them that they had the right to contact a lawyer and asked if they had one. The interviewee did not have a private lawyer because, as they pointed out, "how could [they] have one, as [they] did not expect to be involved in legal proceedings", hence the police arranged for the appointment of an ex



*officio* lawyer. Similarly, another defendant indicates that the police informed them orally during the arrest and through the interpreter.

The practitioners describe the provision of the information on this right. According to their experience, when the police arrest the requested person, they read them their rights. At that point, the defendant is informed of their right to a lawyer, either *ex officio* or a private one, and the appropriate arrangements are made in order to facilitate the appointment –see, section 3.b.

“No one informed me that I had the right to have a lawyer in the issuing State or helped me to contact one”.

*Requested person, Spain.*

"Nadie me informó de que tenía derecho a tener un abogado en el Estado emisor ni me ayudó a ponerme en contacto con uno".

Once the person has a lawyer and the practitioner goes to the police station, a new reading of rights takes place in the presence of their lawyer. The police always inform them orally and also in writing, as this right is included in the Letter of Rights that the persons sign. This Letter of Rights is available in several languages, and –where appropriate– it is read by the interpreter and signed by the person. In this regard, some lawyers have highlighted that the requested person will not necessarily keep the document with them. This could explain the apparent duality of stances on whether or not defendants are informed orally as well as in writing. In effect, the requested persons identify having been informed just orally, and have stated that “no written document was given with this information”. Although they also claim not remembering whether the information was additionally explained in a written document.

Furthermore, this does not exclude the fact that there is agreement that the declaration of rights will be among the documents given to the defendant in court later on –see, section 2.b. In this regard, a lawyer notes that at the court, they will again inform the defendant of their rights –and therefore of their right to a lawyer– orally and in writing by signing the Letter of Rights. In this case, they will have a copy, together with the copy of the statement given and the order of release or pre-trial detention.

**Table 4: Were the requested persons informed of their right to access to a lawyer in the executing Member State?**

	Requested person 1	Requested person 2	Requested person 3	Requested person 4	Requested person 5	Total
<b>YES</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>5</b>
In writing						
Orally				<b>X</b>		<b>1</b>
In writing and orally	<b>X</b>	<b>X</b>	<b>X</b>		<b>X</b>	<b>4</b>
<b>NO</b>						
<b>Don't</b>				<b>X</b>		<b>1</b>

<b>know/remember</b>						
<b>Did not answer</b>						

*ii. Information on the right to access a lawyer in the issuing State*

In Spain, as an executing State, the requested person is informed of their right to be assisted by a lawyer in the country. However, this same categorical assertion cannot be made with regard to the right of the requested person to have a lawyer in the State that issued the EAW against them.

In this regard, the information on rights given at police station and in court is that information which is provided in a general way to all detainees and, therefore, on the rights contained in Article 520 LECrim. This implies that the particularities relating to the EAW procedure are not reflected there and, consequently, the requested person is not informed in these specific reading of rights about their right to a lawyer in the issuing State. In practice, the provision of this information follows an, so far, uneven pattern. Four interviewees highlight not having received this information or not having seen it provided. Only one requested person indicates having been informed of this right.

In this arena, in those cases where such information is not provided, the practice constitutes a deviation from the legal standard. Indeed, the LECrim regulation is complemented by Article 50.3 LRM which states that, once the arrested person is brought before the judge, they shall be informed of, among others, their right to appoint a lawyer in the State issuing the EAW whose function will be to assist the lawyer in Spain by providing information and advice. In the event that they request the appointment of a lawyer in the issuing State, the competent authority will be informed immediately. Furthermore, the requested person shall be informed in writing, in a clear and sufficient manner and in plain and intelligible language, of their right to waive their right to a lawyer in the issuing State, of the content of this right and its consequences, as well as of the possibility of its subsequent revocation. Such a waiver must be voluntary and unequivocal, in writing, stating the circumstances of the waiver –Article 50.4 LRM. However, as observed above, these provisions are not consistently reflected in practice.

**Table 5: Were the requested persons informed by authorities of their right to access to a lawyer in the issuing Member State?**

	<b>Requested person 1</b>	<b>Requested person 2</b>	<b>Requested person 3</b>	<b>Requested person 4</b>	<b>Requested person 5</b>	<b>Total</b>
<b>YES</b>	<b>X</b>					<b>1</b>
<b>NO</b>		<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>4</b>
<b>Don't know/remember</b>						
<b>Did not answer</b>						

b. Legal assistance in executing State (access, consultations, lawyer's tasks)

i. *Access to legal assistance in Spain as an executing State*

The procedure for providing the requested person with legal assistance is systematised in Spain. There is a consensus among practitioners that, once the defendant is informed about their right to a lawyer, either *ex officio* or a private one, the appropriate arrangements will be made in order to facilitate the appointment. In the case the person has a private lawyer, the police ask the arrested person for the name and surname of the lawyer in order to contact them. Thus, it is not necessary for the person to provide a telephone number, although if they do, the police can just call the lawyer. Otherwise, the police will contact the bar association, the detention department, and will indicate which lawyer has been appointed by the defendant so that the practitioner can come to the specific police station. Similarly, the police will call the bar association when an *ex officio* lawyer has to be appointed. It is pointed out that this is a standard procedure for them.

“I was able to speak with my lawyer before the hearing, but the conversation lasted a very short time”.

*Requested person, Spain.*

"Pude hablar con mi abogado antes de la vista, pero la conversación duró muy poco".

Beyond these usual formalities, neither the police nor any other authority helps the requested person to make arrangements to contact a lawyer. A lawyer notes that the police merely inform the person that they are arrested under an EAW issued by a given country and that they are therefore entitled to appoint a lawyer. The police then ask them whether they want to appoint a lawyer or whether they want a lawyer to be appointed *ex officio* and "with this, they complete the formalities, at the police and at the court". Another lawyer states that "they do not help to contact private lawyers". All the practitioners agree that defendants are not given access to the internet to contact a lawyer and, as far as access to the telephone is concerned, they are entitled to only one phone call. Likewise, no list of contact details of lawyers is provided for this purpose, and they point out that neither the police nor the court can recommend a lawyer.

The experience of the requested persons is along the same lines. They point out that no one helped them to make arrangements to contact a lawyer beyond the said formalities. Thus, as at the time of the arrest none of the interviewed requested persons had a private lawyer in Spain, the authorities appointed an *ex officio* lawyer for each of them. However, one of the defendants hired another lawyer at a later stage, after the first time in the courtroom, due to the negative experience with the *ex officio* lawyer –see, section 3.b.ii.

Other than the options foreseen in this process of assigning a lawyer, the practitioners note that detainees cannot specify certain wishes –nor do they feel they can do it. The requested person can only indicate a specific lawyer to be contacted, beyond this scenario they cannot express further desires on the characteristics that the appointed lawyer may have. In the event that the requested person needs an *ex officio* lawyer, the bar association has a specialised EAW duty rota. The appointment depends on that duty roster, from which the lawyers are assigned in turn.

However, it has been highlighted that some lawyers on duty on EAW cases are not able to respond to the particularities of this procedure because they are not sufficiently specialised. As a result, a lawyer has reported that they occasionally had to intervene to point out to another lawyer some issues that they should take into account in regard to their client. In any case, a practitioner stresses

that "the requested person does not choose anything, nor does the police", and another lawyer believes that if any wishes were expressed, they would not be taken into account.

ii. *Lawyer's tasks and consultations with clients*

"The length of the lawyer-client conversation will depend on the position of the case on the courtroom docket. If you are first, you will have little time, if you are fourth, you will be able to go to the cells of the court and talk longer".

*Lawyer, Spain.*

"La duración de la conversación entre abogado y cliente dependerá de la posición del caso en el sumario. Si eres el primero, tendrás poco tiempo, si eres el cuarto, podrás ir a las celdas del tribunal y hablar más tiempo".

On another note, the subject of lawyer-client consultations has been identified as an area of potential friction. The lawyers agree that the requested person is entitled to speak to their lawyer prior to the hearing and in private, if requested. A practitioner expresses that "the police usually give you a place to talk and, although they don't go very far, they try to give you some privacy". Lawyers express that the requested person always spoke to them. However, a practitioner points out that, because they have sometimes been told at the police station that the procedure is automatic and that they will be handed over, *a priori*, the requested persons do not seem to consider that the figure of the lawyer could be useful to them in the EAW procedure.

The duration of these prior private conversations between the requested person and their lawyer before the authorities question them, may present itself as an obstacle to the full realisation of the right to a lawyer. In the words of a practitioner, the duration of the conversation depends on the "lawyer's art". Particularly, it is highlighted that "police officers always try to limit the time" and that some are very insistent and not respectful in this regard. In this sense, the lawyer reports having been confronted by police officers who interrupt the private conversation with the client by abruptly opening the door of the call centre, "without knocking on the door and shouting: Come on, you don't have any longer, end it now". In a similar vein, a defendant indicates having had the opportunity to talk to their lawyer before the authorities questioned them, but "the conversation lasted a very short time".

Fully in line with the above, another lawyer says that they have to impose themselves in order to have the time to speak with the requested person before the authorities question them. The practitioner explains that, in court, lawyers are forced to talk quickly with their clients and not to "slow down the pace of the court". If the lawyer insists on talking longer with the client, they are sometimes "punished" by having their case moved to the last one on the docket. Lawyer and client are not given enough time to talk to each other. In particular, when *ex officio* lawyers are on duty, they may be assigned an EAW case and have several other clients assigned to them on duty, and they are not given enough time in court to talk to the requested person before the hearing. Requested persons who were first assisted by an *ex officio* lawyer have told them that "the lawyer only came to see them for a second and hardly said anything to them". The amount of time available to speak is influenced by the position of the case on the courtroom docket. If, for example, the case is at the top of the list, the lawyer will not have time to go to the cell of the court to talk to their client. Sometimes, they have to meet their client in a corner in the corridor of the court to be able to

speak to the person before the hearing. The practitioner highlights that "one of the main problems in EAW proceedings is the lack of time".

The experience of one defendant is completely aligned with the comments made by this practitioner. The requested person did not have the opportunity to consult with their *ex officio* lawyer in private before being questioned. They were able to speak at the police station, but in the presence of the police, and subsequently they saw the lawyer directly in the courtroom at the courthouse. The interviewee does not recall being alone with the lawyer until they left the courtroom. They did not speak in private and the requested person did not ask why as was not aware of having that right. The defendant states that their rights have been "partially" respected, finding shortcomings in the field of the right to a lawyer, notably, with regard to the performance of their *ex officio* lawyer.

c. Legal assistance in issuing State (access, consultations, lawyer's tasks)

The law provides that the requested person must be informed of their right to appoint a lawyer in the issuing State and that, in the event that they request such appointment, the competent authority shall be informed immediately –Article 50.3 LRM. There is little guidance governing the right to have a lawyer in the issuing State, and this provision does not seem to have an impact in practice on the experience of the defendants in the EAW procedure.

Previously, it was found that, in the field of information on the right to a lawyer in the issuing State, legal provisions are not consistently reflected in practice. Where the issue at stake is access to a lawyer in the issuing State, all interviewees emphasised that, if the requested person wishes to contact a lawyer in the issuing State, they will have to do so by their own means. No one assists the requested person in contacting a lawyer in the issuing State.

In practice, in order to get in touch with one lawyer in the country of issuance, practitioners explain that, in cases where the requested person does not have a lawyer there, it has been necessary to turn to their family, to the consulate of the country or to their lawyer in the executing State. In other cases, the defendant will simply not have a lawyer in the issuing State. In the same vein, a requested person notes not having had a lawyer in the issuing State during the EAW proceedings. Once they found out that the appeal lodged in court in Spain was unsuccessful, they looked for a lawyer in the issuing country via the internet. No one helped them to make arrangements to contact that lawyer. Another defendant who was in pre-trial detention got in touch with a lawyer in the issuing State, once they were in the penitentiary, through the family. As in the previous case, no one helped them to contact a lawyer there, nor were they provided with contact details of available lawyers or access to a phone or internet for this purpose. Furthermore, providing assistance in this respect seems to face specific barriers. For example, on the possibility of the police helping to make arrangements, a lawyer comments that, in conversations in this regard, the police have explained that they cannot make calls abroad as it is not approved.

d. Communication between the lawyers in both States

Whenever a requested person has a lawyer in the executing State of the EAW and another in the issuing State, these professionals sometimes cooperate in the case and sometimes not. In effect, on the one hand, a defendant emphasises that the lawyers in Romania and in Spain did not cooperate at all in the EAW proceedings. Conversely, another requested person indicates that, after appointing

a lawyer of trust, the Italian lawyer and the Spanish lawyer were in contact with each other. In the experience of lawyers, when such cooperation occurs between the two professionals, the extent of the cooperation is uneven.

“No one assists the requested person in contacting a lawyer in the issuing State”.

*Lawyer, Spain.*

"Nadie ayuda a la persona reclamada a ponerse en contacto con un abogado en el Estado de emisión".

Thus, a practitioner considers that this assistance is very limited and that the lawyer in the issuing State has never supplied anything that could be used to prevent the surrender. The cooperation with that lawyer has consisted of them providing information on the actual status of the proceedings in the country of issuance of the EAW and of them being prepared for the surrender. Similarly, another lawyer explains that when the defendant or the family informs them that they have a lawyer in the issuing State, the practitioner contacts them by telephone. The cooperation between the two consists of requesting additional documentation and evidence, with a view to attempting to prevent the surrender.

Another lawyer explains their experience with this cooperation at greater length. In particular, cooperation has been initiated, for example, to find out whether the information the Spanish lawyer had matches that of the proceedings in the issuing State; or to determine whether there may be any grounds for objecting surrender; or whether there may be a violation of fundamental rights; or, in cases of trials *in absentia*, to find out whether it is true or not when it is said that the person was summoned to the trial but did not attend or that they had a lawyer during that trial. Moreover, in some cases, when the EAW procedure aims for the person to be handed over for trial and, therefore, they have to give a statement, the lawyer tries to get the person to do so from Spain, instead of being surrendered. However, the practitioner states that the Spanish court is not very receptive if this has not been requested by the issuing State, because the Spanish court responds to what they have, i.e., the EAW. In this respect, the cooperation of both lawyers is important to try to make this happen.

e. Free of cost access to a lawyer (or legal aid)

It has been well established that when a person is arrested in Spain under an EAW, both in law and in practice, the standard is clear, namely that the requested person is informed of their rights, among them, their right to appoint a lawyer, either privately or *ex officio*. This information covers the free of cost access to a lawyer, which will apply if the person qualifies for legal aid. This information is provided both by the police once the person is arrested and later in the court and is comprised in the Letter of Rights that the defendant signs.

“I never had a private conversation with the lawyer before I was interrogated. When I was at the police station, I talked to the lawyer in the presence of a police officer and then I saw my lawyer straight away in the courtroom”.

*Requested person, Spain.*

“Nunca hablé con el abogado en privado antes de ser interrogada. Cuando estaba en la policía, hablé con el abogado en presencia de un policía y ya luego vi directamente a mi abogado en la sala en el juzgado”.

In line with this, the practitioners stress that defendants are always informed of this right, which is included in the list of rights of which all arrested persons are informed. A lawyer clarifies that they are informed of the possibility to have free legal assistance and that, if the person is entitled to this right, this will apply to the assistance provided by an *ex officio* lawyer. Free legal assistance and the right to be assisted by an *ex officio* lawyer are separate rights.

Notwithstanding the above, this information does not necessarily always reach the defendants with clarity. Indeed, a defendant believes they could argue that they were never informed about the possibility of obtaining free legal aid and were only told that they had the right to *ex officio* lawyer. The requested person paid their lawyers in the issuing State and in the executing State, as all of them were private lawyers, but in addition they had to pay the *ex officio* lawyer in Spain. Conversely, another requested person reports having received information about the possibility to have free legal assistance and, in fact, they had it during the EAW procedure in Spain. In their experience, they only had to pay the lawyer in the issuing State, because Spain covered the costs of free legal assistance provided by the State.

#### f. Discussion of findings

The practice in the realm of the right to a lawyer is consistent with the legal standards in many aspects. However, interviewees have pointed out some barriers to the effective implementation of this right.

- Information about legal assistance

##### *i. Information on the right to access a lawyer in the executing State*

The legal standard in the realm of provision of information establishes that the requested person shall be informed of the rights to which they are entitled as any other detainee. The right to be assisted by a lawyer in Spain is included among them.

In practice, there is agreement that the defendant receives this information about rights at two points in time, at the police station and at the court.

The police inform them about their right to a lawyer, either *ex officio* or a private one –only in case they have already one. This information is provided both orally and also in writing, as this right is included in the Letter of Rights that the defendant signs. The Letter of Rights is available in several languages, and –where appropriate– it is read by the interpreter.

Likewise, at the court, they will again inform the defendant of their rights –and therefore of their right to a lawyer– orally and in writing by signing the Letter of Rights.

##### *ii. Information on the right to access a lawyer in the issuing State*

**The information on rights given at police station and in court, common to all detainees, does not contain the peculiarities relating to the EAW procedure and, therefore, the requested person is not informed about their right to a lawyer in the issuing State in these specific reading of rights.**

Nonetheless, **the law establishes that once the requested person is brought before the judge, they shall be informed** of, among others, their right to appoint a lawyer in the State issuing the EAW, whose function will be to assist the lawyer in Spain. Additionally, the requested person shall be informed in writing of their right to waive their right to a lawyer in the issuing State.

**In practice, the provision of this information follows an uneven pattern so far. All interviewees, except for one, highlight not having received this information or not having seen it provided.**

- Legal assistance in the executing State

*i. Access to legal assistance in Spain as an executing State*

**The procedure for providing the requested person with legal assistance is systematised in Spain.** There is a consensus about practitioners and defendants about how it works.

**The police inform the defendant about their right to a lawyer, either *ex officio* or a private one – only in case they have already one.** If the defendant has the contact of their private lawyer, the police can contact them. If not or if the defendant needs an *ex officio* lawyer, the police contact the bar association and the appointment is facilitated. Regarding the *ex officio* lawyer, the bar association has a specialised EAW duty rota, from which they are assigned in turn.

**Beyond these usual formalities, neither the police nor any other authority helps the requested person to make arrangements to contact a lawyer. The requested persons are not given access to the internet to contact a lawyer or to the telephone, no list of contact details of lawyers is provided for this purpose.** In this latter regard, lawyers point out that neither the police nor the court can recommend a lawyer.

Likewise, other than the options foreseen, **detainees cannot specify certain wishes. They can only indicate the name of their private lawyer in order to be contacted, beyond this scenario they cannot express further desires.**

*ii. Lawyer's tasks and consultations with clients*

The subject of **lawyer-client consultations has been identified as an area of potential friction.** It has been pointed out that the defendant is entitled to speak to their lawyer prior to the hearing and in private, if requested. However, some barriers have been found:

- Because **the requested persons have sometimes been told at the police station that the procedure is automatic and that they will be handed over, *a priori*, they do not seem to consider that the figure of the lawyer could be useful** to them in the EAW procedure.
- **The duration of these prior private lawyer-client conversations before the authorities question the requested person, may present itself as an obstacle to the full realisation of the right to a lawyer.** In this regard, it has been stressed that **police officers try to limit the time** and that they interrupt the private conversation by abruptly opening the door of the call centre. Likewise, it is noted that **the amount of time available to speak is influenced by the position of the case on the courtroom docket.** Cases at the top of the list do not give



enough time to the lawyer to go to the court cells to talk to their client. **Sometimes, lawyers have to meet their clients in a corner in the corridor.** It is stated that **if the lawyer insists on talking longer with the client, they are sometimes "punished" by having their case moved to the last one on the docket.**

- The **time limitation presents itself as an aggravated problem for *ex officio* lawyers, as they are on duty and may be assigned an EAW case while having several other clients assigned to them at the time.**

**This lack of time for private conversations affects in practice the effective implementation of the right to a lawyer.** For example, a requested person did not have the opportunity to consult with their *ex officio* lawyer in private before being questioned. They were able to speak at the police station in the presence of the police, and subsequently they saw the lawyer directly in the courtroom.

- Additionally, it has been highlighted that **some lawyers on duty on EAW cases are not able to respond to the particularities of this procedure because they are not sufficiently specialised.**

- Legal assistance in issuing State (access, consultations, lawyer's tasks)

The law provides that the requested person must be informed of their right to appoint a lawyer in the issuing State and that, in the event that they request such appointment, the competent authority shall be informed immediately. There is little guidance governing the right to have a lawyer in the issuing State, and this provision does not seem to have an impact on the experience of the defendants in the EAW procedure.

**In practice,** there is agreement that **if the requested person wishes to contact a lawyer in the issuing State, they will have to do so by their own means. No one assists the requested person in contacting a lawyer in the issuing State, nor are they provided with contact details of available lawyers or access to a phone or internet for this purpose.** The provision of assistance in this respect seems to face specific barriers. For example, on the possibility of the police helping to make such arrangements, a lawyer comments that the police have explained that they cannot make calls abroad as it is not approved.

- Communication between the lawyers in both States

It has been found that lawyers in both States do not always cooperate and, when they do, the extent of the cooperation is uneven.

Where cooperation has taken place, it has consisted of:

- The lawyer from the issuing State providing information on the actual status of the proceedings in their country and of them being prepared for the surrender.
- The lawyer of the issuing State being requested to provide additional documentation and evidence, in an attempt to prevent the surrender. This could include assessing potential violations of human rights or verify the terms in which a case *in absentia* took place.
- Trying to cooperate in order to get the requested person to give a statement from Spain when the EAW is for prosecution instead of being surrendered. In this respect, it has been pointed out that the court is not very receptive if this is not requested by the issuing State.

- Free of cost access to a lawyer (or legal aid)

In Spain, the requested person is informed of their rights as any other detainees, among them, the free of cost access to a lawyer, which will apply if the person qualifies for legal aid. This information is comprised in the Letter of Rights that the defendant signs and is provided both by the police and in court.

However, this information does not necessarily always reach the defendants with clarity since contrary statements have been made as to whether or not the information was provided. This could imply potential shortcomings on how such information is communicated in practice.

#### 4. Execution of the EAW

##### a. Factors considered when executing the EAW

“Another problem is how to deal with violations of fundamental rights in the country of origin in the context of an EAW, where it is understood that there is mutual trust”.

Lawyer, Spain.

"Otro problema es cómo tratar las violaciones de derechos fundamentales en el país de origen en el contexto de una OED, donde se entiende que hay confianza mutua".

The LRM provides that surrender without control of double criminality shall be agreed when the EAW is issued for an offence falling under the list of 32 categories. In the remaining cases, Spanish judicial authority may agree to surrender taking into account the seriousness of the facts –Article 47 LRM. Moreover, the Spanish judicial authority may refuse to execute an EAW issued for serving a sentence rendered *in absentia* –or may agree to it in accordance with the legal requirements stipulated in Article 49 LRM. Likewise, among others, the execution may be refused when the requested person is a Spanish resident or national –Article 48.2 (b) LRM. In practice, however, barriers are sometimes identified with regard to the grounds for objecting to the execution of the EAW.

“I have only once seen proportionality taken into account in the execution of an EAW. The requested person was a Spanish citizen who was allowed to serve the sentence in Spain as the sentence was very small. This is the only time I have seen this happen, it is not usual”.

Lawyer, Spain.

“Sólo he visto una vez que se tuviera en cuenta la proporcionalidad en la ejecución de una orden de detención europea. La persona reclamada era un ciudadano español al que se le permitió cumplir en España dado que la condena era muy pequeña. Es la única vez que he visto que esto ocurra, no es habitual”.

It has been noted that, initially, some requested persons believe that they have to consent to being handed over because the police had told them that “there is nothing to do”. Nonetheless, faced with

the possibility of arguing against the surrender, they normally object to it. A lawyer comments that nobody wants to be handed over as, in general, prisons in Spain are better than those in Europe. Nuancing this tendency, another lawyer reports having recommended to several clients to consent to the surrender when the EAW was issued for prosecution. The practitioner is of the opinion that, in such cases, it is better for the defendant to appear and defend themselves in court, as the EAW procedure is merely formalistic and does not allow to address the merits of the case.

As for the arguments put forward to support the objection to surrender, two of the reported cases referred to the personal situation of the requested person. In relation to this ground for objection, a lawyer points out trying to substantiate the objection on the person's ties when they are resident in Spain, in order to prevent the surrender and to enable the person to serve the sentence in the country. Otherwise, it is stressed that the grounds that can be invoked are quite limited. However, the practitioner concludes that, in their experience, the court does not take into account the defendant's ties with the country and gives priority to serving the sentence in the country where the offence was committed.

In one of the referred cases, the defendant presented documentation to demonstrate their ties with the country which they have built up over the thirteen years in Spain. Specifically, they stated that they have been working in the same company for eleven years and provided the employment contract as evidence. Furthermore, they showed that they have been living in Spain with their child all that time and provided the census. However, the requested person believes that the judge did not take into account that they objected to the surrender and thinks that they simply wanted the surrender to take place. This belief is based on the fact that, regarding the employment situation, it was argued that the contract was "very old". Likewise, as their child has not the same surname, it was pointed out that the census showed that they were registered with another person, but that it was not possible to ascertain whether it was or not their child. The interviewee states that "a number of very strange objections were raised in court and the surrender was decided". The requested person comments that the only reason why the surrender did not take place was that their two lawyers in the issuing country lodged an appeal for annulment on the grounds of the statute of limitations, six days before the surrender happened. The defendant stresses that, in Spain, the ties with the country were not taken into account to determine whether or not they were to be surrendered, nor to decide on the potential subsequent serving of a sentence in Spain. Moreover – the defendant continues– the prosecutor proposed to hold them in pre-trial detention until the surrender, but the judge agreed the release because they did not pose a risk of absconding.

In the other case, the defendant was being requested to serve a sentence for a case that happened fifteen years prior. The sentence was passed *in absentia*. The requested person had lived in Spain for many years, had ties, a job, a family and Spanish residency and objected to being handed over, requesting to serve the sentence in Spain. Under such grounds, it was argued that under law –Article 48.2 (b) LRM<sup>4</sup>– surrender should be refused, and the sentence should be served in Spain. However, the surrender was agreed. The court stated that the defendant did not accept the sentence imposed as they did not know its content and that it was not foreseen that the court would give a new hearing to the defendant for the purpose of transferring the sentence and exercising their option to

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<sup>4</sup> According to this provision in full: "The Spanish executing judicial authority may refuse to execute the European arrest warrant in the following cases: (...) b) When the European arrest warrant has been issued for the purpose of executing a custodial sentence or detention order, the requested person being of Spanish nationality or resident in Spain, unless they consent to serve the sentence in the issuing State. Otherwise, they must serve the sentence in Spain".

serve the sentence. Yet, the Spanish decision made surrender conditional on the defendant being returned to Spain to serve the sentence imposed after a retrial, since the person was convicted *in absentia*. Nonetheless, once the requested person was surrendered, the authorities of the issuing State failed to comply with that condition –by not returning the person to Spain to serve the sentence– and failed to comply with the principle of speciality, which the person had not waived. In the latter regard, once there, the defendant was tried for acts other than those for which they were surrendered under the EAW.

In this respect, the lawyer highlights that there is no mechanism in place in Spain, as an executing State, in the event of a failure to comply with the conditions of surrender on the part of the issuing State. In the case at stake, the sole action taken to address this non-compliance came from the requested person's lawyer. The practitioner initiated proceedings in Spain, before the Central Criminal Court of the National High Court, demanding that the issuing State authorities be requested to comply with the condition established in the surrender decision. After two years in which various formalities were carried out, the person was released, but was not returned to Spain. Currently, after several petitions to the issuing State authorities, which have not been answered, the lawyer has taken further actions for such authorities to certify that the proceedings are discontinued.

In contrast to these two cases, surrender has been objected to on the grounds of proportionality issues with regard to the severity of the penalty.

The requested person in this case was a Spanish citizen who was being sought for a breach of conviction. Previously, the defendant had been surrendered by Spain under an EAW for a robbery and, before serving the full sentence, did not return to prison. The length of the sentence indicated in the latest EAW was very short, less than one year and a half, which led to the prosecutor to favour not surrendering the person and it was agreed that the person would serve the sentence in Spain. A lawyer notes having only seen the proportionality of the EAW been taken into account in order to decide about its execution on this occasion.

Finally, in one last case, a requested person objected to being handed over on the grounds that they would not be granted a fair trial in the issuing country and, additionally, they based their argument on the severity of the conditions under which, if convicted, they would serve their sentence. The defendant does not believe that their arguments were taken into account by the judge when deciding on their surrender. In connection with this, a lawyer comments on the difficulty of dealing with violations of fundamental rights in the issuing country in the context of an EAW, given the assumption of mutual trust. The practitioner points out that there are cases of violations of procedural fundamental rights, such as, for example, the right of defence –where the principle of speciality is not respected– or the right to a fair trial, and that this issue is not adequately addressed in either EAWs or extraditions.

In this latter sense, interviewees consider that, in general, the arguments used to object to the surrender are not taken into account by the authority in its decision to hand over the requested person. A practitioner maintains that rights are respected, but there is a lot of automation in the EAW procedure regarding surrender. In their experience, unless a lawyer makes the circumstances very clear to the judge, there is no initiative on the part of the court to try to find out “the reality” of the specific case.

## b. Discussion of findings

The legal standard provides that surrender without control of double criminality shall be agreed when the EAW is issued for an offence falling under the list of 32 categories. In the remaining cases, Spanish judicial authorities may refuse to execute an EAW when certain factors are present. Thus, the decision on surrender may take into account the seriousness of the offence or the fact that the EAW was issued for serving a sentence rendered *in absentia*. Likewise, among others, the execution of the EAW may be refused when the requested person is a Spanish resident or national.

In practice, however, some barriers are identified regarding the objection to the execution of the EAW.

On the one hand, the requested persons have sometimes received information that confuses them about basic aspects of the EAW procedure, i.e., the possibility of objecting to surrender. In this regard, upon their arrest, defendants have been told that they are going to be handed over to the issuing country and that there is nothing that can be done about it. Consequently some believe that they have to consent to being handed over. Faced with the possibility of objecting the surrender, it is noted that the defendants normally do.

On the other hand, some difficulties have been highlighted with respect to the consideration given to the factors put forward to support the objection to surrender. Reference has been made to three different categories of factors:

First, **objection to surrender on the grounds of the defendant personal situation:**

- The objection based on the person's ties in Spain is argued when the person is resident in Spain, in order to prevent the surrender and to enable the person to serve the sentence in the country. However, it is stressed that, **in general, the court does not take into account the defendant's ties and gives priority to serving the sentence in the country where the offence was committed.**
- In this sense, it has been emphasised that **documentation demonstrating a defendant's ties with the country, built up over thirteen years, were not taken into account by the judge in deciding on the surrender, nor on the potential subsequent serving of a sentence in Spain.** In that case, the prosecutor proposed pre-trial detention. However, **the surrender did not take place because the lawyer in the issuing State fostered the withdrawal of EAW on the grounds that the statute of limitations for the offence had expired.**
- Additionally, **it has been agreed to make the surrender of a Spanish resident conditional upon the defendant being returned to Spain to serve a new sentence,** after a new trial, in a case of trial *in absentia*. However, **the authorities of the issuing country failed to comply with that condition, by not returning the person to Spain to serve the sentence.** Likewise, **they failed to comply with the principle of speciality,** which was not waived, and the defendant was tried for acts other than those for which they were surrendered under the EAW. Against this, it has been highlighted that **there is no mechanism in place in Spain, as an executing State, to verify compliance with this rule by the issuing State and to take action in the event there is not.** In the case at stake, **the sole action taken to address this non-compliance came from the requested person's lawyer.**

Second, **objection to surrender on the grounds of proportionality issues with regard to the severity of the penalty:**

- It has been pointed out that, exceptionally, the proportionality of the EAW has been taken into account when deciding about its execution. In that case, the requested person was a Spanish citizen and the length of the sentence in the EAW was very short, so the prosecutor

favoured not surrendering them and it was agreed that the defendant would serve the sentence in Spain.

Third, **objection to surrender on the grounds of fair trial and conditions of detention:**

- **The difficulty of dealing with violations of fundamental rights in the issuing State in the context of an EAW, where it is understood that there is mutual trust, has been stressed.** In this regard, a defendant feels that their objection based on the grounds that they would not be granted a fair trial in the issuing country and on the severity of the conditions under which, if convicted, they would serve their sentence, was not taken into account by the judge when deciding on their surrender.

In general, **interviewees consider that the arguments used to object the surrender are not taken into account by the authority in its decision to hand over** the requested person and that, although rights are respected, **there is a lot of automation** in the EAW procedure regarding surrender. On the latter, it has been stressed that there is no initiative on the part of the court to try to assess in depth the specificities of each case.

## CONCLUSION

Overall, the EAW procedure has been described as respecting the requested persons' rights. However, the experiences of both the defendants and the lawyers –who shared the experience of requested persons they had represented– highlight that there are challenges to be addressed. Thus, from the practice experienced by the defendants, the following conclusions can be drawn:

### First.- Right to information

- On the provision of information

According to legal standards, in practice, **the requested person receives information about general rights, as any other detainee, and about the EAW at two points in time**, first at the police station and, later on, at the National Court.

The police tell the requested persons what their rights are and the reason for the arrest, namely, the existence of an EAW. **The information on the content of the EAW is very brief because the police do not have the EAW in full.**

In court, the defendant will again be informed about these rights by the court clerk and about the fact they are there under an EAW issued by another country in order to serve a sentence or for prosecution. Likewise, the defendant will learn about the content of the EAW, first from the lawyer and, afterwards, from the judge.

- On the provision of information on rights

In accordance with legal standards, in practice, the requested persons are informed of the same rights as any other detainees at the police station and in court. The defendant is informed orally and in writing, given that they sign the Letter of Rights that contains the common rights to all detainees.

Additionally, **the requested person shall be allowed to keep the written Letter of Rights in their possession during the entire time of detention. However, some lawyers have highlighted that the defendant will sign the Letter of Rights, but will not necessarily keep the document with them.** This could explain why defendants do not identify having been informed of their rights in writing or have no recollection of being so. Nevertheless, **this does not exclude that the requested persons confirm having the Letter of Rights among the documents provided to them in court.**

- On the provision of information about the EAW

The practice is consistent with legal provisions, but **some shortcomings have been raised with regard to the content of the EAW itself.**

In the police station, **no exhaustive information is given because the police do not have the EAW in full.** The information is given orally and, in addition, the Letter of Rights signed by the defendants contains a small section specifying the criminal offence for which they are being arrested.

In court, the person is informed orally of the fact that they have been requested under an EAW, for prosecution or enforcement of sentence, and for what offence. The lawyer informs them and so

does the judge. Additionally, requested persons indicate having received the information about the EAW in a written document before leaving the court.

However, **concerning the extent of the information within the EAW itself, a lawyer stresses that, in cases of EAWs for prosecution, it may be notably insufficient. Sometimes, the EAW only contains the number of the article of the criminal code of the issuing State under which surrender is requested.**

- On information on consenting to surrender

The experience of interviewees highlights that, **in practice, the level of detail in which this information is provided is inconsistent.**

Thus, on the one hand, the judge in the courtroom always explains to the requested person that they have the right to consent or to object to surrender. However, it has been pointed out that **this explanation merely implies telling the requested persons that if they consent to surrender, they will be handed over.**

On the other hand, **generally speaking judges ask the defendant whether or not they waive the principle of speciality. However, it has been stated that the implications of waiving this rule are not explained in court, but by the lawyer.**

- On the understanding of information

Requested persons indicate that they understand the information that the police, the prosecutor, or the judge, give them, or that they "believe" they do.

All practitioners agree that the police do not provide much information and do not necessarily ensure that the person understands such information, although they consider that this is not the primary role of the police. In court, conversely, emphasis is placed on the requested persons understanding their rights, although the depth in which some information is given could be improved.

**However, a number of factors can hinder the understanding of information:**

- The **quality of the interpretation** is not always good.
- The defendants **sometimes do not understand why they have a lawyer appointed or their options in the procedure, as they have been told that by the police that "nothing can be done in the proceedings** and do not know they have the right to object the surrender". Thus, the role of the lawyer is essential in order to clarify certain aspects of the proceedings.
- **Lawyers involved in EAW proceedings are not always specialists** in the matter.

## **Second.- Right to interpretation and translation**

- On the provision of interpretation

Consistent with the law, **in practice, free of cost interpretation is provided**, if needed, from the moment of the arrest and in court. The process is considered automatic. The interpreter will be



present with the requested person either at the police station, at the hearings or in conversations with the lawyer.

**However, two main obstacles to the effectiveness of this right have been identified:**

On the one hand, a practitioner points out that, **other than in these two scenarios, i.e., at the police station or at the court, no interpretation is provided and the regulation only foresees the provision of such services if the legal premises are met.** Practitioners explain that **the service is not made available until the requested person's surrender**, so that when the person is subsequently, and if applicable, in pre-trial detention, they cannot benefit from this possibility. In this respect, it is emphasised that in the event that judicial officers come to the prison to notify procedural matters, the requested person will not have the assistance of an interpreter and will have to pay for one. Likewise, no interpreter is provided for private consultations with their lawyer while in pre-trial detention.

On the other hand, **the quality of the interpreting service is not consistent.** It has been stressed **that some interpreters do not have the capacity to fulfil the interpretation needs of a judicial proceeding, not even in English.** Explaining the reason behind, it was pointed out that the quality of the interpreters in this service is linked to the conditions under which these professionals are hired, which are not good, making the provision of this service unattractive to more experienced interpreters.

- On the translation of documents

Consistent with legal standards, the requested persons receive documents. The defendant gets a copy of some of the forms that constitute the file, namely: The detention order and information of rights and the essential elements of the proceedings to challenge the police detention; an email with the EAW; a court order containing the facts, the detention or the release.

**Nonetheless, translation is not the rule. These documents are provided in Spanish.** The only document that is given to the defendant in another language is the EAW. **In practice, the interpretation of the documents –envisaged as an exception– has been more commonly applied as the ruling standard.**

**Regarding the possibility of requesting the translation of these documents, no interviewee has requested such a translation to the authorities, and some practitioners do not believe it is possible to get the court to translate them.**

- On interpretation of consultations with lawyers

The law establishes that defendants have the right to free of cost interpretation during conversations with their lawyer that are directly related to their subsequent questioning or taking of a statement, or which are necessary for the lodging of an appeal or for other procedural applications.

In practice, the right of the requested person to have an interpreter in their consultations with a lawyer, both in the police station and at the court, is respected, as well as the fact that they do not have to pay for this service.

**However, the effective implementation of this right seems to be hampered by the at times uneven quality of the interpretation provided.**

Additionally, a practitioner points out that **if an interpreter is needed when the person is placed in pre-trial detention while awaiting surrender, then they will have to pay one. The legal standard only recognises this right in relation to conversations with the lawyer that are directly related to the questioning or taking of a statement, or that are necessary for the lodging of an appeal or for other procedural applications.** Therefore, only if such legal requirements are met could the application of the right be claimed under this provision.

### **Third.- Right to access to a lawyer**

- Information about legal assistance
- *On information on the right to access a lawyer in the executing State:*

The requested person is informed of their rights as any other detainee and the right to be assisted by a lawyer in Spain is included among them. The defendant receives this information at the police station and at the court.

The police inform them about their right to a lawyer, either *ex officio* or a private one –only in case they have already one. This information is provided orally and also in writing, as this right is included in the Letter of Rights that the persons sign. This Letter of Rights is available in several languages, and –where appropriate– it is read by the interpreter.

Likewise, at the court, they will again inform the defendant of their rights –and therefore of their right to a lawyer– orally and in writing by signing the Letter of Rights.

- *On information on the right to access a lawyer in the issuing State:*

**The information on rights given at police station and in court, common to all detainees, does not contain the particularities relating to the EAW procedure. Hence, the requested person is not informed about their right to a lawyer in the issuing State in these specific reading of rights.**

Nonetheless, **the law establishes that once the requested person is brought before the judge, they shall be informed of their right to appoint a lawyer in the State issuing the EAW.** Additionally, the requested person shall be informed in writing of their right to waive their right to a lawyer in the issuing State.

**In practice, the provision of this information follows an, so far, uneven pattern. All interviewees, except for one, highlight not having received this information or not having seen it provided.**

- Legal assistance in the executing State
- *On the access to legal assistance in Spain as an executing State*

**The procedure for providing the requested person with legal assistance is systematised in Spain. The police inform the defendant about their right to a lawyer, either *ex officio* or a private one – only in case they have already one. If the defendant has the contact of their private lawyer, the police can contact them. If not or if the defendant needs an *ex officio* lawyer, the police contact the**

bar association and the appointment is facilitated. Regarding the *ex officio* lawyer, the bar association has a specialised EAW duty rota, from which they are assigned in turn.

**Beyond these usual formalities, neither the police nor any other authority helps the requested person to make arrangements to contact a lawyer. The requested persons are not given access to the internet to contact a lawyer or to the telephone, no list of contact details of lawyers is provided for this purpose.** In this latter regard, lawyers point out that neither the police nor the court can recommend a lawyer.

Likewise, other than the options foreseen, **detainees cannot specify certain wishes. They can only indicate the name of their private lawyer in order to be contacted, beyond this scenario they cannot express further desires.**

- *On the lawyer's tasks and consultations with clients*

The subject of **lawyer-client consultations has been identified as an area of potential friction.** The defendant is entitled to speak to their lawyer prior to the hearing and in private, if requested. **However, some barriers have been found:**

- Because **the requested persons have sometimes been told at the police station that the procedure is automatic and that they will be handed over, *a priori*, they do not seem to consider that the figure of the lawyer could be useful** to them in the EAW procedure.
- **The duration of these prior private lawyer-client conversations before the authorities question the requested person, may present itself as an obstacle to the full realisation of the right to a lawyer.** In this regard, it has been stressed that **police officers try to limit the time** and that they interrupt the private conversation by abruptly opening the door of the call centre. Likewise, it is noted that **the amount of time available to speak is influenced by the position of the case on the courtroom docket.** Cases at the top of the list do not give enough time to the lawyer to go to the court cells to talk to their client. **Sometimes, lawyers have to meet their clients in a corner in the corridor.** It is stated that **if the lawyer insists on talking longer with the client, they are sometimes "punished" by having their case moved to the last one on the docket.**
- The **time limitation presents itself as an aggravated problem for *ex officio* lawyers, as they are on duty and may be assigned an EAW case while having several other clients assigned to them at the time.**

**This lack of time for private conversations affects in practice the effective implementation of the right to a lawyer.** A requested person did not have the opportunity to consult with their *ex officio* lawyer in private before being questioned. They were able to speak at the police station in the presence of the police, and subsequently they saw the lawyer directly in the courtroom.

- Additionally, it has been highlighted that **some lawyers on duty on EAW cases may lack the necessary specialisation to handle the specificities of this procedure.**

- Legal assistance in issuing State (access, consultations, lawyer's tasks)

**In practice, there is agreement that if the requested person wishes to contact a lawyer in the issuing State, they will have to do so by their own means. No one assists the requested person in contacting a lawyer in the issuing State, nor are they provided with contact details of available**

**lawyers or access to a phone or internet for this purpose.** The provision of assistance in this respect seems to face specific barriers. For example, on the possibility of the police helping to make such arrangements, a lawyer comments that the police have explained that they cannot make calls abroad as it is not approved.

- Communication between the lawyers in both States

It has been found that lawyers in both States do not always cooperate and, when they do, the extent of the cooperation is uneven. Where cooperation has taken place, it has consisted of:

- The lawyer from the issuing State providing information on the actual status of the proceedings in their country and of them being prepared for the surrender.
- The lawyer of the issuing State being requested to provide additional documentation and evidence, in an attempt to prevent the surrender. This could include assessing potential violations of human rights or verify the terms in which a case *in absentia* took place.
- Trying to cooperate in order to get the requested person to give a statement from Spain when the EAW is for prosecution instead of being surrendered. In this respect, it has been pointed out that the court is not very receptive if this is not requested by the issuing State.

- Free of cost access to a lawyer (or legal aid)

In Spain, the requested person is informed of their rights as any other detainees, among them, the free of cost access to a lawyer, which will apply if the person qualifies for legal aid. This information is included in the Letter of Rights that the defendant signs and is provided both by the police and in court.

**However, this information does not necessarily always reach the defendants with clarity since contrary statements have been made as to whether or not the information was provided. This could imply potential shortcomings on how such information is communicated in practice.**

- Execution of the EAW

The legal standard provides that the Spanish judicial authority may refuse to execute an EAW when certain factors are present. Thus, the decision on surrender may take into account the seriousness of the offence or the fact that the EAW was issued for serving a sentence rendered *in absentia*. Likewise, among others, the surrender may be refused when the requested person is a Spanish resident or national. In practice, **however, some barriers are identified regarding the objection to the execution of the EAW.**

On the one hand, the requested persons have sometimes received information that confuses them about basic aspects of the EAW procedure, i.e., the possibility of objecting to surrender. In this regard, upon their arrest defendants have been told that they are going to be handed over to the issuing country and that there is nothing that can be done. Consequently some believe that they have to consent to being handed over. Faced with the possibility of objecting the surrender, it is noted that the defendants normally do.

On the other hand, some difficulties have been highlighted with respect to the consideration given to the factors put forward to support the objection to surrender. Reference has been made to three different categories of factors:

First, **objection to surrender on the grounds of the defendant personal situation:**

- The objection based on the person's ties in Spain is argued when the person is resident in Spain, in order to prevent the surrender and to enable the person to serve the sentence in the country. However, it is stressed that, **in general, the court does not take into account the defendant's ties and gives priority to serving the sentence in the country where the offence was committed.**
- In this sense, it has been emphasised that **documentation demonstrating a defendant's ties with the country, built up over thirteen years, were not taken into account by the judge in deciding on the surrender, nor on the potential subsequent serving of a sentence in Spain.** In that case, the prosecutor proposed pre-trial detention. However, **the surrender did not take place because the lawyer in the issuing State fostered the withdrawal of EAW on the grounds that the statute of limitations of the offence had expired.**
- Additionally, **it has been agreed to make the surrender of a Spanish resident conditional upon the defendant being returned to Spain to serve a new sentence, after a new trial, in a case of trial *in absentia*.** However, **the authorities of the issuing country failed to comply with that condition, by not returning the person to Spain to serve the sentence.** Likewise, **they failed to comply with the principle of speciality, which was not waived, and the defendant was tried for acts other than those for which they were surrendered under the EAW.** Against this, it has been highlighted that **there is no mechanism in place in Spain, as an executing State, to verify compliance with this rule by the issuing State and to take action in the event there is not.** In the case at stake, **the sole action taken to address this non-compliance came from the requested person's lawyer.**

Second, **objection to surrender on the grounds of proportionality issues with regard to the severity of the penalty:**

- It has been pointed out that, **exceptionally, the proportionality of the EAW has been taken into account when deciding about its execution.** In that case, **the requested person was a Spanish citizen and the length of the sentence in the EAW was very short, so the prosecutor favoured not surrendering them and it was agreed that the defendant would serve the sentence in Spain.**

Third, **objection to surrender on the grounds of fair trial and conditions of detention:**

- **The difficulty of dealing with violations of fundamental rights in the issuing State in the context of an EAW, where it is understood that there is mutual trust, has been stressed.** In this regard, a defendant feels that their objection based on the grounds that they would not be granted a fair trial in the issuing country and on the severity of the conditions under which, if convicted, they would serve their sentence, was not taken into account by the judge when deciding on their surrender.

**In general, interviewees consider that the arguments used to object the surrender are not taken into account by the authority in its decision to hand over the requested person and that, although rights are respected, there is a lot of automation in the EAW procedure regarding surrender.** On the latter, it has been stressed that there is no initiative on the part of the court to try to assess in depth the specificities of each case.