

# Social Fieldwork Research (FRANET)

European Arrest Warrant proceedings –  
safeguards for requested persons

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## EXECUTIVE SUMMARY

The 2002/584/JHA Council Framework Decision on the European arrest warrant and the surrender procedures between the Member States (hereinafter EAW Framework Decision) replaced the lengthy extradition procedures that used to exist between EU countries and acts as the first concrete measure implementing mutual recognition in criminal law. In Malta, Subsidiary Legislation 276.05 Extradition (Designated Foreign Countries) Order implements the EAW Framework Decision. As an act of subsidiary legislation, the Extradition (Designated Foreign Countries) Order must be read together with the Extradition Act. Part IV of the Extradition Act contains a series of provisions which apply to the subjects of any return proceeding, including EAWs.

The European Union adopted specific rules that guarantee the procedural rights of persons sought under an EAW. Fair trials and the right to defence are the core of these rules, which are implemented in Malta as follows:

### Right to information

The rights a requested person must be informed of are listed in a written “*Letter of Rights for persons arrested on the basis of a European Arrest Warrant*”, as found in Schedule E of the Criminal Code. Malta has not made a notification regarding renunciation of the speciality rule to the General Secretariat of the Council under Art. 27 p. 1 of the EAW Framework Decision. **The speciality rule**, therefore, **applies in all EAW cases**, and consent to surrender cannot lead to a presumption of consent to prosecute, sentence, or detain for other offences.

The research reveals that all requested persons are informed of their rights upon arrest and in court, with their lawyer further explaining the process in detail. Interviewees state that arrestees are regularly informed about their procedural rights, the contents of the EAW and what consenting to their surrender entails. There is, however, little consensus on the provision of information about the rule of speciality. The lawyers claim the rule of speciality is not explained unless brought forward by the defence, while prosecutors state that it is the duty of the attorney to explain it to their client. The rule of speciality can be an issue because lawyers do not have full access to the documents of the EAW, and there is uncertainty about whether prosecution will take place for previous offences not contained in the warrant. Lawyers maintain Maltese courts tend to operate under the belief that the Framework Directive is enough to ensure that states respect the speciality rule. However, the interviewees’ experience reveal that some states do not adhere to the speciality rule, even when it is explicitly listed as a condition in the surrender order.

### Right to interpretation and translation

The Criminal Code contains most of the legal framework regarding the provision of interpretation and translation to requested persons, in line with **Article 11(2) of the EAW Framework Decision** and **the Directive 2010/64/EU of the European Parliament**. Regarding the right to interpretation, Article 516(2) of the Criminal Code states that the proceedings and evidence introduced must be interpreted by the court or a sworn interpreter. The interviewees confirm the requested person has an interpreter when communicating with public authorities, upon arrest, and during the hearings. However, the challenge posed by the lack of professionals who can directly translate from Maltese into other languages accounts for a limitation of this right.

On the translation of documents, the law specifies that the letter of rights and the EAW should always be provided in a language the arrestee comprehends. **There is, however, no obligation to translate other documents on the EAW**. This is a concern for lawyers, who believe that inadequate disclosure

of information limits their ability to assist their clients. For instance, the interviewees maintain that the content of the case file is not translated into a language lawyers can understand. They argue that this is a problem because the lawyer in the executing state does not have enough elements to assess if, for instance, the request is malicious, limiting the right to assist the client.

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

Article 355AUH of the Criminal Code fully transposes Article 10 of Directive 2013/48/EU and dictates that when Malta is an executing Member State, a requested person has the right to access a lawyer upon arrest in a timely manner. The research findings show that in criminal proceedings, Malta offers free legal assistance without any problems or limitations. However, the respondents argue that there is room for improvement, especially regarding EAW cases. While legal assistance in the executing state is provided at all stages during the proceedings, Maltese authorities do not facilitate the appointment of a lawyer in the issuing Member State. **Neither police officers nor the court in the issuing state informs requested persons about their right to dual representation.**

Communication between lawyers in both states is essential to establish an effective line of defence and enable full access to the elements of the case. However, Lawyers claim that time limits imposed by EAW hamper the opportunity to consult with the lawyer in the issuing state, and their **cooperation often depends on the financial means of the requested person**. Lawyers state that a lack of communication and restricted access to documents may hinder their ability to challenge EAWs.

### **Issuing and execution of the EAW – factors considered**

Findings show Maltese authorities consider the core elements of the Framework Decision before issuing or executing an EAW. There must be reasonable grounds to believe that a person has committed an extraditable offence or has unlawfully fled Malta after being convicted. However, there is no statutory guidance beyond the description of purely procedural elements. **Issues such as proportionality are not addressed by legislation** and are not factors that influence decisions in EAW proceedings. Academic literature shows **there are no legal avenues in place to challenge the issuing of an EAW or request its withdrawal**. For instance, authorities do not inquire about detention conditions while executing an EAW unless the defence lawyer raises the matter. Based on the principle of mutual recognition and mutual trust, prosecutors explain that Member States agree not to question the systems of other European countries. Respondents agree that in Malta authorities do not usually consider the procedural rights of the requested person in the issuing state. **The court considers the right to a fair trial only in the case of conviction *in absentia*.**

## INTRODUCTION

During the empirical part of the research, **seven** semi-structured interviews were conducted with prosecutors and defence lawyers engaged in issuing and executing EAWs. Interviews were conducted between April 2022 and August 2022 in person or online. There are currently no COVID-19 restrictions in Malta, and the interviewees decided the settings of the interviews according to their preferences.

### **Preparation of fieldwork, identification, and recruitment of participants**

The researcher conducting the interviews has experience with empirical research and interviewing. Therefore, no training was necessary. Before the interviews, researchers compiled a list of possible participants with extensive experience in EAWs cases, keeping gender balance in mind. Interviewees were identified by researching on the internet and through personal connections (i.e., by applying the snowball method).

The interview process involved three prosecutors and four lawyers, as researchers could not conduct interviews with Maltese judges. This is because of two reasons: first, only a few Maltese magistrates are dealing with EAW cases, meaning that there would be no anonymity. Second, "***According to the Code of Conduct Applicable to the Judges and Magistrates, no individual interviews can be entertained by sitting members of the judiciary.***"<sup>1</sup>

The first interviews were conducted with two prosecutors from the Office of the Attorney General, while the third prosecutor is part of the Malta Police Force.

In Malta, the police act as both investigators and prosecutors. To interview a police officer it was necessary to obtain an official authorisation from the Police Communication Office. The communication officer selected the interviewee and provided the researchers with the contact details.

The four lawyers interviewed are managing partners of private law firms.

Selection of lawyers with sufficient experience and knowledge in EAWs was challenging, as professionals in that field are limited in number and high in demand. Therefore, a fourth lawyer was chosen to give additional information on the subject matter. Their expertise in the field provided a better overview and analysis of the actual implementation of procedural rights. A second challenge was to keep a gender balance while selecting interviewees. Researchers were unable to find any women attorneys who had handled cases under the EAW in Malta.

### **Sample and description of fieldwork**

Defence lawyers:

Requested: 4, completed: 4

Judges/prosecutors:

Requested: 3, completed: 3

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<sup>1</sup> Information provided by email from the Deputy Registrar on 24th August 2021.

Table 1: Sample professionals

Code	Group	Expertise in European Arrest Warrant	Gender
1	Defence lawyer	The interviewee is a managing partner of a law firm specialising in criminal and human rights law. He has represented numerous clients in EAW cases.	Male
2	Defence lawyer	The interviewee is a criminal defence lawyer and managing partner in a law firm specialising in civil law with experience representing clients in EAW cases.	Male
3	Defence lawyer	The interviewee is a senior lecturer in Criminal law at the University of Malta and managing partner of a law firm. He represented several clients arrested on an EAW.	Male
4	Defence lawyer	The interviewee is a managing partner of a law firm with expertise in EAW and a lecturer at the University of Malta. Co-editor of books and articles, he provided recommendations for improving defence rights in EAW cases.	Male
5	Prosecutor	The interviewee is a prosecutor with four years of experience working in the Office of the Attorney General. She has handled EAW cases in both the issuing and executing Member States.	Female
6	Prosecutor	The interviewee worked as a prosecutor in the Office of the Attorney General for more than five years. His experience includes both issuing and executing EAWs.	Male

7	Prosecutor	The interviewee is an inspector and has worked at the Malta Police force for 19 years. He gained extensive experience handling EAW cases and attending EAW proceedings as a prosecutor.	Male
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Interviews lasted 77 minutes on average. The general tone of the conversations was friendly and relaxed. The level of trust was also high. Interviewees were willing to share their experiences to contribute to the research. Lawyers, in particular, expressed criticism and mentioned the interview as an opportunity to share the gaps in the Maltese legislation and the judicial implementation of the Framework Decision on EAW.

### Data analysis

The information gathered from the seven interviews was identified, analysed, and reported using a thematic analysis approach. Following the structure of the final report, researchers reviewed the responses to identify common themes or contradictory statements. Data analysis began by creating a codebook, and interviewees were coded based on their professional group.

To write the report, researchers employed a deductive approach. They selected the thematic areas considering the desk research findings, highlighting the relevant responses from all the interviewees.

The second step of the data analysis consisted of revising the codes and discarding unclear or irrelevant information. The data that did not fall into the preconceived theme initially identified were also analysed using an inductive approach. Any new topic or detail revealed by more than one interviewee was considered relevant and potentially interesting. As a result, new themes were categorised and included in the codebook. This method allowed the researchers to identify recurring themes and pinpoint differences or contradictory replies among interviewees.

Each theme indicated in the desk research was described along with the coded information gathered from the interviews. Direct quoting of the interviewees was included to better explain the content of the topics discussed and support the findings of the desk research.

### Brief overview of the report's contents

This report analyses the Maltese implementation of procedural rights in European Arrest Warrant ('EAW') proceedings in accordance with the provisions of the 2002/584/JHA Council Framework Decision.<sup>2</sup> The report is composed of five thematic chapters that examine the following topics: the right to information, the right to interpretation and translation, the right to access to a lawyer, the factors considered when issuing or executing the EAW, and the use of digital and technological tools.

Every chapter starts with a legal overview outlining the provisions enacted to transpose the Council Framework Decision and relevant case law. Academic literature was used to support and discuss normative notions and judicial decisions. In addition to the desk research, the review of the seven semi-structured interviews provides insight into the practical implementation of the rights discussed.

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<sup>2</sup> Council Framework Decision 2002/584/JHA of 13 June 2003 on the European arrest warrant (EAW) and the surrender procedures between the Member States.



At the end of each section, a paragraph titled “discussion of findings” provides a general assessment, which includes challenges, improvements, promising practices, and suggestions.

The last conclusive chapter summarises the main challenges surrounding the effective implementation of the provisions of the European Arrest Warrant and possible solutions.

## RESEARCH FINDINGS

### 1. Right to information

#### a. Legal overview

##### i. Defining the right to information in Maltese law

The right to information of requested persons in Malta is primarily found in the Criminal Code and the Extradition (Designated Foreign Countries) Order, read together with the Extradition Act.<sup>3</sup> Article 8(3) of the Extradition (Designated Foreign Countries) Order states that an individual who is arrested through a European Arrest Warrant must be provided a copy of the warrant “as soon as practicable after his arrest.”<sup>4</sup> The Order also addresses the provision of information to requested persons upon their first appearance in court. Article 11 (1) (c) mandates the court to provide the requested person with certain information about consenting to the surrender.<sup>5</sup> The information which must be provided is found in Article 11 (2), namely: a) that the person may consent to their return to the issuing country; b) that if consent is given, there is no right to appeal; c) an explanation of the procedure if consent is given; and d) that any consent must be made to the court and cannot be revoked.<sup>6</sup>

Found in Part IV, Article 16 of the Extradition Act stipulates that during the first court appearance following a requested person’s arrest, certain information about their rights must be explained.<sup>7</sup>

The court must inform the requested person that return to the issuing country will not occur until at least seven days have passed from a judgement in favour of the warrant’s execution, and that such a judgement can be appealed.<sup>8</sup> The court also has to explain that the requested person may apply for redress if they believe certain rights have been so grossly violated as to potentially merit the reversal or modification of the court’s judgement.<sup>9</sup> The rights which apply are those found in the Constitution of Malta or the European Convention Act, or the restrictions on return found in Article 10(1) and 10(2) of the Extradition Act.<sup>10</sup>

Part IV of the Extradition Act also specifies that **any international warrants (including EAWs) executed in Malta are subject to a series of provisions found in the Criminal Code.**<sup>11</sup> This includes Article 355AC of the Criminal Code, which requires that upon arrest, an individual be clearly informed why they are under arrest, in a language they understand.<sup>12</sup> Allowances are made for reasonable delays in the information being transmitted to the arrested person, where this requires the use of an interpreter and one is not immediately available.

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<sup>3</sup> Malta, [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004; Malta, [Criminal Code](#), (Act. No IV of 2014), Chapter 9 of the Laws of Malta, 10 June 1854; Malta, [Extradition Act](#), Chapter 276 of the Laws of Malta, 01 February 1982.

<sup>4</sup> Malta, Article 8 (3) of the [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004.

<sup>5</sup> Malta, Article 11 (1) (c) of the [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004.

<sup>6</sup> Malta, Article 11 (2) of the [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004.

<sup>7</sup> Malta, Article 16 of the [Extradition Act](#), Chapter 276 of the Laws of Malta, 01 February 1982; Article 25 of the [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004.

<sup>8</sup> Malta, Article 16 of the [Extradition Act](#), Chapter 276 of the Laws of Malta, 01 February 1982.

<sup>9</sup> *Ibid.*

<sup>10</sup> Malta, Articles 10 (1) (2) of the [Extradition Act](#), Chapter 276 of the Laws of Malta, 01 February 1982.

<sup>11</sup> Malta, Article 14 (5) of the [Extradition Act](#), Chapter 276 of the Laws of Malta, 01 February 1982.

<sup>12</sup> Malta, Article 355AC (2) of the [Criminal Code](#), (Act No. IV of 2014), Chapter 9 of the Laws of Malta, 10 June 1854.

Most provisions relevant to the right to information are in fact found in the Criminal Code. One such clause is found in Article 534AB (1), which requires the police or court to inform someone without delay of the following procedural rights: (a) right of access to a lawyer; (b) any entitlement to free legal advice and the conditions for accessing it; (c) the right to be given information about the offence alleged in as much detail as is necessary to ensure fair proceedings and an effective defence; (d) the right to interpretation and translation; (e) the right to remain silent; (f) the right to have someone informed of the arrest; (g) the right to communicate with a third party or consular officials; (h) the right to medical care; and (i) the right to have a letter of rights read out if the person is illiterate.<sup>13</sup>

Subtitle IX of the Criminal Code, entitled “*Right to Legal Assistance and Other Rights During Detention*”, also contains a series of articles which are relevant to the right to information of requested persons.<sup>14</sup> Two provisions regarding the right to information can be found within Title IX: Article 355AUC (1) and Article 355AUH (4).<sup>15</sup> Article 355AUC establishes a detainee’s right to inform a third person of their arrest, including that the arrested person must be informed “*without delay*” and that a record must be made of the manner in which this has been satisfied.<sup>16</sup> Article 355AUH (4) pertaining to the right of EAW subjects to legal representation, specifies that **requested persons must also be informed following the arrest that they have the right to an attorney in the issuing state.**<sup>17</sup>

The rights a requested person must be informed of are listed in a written “*Letter of rights for persons arrested on the basis of a European Arrest Warrant*”, as found in Schedule E of the Criminal Code.<sup>18</sup> Both Article 534AB (3) of the Criminal Code and Article 65 of the Police Act obligate police to promptly provide the letter of rights and allow the arrestee to retain it throughout their detention.<sup>19</sup> The letter of rights provided to requested persons begins, “*You have been arrested on the basis of an European Arrest Warrant. You have the following rights...*” and details in five sections the contents of those rights, namely: A. Information about the European Arrest Warrant; B. Assistance of a lawyer; C. Interpretation and Translation; D. Possibility to consent; and E. Hearing.<sup>20</sup>

## ii. Application of the speciality rule

Malta has not made a notification regarding the renunciation of the speciality rule to the General Secretariat of the Council under Art. 27 p. 1 of the EAW Framework Decision.<sup>21</sup> **The speciality rule, therefore, should apply in all EAW cases in Malta, and consent to surrender cannot give rise to the presumption that consent is also given for prosecution, sentencing, or detention in respect of other offences.**

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<sup>13</sup> Malta, Article 355AB (1) of the [Criminal Code](#), (Act No. IV of 2014), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>14</sup> Malta, Articles 355AS-355AUK of the [Criminal Code](#), (Act No. LI of 2016), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>15</sup> Malta, Articles 355AUC (1), 355AUH (4) of the [Criminal Code](#), (Act No. LI of 2016), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>16</sup> Malta, Article 355AUC (1) of the [Criminal Code](#), (Act No. LI of 2016), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>17</sup> Malta, Article 355AUH (4) of the [Criminal Code](#), (Act No. LI of 2016), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>18</sup> Malta, Schedule E Part II of the [Criminal Code](#), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>19</sup> Malta, Article 355AB (3) of the [Criminal Code](#), Chapter 9 of the Laws of Malta, 10 June 1854; Malta, Article 65 of the [Police Act](#), 12 May 2017.

<sup>20</sup> Malta, Schedule E Part II of the [Criminal Code](#), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>21</sup> General Secretariat of the Council, [Implementation of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States](#), 15 June 2021.

According to Article 43 of the Order, consent must be given before the court with the assistance of a defence lawyer, must be recorded in writing, and is irrevocable.<sup>22</sup> Those formal requirements also apply to consent or renunciation to the rule of speciality, which must be expressed at the same time that consent to surrender is given.

When the Court of Magistrates approves the execution of an EAW – stated as an “*order of committal*” – it consistently includes a clause stating that the requested person’s surrender is made “*on condition that the present extradition of the person requested be subject to the law of speciality and thus in connection with those offences mentioned in the European Arrest Warrant issued against him deemed to be extraditable offences by this court.*”<sup>23</sup>

### iii. Remedies

It is possible to challenge failures or refusals to provide information in the same way as one would challenge any other procedural deficit in the course of EAW proceedings as a result of authorities’ action or inaction.

Remedies are available under Article 355AUI of the Criminal Code, according to which “*a claim for redress shall be filed promptly, and the court seized with the claim shall have authority to grant such redress as it deems appropriate.*”<sup>24</sup> It is in the court’s discretion to determine what may constitute “appropriate” redress when a breach is determined. Possible outcomes may include dismissing the case or appealing. In some cases, monetary compensation may be ordered.

Furthermore, the requested person has a right of appeal from the decision to grant or to deny such redress within eight working days from that decision.<sup>25</sup> One of the judges ordinarily sitting in the Court of Criminal Appeal or ordinarily sitting in the Criminal Court will, without a jury, issue a decision in the appeal’s regard.<sup>26</sup>

Redress applications for potential violations of constitutional rights are handled by the Civil Court, First Hall, as per article 46 of the Constitution and Article 4 of the European Convention Act.<sup>27</sup>

The court has the authority to issue any order it deems appropriate to protect the individual’s constitutional rights.<sup>28</sup> Article 4 of the European Convention Act (Malta’s incorporation of the European Convention of Human Rights into domestic law) sets out the “*Procedure for enforcement of Human Rights and Fundamental Freedom.*” According to Article 4, the Civil Court has jurisdiction over redress applications made for violations of “*any of the Human Rights and Fundamental Freedoms*”.<sup>29</sup> Furthermore the European Convention Act also states that in case of violations of rights guaranteed therein, a person is entitled to “*an effective remedy*”.<sup>30</sup> The type of remedies is not defined in the act

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<sup>22</sup> Malta, Article 43 of the [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004.

<sup>23</sup> As an example of this see: Malta, Court of Magistrates (Committal), (*Extradition (EAW) Proceedings No. 372/2018*) [The Police \(Inspector Chris Galea Scannura\) vs Silver Maekallas \(or Maekallas\)](#) (2018), 04 July 2018, p. 4.

<sup>24</sup> Malta, Article 355AUI of the [Criminal Code](#), (Act No. LI of 2016), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>25</sup> Malta, Article 355AUI (1) of the [Criminal Code](#), (Act No. LI of 2016), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>26</sup> *Ibid.*

<sup>27</sup> Malta, Article 46 (1) of the [Constitution in Malta](#), Chapter IV, 21 September 1964; Malta, Article 4 of the [European Convention Act](#), Chapter 319, 19 August 1987.

<sup>28</sup> Malta, Article 46 (2) of the [Constitution of Malta](#), Chapter IV, 21 September 1964.

<sup>29</sup> Malta, Article 4 of the [European Convention Act](#), Chapter 319, 19 August 1987.

<sup>30</sup> Malta, First Schedule, Article 13 of the [European Convention Act](#), Chapter 319, 19 August 1987.

nor in the original Convention text. However, the European Court of Human Rights (ECtHR) has produced a guide on the right to an effective remedy which the Civil Court can consider when deciding what kind of remedy to issue.<sup>31</sup>

In cases where requested persons are arrested and held without being informed of the reasons why, they also have the option to file a claim for compensation under the European Convention Act.<sup>32</sup>

## b. Right to information in practice

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

All interviewees agree that requested persons are informed of their rights upon arrest and in court. Information is provided orally and in writing. Authorities do their best to ensure the arrestees understand their rights at any stage of the proceedings and that the Letter of Rights is in a language they understand.

Two lawyers describe the process in detail, stating that upon arrest, the police briefly explain the EAW and take the requested person to the police headquarters. Once at the police station, the police give the arrestee the EAW and the letter of rights. Lawyers who regularly handle EAWs will generally also verify this information with the client. Interviewees confirm the dictate of Article 534AB of the Criminal Code, which requires the police to inform arrested persons of their procedural rights and to explain the Letter of Rights if they are illiterate or unable to comprehend it. The police hand a specific letter for persons arrested on a European Arrest Warrant detailing every aspect of the procedure. A translator will also translate its content and the explanation of the police in the event the arrestee does not understand English.

**(Defence lawyer, Malta)** adds: *“In most instances, and I will put this up to 98%, the local police ensure that they’re informing the individual of all their rights, according to the framework or the directive on the EAW.”*

### ii. Information about rights

All respondents generally agree that the rights communicated to the arrestees are those listed in Schedule E of the Criminal Code for persons arrested on the basis of a European Arrest Warrant and those under Article 534AB (1) of the Criminal Code.<sup>33</sup> The procedural rights mentioned by the interviewees are listed in the desk research.

*Table 2: Are persons arrested on an EAW informed about their procedural rights?*

	Lawyer 1	Lawyer 2	Lawyer 3	Lawyer 4	Judge 1	Judge 2	Judge 3	Total
<b>YES</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>7</b>
In writing (letter of rights)	-	-	-	-	-	-	-	
Orally	-	-	-	-	-	-	-	<b>0</b>

<sup>31</sup> European Court of Human Rights (2021), [Guide on Article 13 of the European Convention on Human Rights: Right to an effective remedy](#), 31 December 2021.

<sup>32</sup> Malta, First Schedule, Article 5 (2) of the [European Convention Act](#), Chapter 319, 19 August 1987.

<sup>33</sup> Malta, Schedule E Part II of the [Criminal Code](#), Chapter 9 of the Laws of Malta, 10 June 1854.

In writing (letter of rights) and orally	X	X	X	X	X	X	X	7
<b>NO</b>	-	-	-		-	-	-	0
<b>Don't know/remember</b>	-	-	-		-	-	-	0
<b>Did not answer</b>	-	-	-		-	-	-	0

### iii. Information about the EAW – content and procedure

All interviewees confirm that information about the content of the EAW is explained to the requested persons by the police and in court. The arrestees receive a copy of the arrest warrant in their preferred language. When the person has difficulty reading the document, the authorities will take the necessary measures to assist them.

**(Prosecutor, Malta)** states: *“We give them a copy in a language they understand. Most of the time, there is a document. If the person tells us they have a problem reading the document, we do our best. We take any necessary measures that will help them understand.”*

Regarding the quality of the information, one defence lawyer claims that sometimes the authorities cannot answer specific questions, such as evidence against the requested person or other aspects of the case. The quality of the answer depends on how detailed the information sent by the issuing state is.

*Table 3: Are persons arrested informed of the contents of the EAW against them?*

	Lawyer 1	Lawyer 2	Lawyer 3	Lawyer 4	Judge 1	Judge 2	Judge 3	Total
<b>YES</b>	X	X	X	X	X	X	X	7
In writing	-	X	X		X	X	X	5
Orally	-				-			0
In writing and orally	X			X	-			2
<b>NO</b>	-				-			0
<b>Don't know/remember</b>	-				-			0
<b>Did not answer</b>	-				-			0

### iv. Information on consenting to surrender

The court has an obligation to explain to requested persons what consenting to their surrender entails during the first hearing.

**(Prosecutor, Malta)** states: *“In Malta, during the initial hearing, we tackle two things: ensuring the identity of the person and whether they will consent to their surrender or not. The court asks them if they are voluntarily surrendering to what the European Arrest Warrant is requesting from them. If the person says yes, the court is obliged to explain it. So, the surrender has to be done in front of the judicial authority. The court will also give them time to reconsider.”*

The prosecutor continues by explaining that according to Article 43 of the Extradition Order, once consent is given, it is irrevocable, and the requested person will be extradited to the requesting country.

**(Prosecutor, Malta)** states: *“Then, if they reaffirm their position, the court will order their return. According to our legislation, there is no right of appeal from it. The person will be returned within 10 days to the issuing country.”*

However, a defence lawyer complains that the court fails to inform the arrestee about various rights the person has in relation to the surrender, whether consented to or not.

**(Defence Lawyer, Malta)** explains: *“Several other elements are not explained to requested persons including that any time spent in detention in Malta should be deducted from their ultimate sentence, that they can request their sentence be served in their country of residence, or that they can seek bail once transferred to the requesting state.”*

### **The interviewees give contradictory statements when asked about the speciality rule.**

Three defence lawyers state that requested persons are not informed about the rule of speciality unless the defence attorney raises the issue. In particular, a lawyer explains that the rule of speciality can be problematic because the defence cannot obtain full access to the documents of the EAW. Therefore, if they do not request the speciality rule, they do not know if the client might be prosecuted or detained for previous offences not specified in the warrant.

Another lawyer reports that requested persons are not informed about the speciality rule at all, let alone renunciation of it. He further states that the speciality rule is not applied unless the defence attorney raises the issue. In his experience, the Maltese courts tend to operate under the belief that the Framework Decision is enough to ensure that states respect the speciality rule. However, he found that in practice, some states do not adhere to the speciality rule, even when it is explicitly listed as a condition in the surrender order.

**(Defence Lawyer, Malta)** states: *“No, they are not informed about the specialty rule or the right to renounce it. (...) In practice, our courts tend to opine that the directive is a sufficient agreement. They think it is sufficient proof between the EU Member States to assure that the role of speciality is applied. In practice, we know that even if the judgement with which a detainee is transferred includes the protection of the rule of specialty, certain jurisdictions within the EU couldn't be bothered about it, so they keep proceeding forward.”*

Contrary to what lawyers claimed, prosecutors have different opinions and state that judicial authorities do explain the speciality rule. A prosecutor reports that the speciality rule was mentioned in all EAW cases they were involved in. The interviewee further clarifies that, **in practice, the rule of speciality always applies, so renunciation is not applicable.**

**(Prosecutor, Malta)** affirms: *“So as a rule, either prosecutors or the defence will bring it up and persons will be informed about the specialty rule. However, a person who does not know what it is, will not really understand it and what it entails obviously. (...) On my side, as a prosecutor I think that it is not fair (...) that a country sends a European Arrest Warrant for X offences, but then you may be tried for many others. That is why we always enforce the law of specialty.”*

Table 4: Are the requested persons informed about what consenting to their surrender entails?

	Lawyer 1	Lawyer 2	Lawyer 3	Lawyer 4	Judge 1	Judge 2	Judge 3	Total
YES	X	X	X	X	-	X	X	6
NO	-	-	-	-	X	-	-	1
Don't know/ remember	-	-	-	-	-	-	-	0
Did not answer	-	-	-	-	-	-	-	0

#### v. Understanding of information

In most cases, requested persons understand the information provided, and lawyers ensure their clients have a general overview of how EAWs work.

**(Defence Lawyer, Malta)** claims: *“It depends on the level of understanding of the individual to what extent they comprehend each aspect of the procedure.”*

However, one of the lawyers has a different view on the matter and explains why EAW proceedings are difficult to understand.

**(Defence Lawyer, Malta)** states: *“First of all, it gets amended very regularly. Since it is amended at the European community level, it is not as straightforward for me as when it is at a local level. But I believe it is not as simple as it was envisaged to be at the offset. At the beginning the idea of the European Union was one of simplicity and reduction of formality. In my opinion, it got much more complicated. It became very expeditious. It moves quickly because the terms are imposed, making it even more complex, especially for the defence council.”*

During the hearings, judicial authorities examine whether requested persons understand the information about the EAW, but ultimately the lawyer is obliged to explain and ensure clients understand. In this regard, one of the interviewees believes that a more comprehensive approach is needed when explaining procedural rights in court.

**(Defence Lawyer, Malta)** states: *“The magistrate asks the individual if they understand what they are saying and waits for the individual's reply. Is this a good assessment of the individual's understanding? I don't think so. On paper the answer would be 'yes', but in practice, the answer is 'no'. In practice, it is failing. However, the court's paper says the court has informed the individual of his rights and the individual has confirmed it, even if this is not true in practice. I am not blaming the magistrate, but the system in general. This is not the correct way to assess an individual.”*



### c. Lack of information on the speciality rule

Lawyers expressed **concerns regarding the speciality rule** by claiming that the police and the court do not inform requested persons about this procedural aspect unless the defence attorney raises the matter.

A lawyer explains that the police do not mention the speciality rule at the moment of the arrest because it is beyond their duty and legal knowledge of the case. According to this lawyer, the rule of speciality can be an issue because lawyers do not have full access to the documents of the EAW. The interviewee further argues that sometimes he will find out about procedural details of the case only during the hearings and not at the moment of the arrest. In this situation, the police either do not have the information, citing logistical difficulties, or the foreign authorities provide more information after the arrest without notifying the lawyer.

**(Defence Lawyer, Malta)** states: *“It is with the speciality rule where problems start arising. Because it depends on the information and if it was all given. There are two levels of complexity: First, if the requesting state is not exhaustive. Sometimes it is very hard for the person suspected and the Maltese lawyer to understand the information or the lines of the charge. This happens especially with issues like political offence, exceptions, rule of speciality or even a descent into double criminality and the time bar.”*

The lawyer believes that in EAW proceedings, the police should exhibit all the relevant information to support the warrant, but this is not likely to occur.

**(Defence Lawyer, Malta)** affirms: *“Second, there could also be a situation whereby the police don't fully disclose the information to me. It is not uncommon to find that a certain level of information in court is more detailed than what they had given at that moment of arrest. Sometimes it happens because the foreign authority would be following up with more information upon the arrest or because sometimes, they claim logistical difficulties between intelligence and the police. So, at the beginning, I don't believe requested persons are informed about the speciality rule. In practice, I'm not even sure if the police are competent to raise it, in the sense that it is beyond their legal knowledge to enter into issues of rule of speciality.”*

### d. Discussion of findings

Interview results show that requested persons are informed of their procedural rights upon arrest in compliance with **Article 534AB (1)**. The police officers provide the requested person with a **Letter of Rights** in accordance with **Article 534AB (3)** of the **Criminal Code** and **Article 65 of the Police Act**. They also give the arrestees a copy of the arrest warrant as stipulated in **Article 8 (3) of the Extradition Order**. If persons are unable to understand the content of the EAW, Maltese authorities will ensure its comprehension and are responsible for its explanation and clarifications. However, one lawyer laments that authorities cannot always explain specific information.

All respondents confirm that the **court informs the requested person about their right to surrender** in accordance with **Article 11 (1) (c) of the Extradition Order**.<sup>34</sup> However, one lawyer questions the quality of the information and claims that the police and the court provide insufficient information, especially regarding certain technicalities of their surrender. Findings demonstrate contradictory

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<sup>34</sup> Malta, Article 11 (1) (c) of the [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004.

views among the respondents about the speciality rule. The prosecutors and the defence lawyers stand in disagreement in regard to assessing the person's understanding of the information. Most of the defence lawyers seem to agree that the court does not ensure the requested person's understanding of the information on the EAW. Instead, the prosecutors argue that it is the role of the lawyer to provide this information.

## 2. Right to interpretation and translation

### a. Legal overview

#### i. Legal Accessibility of interpretation and translation

The Criminal Code contains most of the legal framework regarding the provision of interpretation and translation to requested persons, mainly in Book Second regulating the “*laws of criminal procedure*.”<sup>35</sup> The Extradition (Designated Foreign Countries) Order also features a limited transposition of the right.<sup>36</sup>

The right to translation or interpretation as found in the Extradition Order is limited in scope and does not fully transpose the spirit of Article 11 of the Framework Directive – namely that the right should apply from the time of arrest. The right is found under the heading of “*The Initial Hearing*” and states that when a requested person is brought to court for the first time, “***if he does not understand the language in which the proceedings are conducted, [he] shall have the right to the appointment of an interpreter.***”<sup>37</sup> There is no discussion of the right’s application prior to the initial hearing, nor is it restated or referenced in the articles detailing “*The Extradition Proceedings*”.<sup>38</sup>

While the right to interpretation or translation was weakly transposed in the Extradition (Designated Foreign Countries) Order, it was strengthened through the implementation of the interpretation and translation directive. The resulting measures are found in the Criminal Code enacted through ACT No. IV of 2014.<sup>39</sup> For example, according to Article 355AC (2) on “*information to be given on arrest*”, **an arrest is not lawful unless the person is told the reasons for the arrest “in a language he understands.”**<sup>40</sup> The article permits reasonable delays in obtaining an interpreter depending on the circumstances. In cases where a person does not understand the language of proceedings before the courts, Article 516 (2) states that the proceedings and evidence introduced will be interpreted by the court or a sworn interpreter.<sup>41</sup> However, the majority of the provisions regarding interpretation or translation in the Criminal Code are found in Book Second, Title VI, on Laws of Criminal Procedure.<sup>42</sup>

Dispositions included in Title VI apply from the moment a person is informed by police they are a suspect or charged with an offence to the “*conclusion of criminal proceedings.*” The definition of criminal proceedings “*includes investigations by the Executive Police and extradition proceedings.*”<sup>43</sup> **Article 534AB stipulates such persons should be informed by the police or courts of their right to interpretation and translation as quickly as possible.**<sup>44</sup> It also states that if the person does not understand the language of the letter of rights, the rights contained in the letter should be orally

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<sup>35</sup> Malta, [Criminal Code](#), Chapter 9 of the Laws of Malta, Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>36</sup> Malta, [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004.

<sup>37</sup> Malta, Articles 10, 11, 11 (1A) (b) of the [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004.

<sup>38</sup> Malta, Articles 12, 31A of the [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004.

<sup>39</sup> Malta, [Criminal Code](#), (Act No. IV of 2014), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>40</sup> Malta, Article 355AC (2) of the [Criminal Code](#), (Act No. IV of 2014), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>41</sup> Malta, Article 516 (2) of the [Criminal Code](#), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>42</sup> Malta, Articles 534A, 534AGQ of the [Criminal Code](#), (Act No. IV of 2014), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>43</sup> Malta, Article 534A of the [Criminal Code](#), (Act No. IV of 2014), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>44</sup> Malta, Article 534AB (1) (d) of the [Criminal Code](#), (Act No. IV of 2014), Chapter 9 of the Laws of Malta, 10 June 1854.

dictated to them in an appropriate one.<sup>45</sup> **The letter should later be provided to the person in their language as soon as practicable.**

Articles 534AC-534AE are particularly important to this topic, as they all deal exclusively with interpretation and translation. Article 534AC (1) establishes the right to provision of interpretation of criminal proceedings *“without unreasonable delay.”*<sup>46</sup> **Sub-article (2) states interpretation should be provided for all activities or communications between the individual and their legal counsel.** This includes questioning, hearings, submissions of appeals, or *“other procedural applications.”*<sup>47</sup> **According to Sub-article (4), the responsibility to determine whether an individual is competent in the language of proceedings or requires an interpreter lies with the police and courts.**<sup>48</sup> Sub-article (5) allows the person to challenge a decision that they do not require interpretation at any stage in proceedings.<sup>49</sup> It also allows them to make a complaint that *“the quality of the interpretation is not sufficient to safeguard the fairness of the proceedings.”* Article 534AC concludes with the stipulation that interpretation must be *“of a quality sufficient to safeguard the fairness of proceedings, in particular by ensuring that the suspect or accused has knowledge of the case against him and is able to exercise his right of defence.”*<sup>50</sup> Therefore, the right to interpretation found in Article 534AC is quite detailed.

While Article 534AC deals with interpretation, Article 534AD contains provisions regarding the translation of documents.<sup>51</sup> Sub-article (1) states that individuals who do not understand the language of the proceedings must be given written translations of all documents which are needed to guarantee their right to a defence is effectively exercised and to *“safeguard the fairness of the proceedings.”*<sup>52</sup> According to Sub-article (2), it is the police and courts who decide what constitutes an *“essential document”*, but the individual or their counsel can submit *“reasoned”* requests that a document should be deemed essential.<sup>53</sup> It also stipulates that, as a minimum, *“essential documents shall include any decision depriving a person of their liberty, any charge or indictment, and any judgement.”* Beyond this descriptive definition, no other provisions exist detailing which documents must be translated. Therefore, **it is at the discretion of the court and police whether a requested person must receive a translated copy of a document.** Despite this, Sub-article (3) does give the individual the right to challenge a decision that translation is not needed, but also to complain that any translation given is of a poor standard. However, despite the preceding measures detailed in Sub-articles (1)-(3), Sub-article (4) foresees that instead of written translations, oral ones, or even simply oral summaries, may

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<sup>45</sup> Malta, Article 534AB (3) of the [Criminal Code](#), (Act No. IV of 2014), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>46</sup> Malta, Article 534AC (1) of the [Criminal Code](#), (Act No. IV of 2014), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>47</sup> Malta, Article 534AC (2) of the [Criminal Code](#), (Act No. IV of 2014), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>48</sup> Malta, Article 534AC (4) of the [Criminal Code](#), (Act No. IV of 2014), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>49</sup> Malta, Article 534AC (5) of the [Criminal Code](#), (Act No. IV of 2014), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>50</sup> Malta, Article 534AC (6) of the [Criminal Code](#), (Act No. IV of 2014), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>51</sup> Malta, Article 534AD of the [Criminal Code](#), (Act No. IV of 2014), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>52</sup> Malta, Article 534AD (1) of the [Criminal Code](#), (Act No. IV of 2014), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>53</sup> Malta, Article 534AD (2) of the [Criminal Code](#), (Act No. IV of 2014), 10 June 1854.

be given instead.<sup>54</sup> The article concludes with a stipulation that any translations provided must ensure the individual has a sufficient understanding of the case against them to be able to exercise their right to a defence. This is stated as being for the purpose of “safeguarding the fairness of the proceedings.”<sup>55</sup>

The final two relevant articles of Title VI of the Criminal Code are Article 534AE and Article 534AG.<sup>56</sup> Interpretation and translation services are to be provided free of charge according to Article 534E.<sup>57</sup> The same article also requires that a list of “appropriately qualified” translators and interpreters be maintained and made available as needed.<sup>58</sup> Article 534AG, which concludes Title VI, mandates that a record be kept of any interpretation or translations which were provided in the course of proceedings.<sup>59</sup>

The right to interpretation and translation, as discussed thus far, is also reflected in the “Letter of Rights for persons arrested on the basis of a European Arrest Warrant” found in Schedule E Part II of the Criminal Code.<sup>60</sup> Article C, “Interpretation and Translation”, informs a requested person that they have the right to be assisted by an interpreter free of charge if they do not speak the language of the police or other authorities.<sup>61</sup> It also says that the interpreter can help the requested person communicate with their lawyer and that the interpreter must maintain the confidentiality of those conversations. **The requested person is also informed that they are entitled to a copy of the EAW in a language they understand but that they may be provided with an oral translation or summary instead.**

The Court of Magistrates helps to protect the right to interpretation and translation by always informing requested persons of this right. Every judgement contains a statement confirming the information was given.

For example, in *The Police (Inspector Mario Cuschieri) vs Johan Germaine Corneille Van Oudenhove*, the court recorded in its judgement that it explained to Van Oudenhove “the right to be assisted by an interpreter from the Maltese language to the Dutch language and vice versa in case he was not English Speaking or Maltese Speaking (...) and the requested person opted to (...) have these proceedings conducted in English and this after the court ascertained that the requested person was English speaking.”<sup>62</sup>

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<sup>54</sup> Malta, Article 534AD (4) of the [Criminal Code](#), (Act No. IV of 2014), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>55</sup> Malta, Article 534AD (6) of the [Criminal Code](#), (Act No. IV of 2014), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>56</sup> Malta, Articles 534AE, 534AG of the [Criminal Code](#), (Act No. IV of 2014), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>57</sup> Malta, Article 534AE (1) of the [Criminal Code](#), (Act No. IV of 2014), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>58</sup> Malta, Article 534AE (2) of the [Criminal Code](#), (Act No. IV of 2014), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>59</sup> Malta, Article 534AG of the [Criminal Code](#), (Act No. IV of 2014), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>60</sup> Malta, Schedule E Part II of the [Criminal Code](#), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>61</sup> Malta, Schedule E Part II Article C of the [Criminal Code](#), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>62</sup> Malta, Court of Magistrates (Committal), (*Extradition (EAW) Proceedings No. 535/2016*) [The Police \(Inspector Mario Cuschieri\) vs. Johan Germaine Corneille Van Oudenhove](#) (2016), 26 October 2016, p. 3.

## ii. Rules governing the provision of live interpretation

**There are no rules differentiating between live or recorded interpretation in Malta.** There is also no specific mention of interpretation through digital means. The Criminal Code does, however, make stipulations regarding the quality of interpretations. Article 534AE (2) requires that the list of interpreters (and translators) provided to legal counsels and relevant authorities includes such professionals who are “*appropriately qualified*.”<sup>63</sup> It is nowhere specified, however, who decides what constitutes “*appropriately qualified*”, nor what criteria may apply. In Article 534AC, the Code also contains a provision which grants a requested person the right to challenge or complain about the quality of interpretation services.<sup>64</sup> The same article also states that interpretation services “*shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that the suspect or the accused has knowledge of the case against him and is able to exercise his right of defence*”.<sup>65</sup>

## iii. Remedies

**There are no specific rules addressing violations of the right to interpretation or translation during EAW proceedings.** Redress applications for potential violations of constitutional rights are handled by the Civil Court, First Hall, as per Article 46 of the Constitution and Article 4 of the European Convention Act.<sup>66</sup> In addition, remedies to breaches of procedural rights apply and are available under Article 355AUI of the Criminal Code described before.<sup>67</sup>

## b. Interpretation and translation in practice

### i. Provision of interpretation (decision and means)

Requested persons who do not understand English, or Maltese have the right to be assisted by an interpreter, as per Articles 10 and 11 (1A) (b) of the Extradition (Designated Foreign Countries) Order.<sup>68</sup>

All interviewees agree that interpretation is guaranteed when requested and describe the procedure. During the first questioning at the police station, the requested person has a right to have a translator (not a translation of the documents as per Article 534AB (3) of the Criminal Code) who will explain the content of the EAW and the Letter of Rights.<sup>69</sup> The police must conduct the interrogation in a language the arrestee understands. If the language is not English or Maltese, the police officer will be assisted by a translator. Usually, defence lawyers ensure that the client understands everything and ask for a translator if they believe it is necessary. The prosecutors confirm that upon arrest, the police assess whether an interpreter is necessary based on general communication between them and the requested persons.

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<sup>63</sup> Malta, Article 534AE (2) of the [Criminal Code](#), (Act No. IV of 2014), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>64</sup> Malta, Article 534AC (5) of the [Criminal Code](#), (Act No. IV of 2014), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>65</sup> Malta, Article 534AC (6) of the [Criminal Code](#), (Act No. IV of 2014), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>66</sup> Malta, Article 46 (1) of the [Constitution of Malta](#), Chapter IV, 21 September 1964; Malta, Article 4 of the [European Convention Act](#), Chapter 319, 19 August 1987.

<sup>67</sup> Malta, Article 355AUI of the [Criminal Code](#), (Act No. LI of 2016), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>68</sup> Malta, Articles 10, 11, 11 (1A) (b) of the [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004.

<sup>69</sup> Malta, Article 534AB (3) of the [Criminal Code](#), (Act No. IV of 2014), Chapter 9 of the Laws of Malta, 10 June 1854.

During the hearings, the defence attorney informs the court that their client does not speak or understand Maltese. When this happens, the court will determine whether the requested person can sufficiently speak and understand English. If they can, then the proceedings will be conducted in English as per the Judicial Proceedings (Use of English Language) Act.<sup>70</sup> A lawyer specifies that even if the requested person declares to understand when a magistrate doubts that the requested person has adequate knowledge of the English language, they will appoint an interpreter.

Two defence lawyers question the **quality of the service, claiming that there is room for improvement**. In most cases, translation or interpretation is made directly between Maltese and the native language of the requested person. However, **the number of interpreters qualified to interpret between Maltese and other languages is limited**. Finding an interpreter who can translate directly between these two languages is also not always possible. In these cases, two interpreters are engaged: one to translate from Maltese to English and a second to translate from English to the requested person's native tongue.

**(Defence lawyer)** affirms: *"There are interpreters but whether that interpretation or translation is good is another matter. For example, we've had cases with Hungarian, a language not used in Malta. You wouldn't have anyone who can translate directly from Hungarian to Maltese. So, you'd have two translators, somebody translating from Hungarian to English and then somebody translating from English into Maltese. I believe having the proceedings or the interrogation translated with two interpreters isn't good enough. Therefore, it needs to be improved."*

## ii. Translation of documents

All respondents agree that the right **to translation of documents is guaranteed during EAW proceedings**. When the requested person is a non-Maltese speaker, the documents are provided in English and edited by a translator in the language the requested person understands.

Regarding the content of the case file, one interviewee mentions that Malta introduced the rule of disclosure, which extends to any police investigation. Disclosure applies when the police summon someone as a person of interest, wanted person, or suspect. However, there is still legal uncertainty about whether this obligation applies to the prosecution in case of European Arrest Warrants. In EAW cases, disclosure is limited to the content of the European Arrest Warrant itself.

One of the lawyers further elaborates on this point. The interviewee maintains that the content of the case file is not translated into a language requested persons and lawyers can understand. It is not only the case in Malta but a general issue in EAW proceedings all around Europe. They argue that this is a problem because the lawyer in the executing state does not have enough elements to assess if, for instance, the request is malicious, limiting the right to assist the client.

**(Defence lawyer, Malta)** states: *"Except for the Letter of Rights and the EAW, other relevant documents are not provided with a translation. That's a big problem. I don't believe it's done in many countries. This is the main issue with EAWs because EAW is a quick form of extradition. So, you've got to go very limitedly on the case elements to meet all the requirements of speciality, criminality, etcetera."*

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<sup>70</sup> Malta, Article 3, 4 of the [Judicial Proceedings \(Use of English Language\) ACT](#) (No. 189), 15 September 1965.

### iii. Interpretation of consultations with lawyers

Authorities always provide a translator to assist communications between lawyers and clients when it is necessary and requested. They accept the request to avoid the lawyer raising constitutional issues, which delays the proceedings. Before the hearings, the police appoint an interpreter to guarantee the delivery and understanding of the information to the requested persons. **This includes consultations with lawyers when at the police station.** During the hearings, the Court appoints an interpreter to ensure safe communication between the requested person and anyone speaking with him.

A prosecutor specifies that Maltese authorities do not assign a specific interpreter for consultations between lawyers and clients to avoid any conflict or confidentiality issues. Most of the time, the defence lawyer will choose an interpreter they trust. If a requested person trusts the interpreter previously supplied by the authorities – either upon arrest or in court – then they are free to engage the interpreter for consultations with their lawyer.

**(Prosecutor, Malta)** affirms: *“We consider the meeting between the lawyer and the client as top secret. It is on the requested person to establish if the interpreter we chose for them is professional enough to be trusted. We don't send state-appointed interpreters for consultations between lawyers and clients because we want to play it safe and avoid them claiming confidentiality issues.”*

One lawyer, however, has a different opinion and states that **one of the main issues with the European Arrest Warrant is the briefing between the client and the lawyer at the private stage.** The interviewee explains that private consultations between lawyers and clients do not qualify for assistance from a state-appointed interpreter. Therefore, being assisted by an interpreter outside the courtroom is possible by either making specific requests (which are not catered by the contemplated legal procedure) or paying private interpreters.

#### c. Gaps on the right to interpretation

The fieldwork research reveals that there are issues regarding the quality of and accessibility to interpreters. A prosecutor recounts that sometimes finding an available interpreter can be challenging. In their opinion, the government should offer higher wages to court interpreters as an incentive.

**(Prosecutor, Malta)** explains: *“Sometimes it's a logistical problem to have the interpreter come down to the court session because maybe the interpreter has other work to do. What I wish to see in my country, if it's possible, is a bigger pool of interpreters. That's not up to me. We have to pay interpreters a bit more, so they come.”*

One of the defence lawyers mentions the use of video conferencing tools during the COVID-19 pandemic. This is regarded as a challenge to interpretation by one of the defence lawyers, and further stressed by one of the prosecutors as they find interpretations through videos to be impractical.

**(Defence lawyer, Malta)** affirms: *“When communication was impossible, we had to take necessary measures, being legal or private, but with substantial difficulties. In my opinion, one*



*of the main issues I've been having with the European arrest warrant is the briefing between the client and the lawyer at the private stage."*

A defence lawyer points out that the right to interpretation does not extend from the preliminary execution of the warrant. They explain that when the requested person is arrested by police officers and brought before the Court, the right to interpretation does not extend to lawyers consulting with their client. In this case, lawyers must find alternate means, either by making specific requests or by paying private interpreters. Client resources determine this. They highlight that the interpreter is there primarily to secure and guarantee a fair trial for the arrestee and not for the Court. This stresses the point that **requested persons should have a right to receive assistance by a court-appointed interpreter during private communications with their lawyers**. The interviewee further explains the challenges of having an interpreter during the COVID-19 pandemic. Lawyers were allowed to speak with clients only via a telecommunication system, and there was no room for an interpreter, including in EAW cases.

**(Defence lawyer, Malta)** explains: *"Since the breakout of COVID in 2020, there have been several changes in the custodial regimes for people being detained, including persons detained on European arrest warrants. We had a non-contact visit via a telecommunication system, which I don't trust enough. There was no room for an interpreter. When communication was impossible, we had to take necessary measures, being legal or private, but with substantial difficulties."*

#### **d. Discussion of findings**

The findings show that a requested person in Malta is provided with translation and interpretation upon need, in line with **Article 11 (2) of the EAW Framework Decision and the Directive 2010/64/EU of the European Parliament**.<sup>71</sup> Respondents, however, identify different gaps affecting the quality of the service.

The interviewees confirm that an interpreter is available from the first questioning at the police station until the end of the court proceedings. However, some limitations appear to constrain the quality of the service, as one of the lawyers notes the difficulties in finding a professional who can directly interpret from Maltese into other languages. In these cases, two interpreters are required, further complicating the interrogation process. One of the prosecutors explains that the problem is sometimes finding an available interpreter because they have other commitments. In their opinion, the government should offer higher wages to court interpreters as an incentive and ensure they would be present when needed.

While all the interviewees agree that the warrant is provided in a language that the requested person understands, there are no provisions detailing which documents must be translated under Maltese law. This is noted by some of the interviewees, while they stress that the lack of full disclosure limits the right to assist the client in a competent fashion that considers the individuality of the case. The two allegations pose questions on the fairness of the proceedings as guaranteed in **Article 534 AD (1)**

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<sup>71</sup> Council of the European Union (2002), Article 11 (2) of the [EAW Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States](#), OJ 2002 L 190; Council Directive 2010/64/EU of 20 October 2010 on the right to interpretation and translation in criminal proceedings, OJ 2010 L 280.

of the **Criminal Code**, since the defence of the requested person is dependent on the accessibility to relevant information, yet it relies on the court and the police to decide whether a requested person must receive a translated copy of a document.<sup>72</sup>

Interviewees confirmed that the Maltese authorities provide translators to assist consultations between lawyers and victims at police stations and during hearings. While confidentiality issues are avoided since authorities do not impose an interpreter, the standards of the briefing between the arrestee and the lawyer at a private stage appear to be dependent on the economic means of the requested person.

The findings interrogate the availability of competent interpreters that can assist in EAW proceedings. This is particularly relevant to the case of Malta due to the prevalence of the Maltese language in court. Furthermore, the lack of support for incorporating digital tools into EAW proceedings by the interviewees highlights the emphasis placed on achieving adequate assistance for the arrestee throughout all stages of the EAW.

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<sup>72</sup> Malta, Article 534AD (1) of the [Criminal Code](#), (Act No. IV of 2014), Chapter 9 of the Laws of Malta, 10 June 1854.

### 3. Right to access to a lawyer

#### a. Legal overview

##### i. Access to a Lawyer in executing/issuing state

Sub-title IX on the “*RIGHT TO LEGAL ASSISTANCE AND OTHER RIGHTS DURING DETENTION*” of the Criminal Code transposes the provisions of Directive 2013/48/EU on the right to access to a lawyer in criminal proceedings and in the European arrest warrant proceedings.<sup>73</sup>

According to Article 355AT and 355AU, this Sub-title lays down minimum rules concerning the right of persons subject to European arrest warrant proceedings in terms of Framework Decision 2002/584/JHA.<sup>74</sup>

Article 355AUH fully transposes Article 10 of Directive 2013/48/EU on the right of access to a lawyer in European arrest warrant proceedings.<sup>75</sup> **When Malta is the executing Member State, a requested person shall have the right of access to a lawyer upon arrest pursuant to a European arrest warrant in a timely and adequate manner, allowing the person to exercise their rights effectively. The requested person also has the right to meet and communicate with their lawyer before and during the proceedings.** When the lawyer participates during the hearing, “*this shall be noted in the records of the proceedings of the competent judicial authority in Malta.*”<sup>76</sup> It is important to mention that, under Maltese law, **an accused person has the right to speak with his lawyer for up to an hour before any interrogation takes place, but not during it.**<sup>77</sup>

**In the case of Malta as the issuing Member State, the office of the Attorney General shall immediately, upon a request from a competent authority in the executing Member State, provide the requested persons with information to facilitate their appointing a lawyer in Malta.**<sup>78</sup> However, in a report analysing the implementation and practical operation of the EAW from the point of view of defence practitioners, a Maltese respondent reported that when Malta is the issuing state, **assisting the defence counsel in the executing state is quite challenging due to the lack of information.** The reason is that the issuance of these orders is an administrative decision without a hearing in which the surrendered person does not have a *locus standi* to appear.<sup>79</sup>

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<sup>73</sup> Malta, Articles 355AS, 355AUK of the [Criminal Code](#), (Act No. LI of 2016), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>74</sup> Malta, Articles 355AT (2) (c), 355AU (3) of the [Criminal Code](#), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>75</sup> Malta, Article 355AUH of the [Criminal Code](#), (Act No. LI of 2016), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>76</sup> Malta, Article 355AUH (2) of the [Criminal Code](#), (Act No. LI of 2016), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>77</sup> Council of Bars and Law Societies of Europe, [EAW - Rights Analysis of the implementation and operation of the European Arrest Warrant from the point of view of defence practitioners](#) 2016, p. 194.

<sup>78</sup> Malta, Article 355AUH (6) of the [Criminal Code](#), (Act No. LI of 2016), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>79</sup> Council of Bars and Law Societies of Europe, [EAW - Rights Analysis of the implementation and operation of the European Arrest Warrant from the point of view of defence practitioners](#) 2016, p. 209.

## ii. Legal Aid

Legal aid in EAW proceedings is governed by the provisions of articles 570 to 573 of the Criminal Code, as specified in Article 77 of the Extradition Order.<sup>80</sup> **In both cases, when Malta is either an executing or issuing state, the requested person can be assisted by the Advocate for Legal Aid, which will assign a lawyer for this purpose.<sup>81</sup> A lawyer from an approved list by the Minister for Justice will be assigned according to a roster.<sup>82</sup>** Therefore, a person receiving legal aid does not have the choice of a lawyer. Experts suggest that, although Malta offers free legal assistance without **any problems and limitations**, there is room for improvement, especially regarding EAW cases. The legal aid system needs more resources, including the capability of contacting foreign lawyers within other jurisdictions to ensure the proper and effective defence of surrendered individuals.<sup>83</sup>

The right of access to a lawyer in EAWs can be derogated only in exceptional circumstances and only at the pre-trial stage. According to article 355AUA (11), derogation may occur when *“the geographical remoteness of the suspect or the accused person makes it impossible to ensure the right of access to a lawyer.”*<sup>84</sup> Sub-article (12) continues stating that in the light of the particular circumstances of the case, access to a lawyer may be delayed to protect the *“life, liberty or physical integrity of a person”* or where *“immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings.”*<sup>85</sup>

## iii. Dual Representation

The Criminal Code recognises and enhances the right to dual legal representation using the same wording of Directive 2013/48/EU.

**According to Article 355AUH (4), Maltese authorities must inform requested persons of their right to appoint a lawyer in the European State that has issued an EAW, asking for their arrest and surrender.<sup>86</sup> Those competent authorities are the police upon arrest, the judge, and the prosecutor during the hearing. The article specifies that the role of that lawyer in the issuing Member State is that of assisting the defence lawyer in Malta, as the executing Member State, “by providing that lawyer with information and advice with a view to the effective exercise of the rights of requested persons under Framework Decision 2002/584/JHA.”<sup>87</sup>**

Therefore, where a requested person wants to appoint a lawyer in the issuing Member State and does not already have such a lawyer, the Office of the Attorney General in Malta as the executing Member

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<sup>80</sup> Malta, Articles 570, 573 of the [Criminal Code](#), Chapter 9 of the Laws of Malta, 10 June 1854; Malta, Article 77 of the [Extradition Act](#), Chapter 276 of the Laws of Malta, 01 February 1982.

<sup>81</sup> Malta, Articles 911 of the [Code of Organization and Civil Procedure](#), 01 August 1855.

<sup>82</sup> Malta, Article 918 of the [Code of Organization and Civil Procedure](#), 01 August 1855.

<sup>83</sup> Council of Bars and Law Societies of Europe, [EAW-Rights. Analysis of the implementation and operation of the European Arrest Warrant from the point of view of defence practitioners](#) 2016, p. 209.

<sup>84</sup> Malta, Article 355AUA (11) of the [Criminal Code](#), (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>85</sup> Malta, Article 355AUA (12) of the [Criminal Code](#), (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>86</sup> Malta, Article 355AUH (4) of the [Criminal Code](#), (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>87</sup> Malta, Article 355AUH (5) of the [Criminal Code](#), (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

State shall “promptly inform the competent authority in the issuing Member State.”<sup>88</sup> Similarly, when Malta is the issuing state, the Office of the Attorney General shall promptly provide assistance upon a request from a competent authority in the executing Member State and facilitate the appointment of a lawyer in Malta.<sup>89</sup>

Despite these statutory provisions, in the “EAW-Rights” study mentioned before, national experts highlighted the importance of forming a network of EAW defence practitioners, in particular, to deal with the dual representation in issuing and executing states.<sup>90</sup> **In practice, cooperation between dual representatives depends on the financial resources of the requested party.**<sup>91</sup>

The Maltese expert in the study asserted that this type of contact is only possible if one has independently secured legal representation in both states rather than relying on legal aid.<sup>92</sup> The respondent lamented this gap in the quality of representation, recognising the role such communication can play in guaranteeing effective legal assistance.<sup>93</sup>

Besides the Criminal Code, there are no provisions regulating cooperation between lawyers and mentioning aspects such as the use of digital tools.

#### iv. Remedies

In case any rights outlined in Sub-title IX of the Criminal code are violated, the requested person in European arrest warrant proceedings is entitled to seek redress as provided for in Article 355AUI of the Criminal Code.<sup>94</sup> The claim for redress shall be filed promptly, and the court seized with the claim shall have the authority to grant such redress as it deems appropriate within a reasonable time. **The suspect or accused person has the right to appeal the decision to grant or to deny such redress to the Court of Criminal Appeal within eight working days from the decision.**<sup>95</sup>

Table 5: Dual representation (in law)

Does the law of the executing MS foresee that the person arrested has a right to have the assistance of a lawyer in the issuing Member State and informed of this right?	
Malta	YES

Table 6: Cost-free legal assistance (in law)

Free of cost lawyer	When your country is an executing state	When your country is an issuing state (e.g., to assist the lawyer in the executing state)
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<sup>88</sup> Malta, Article 355AUH (5) of the [Criminal Code](#), (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>89</sup> Malta, Article 355AUH (6) of the [Criminal Code](#), (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>90</sup> Council of Bars and Law Societies of Europe, [EAW-Rights. Analysis of the implementation and operation of the European Arrest Warrant from the point of view of defence practitioners](#) 2016, pp. 218-219.

<sup>91</sup> *Ibid.*

<sup>92</sup> Council of Bars and Law Societies of Europe, [EAW-Rights. Analysis of the implementation and operation of the European Arrest Warrant from the point of view of defence practitioners](#) 2016.

<sup>93</sup> Council of Bars and Law Societies of Europe, [EAW-Rights. Analysis of the implementation and operation of the European Arrest Warrant from the point of view of defence practitioners](#) 2016, p. 204.

<sup>94</sup> Malta, Article 355AUI of the [Criminal Code](#), (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>95</sup> *Ibid.*

provided in law		
Malta	YES	YES

**b. Right to access to a lawyer in practice**

**i. Information about legal assistance (including dual representation)**

Requested persons are informed about their right to a lawyer upon arrest and in court, both orally and in writing. A prosecutor describes the way arrestees are informed. When a requested person is arrested in Malta on an EAW, they are given a Letter of Rights that includes a section on the right to a lawyer. The police hand the requested person the Letter of Rights and explain the content verbally. The prosecutor says the police might ask the person for the name of their lawyer or tell the person that they should hire one. The interviewee claims that police are hesitant to interview someone without their lawyer and will always advise them to call an attorney. Judicial authorities also encourage requested persons to seek legal counsel and let them know they can choose a lawyer or receive legal aid.

**(Prosecutor, Malta)** explains: *“Maltese police don’t want to talk to suspects without their lawyer. If requested persons insist on not wanting a lawyer, they will have to sign a paper. It has to be clear and written black on white that the person refused free government-sponsored legal representation. This proof will explain why the person doesn’t have a lawyer to the magistrate reading the case.”*

Furthermore, interviewees describe how the requested persons choose the lawyer in the executing state. To begin with, a police officer hands a list of attorneys to the requested persons but cannot recommend a lawyer. There are two possible circumstances, depending on whether or not the person can afford a private attorney. When the person does not have the means, the legal aid attorney on duty will be contacted for them. On the other hand, if the person has the economic means to hire a private lawyer and has one, the police will contact this lawyer. When arrestees do not know a lawyer, they can choose from a list of criminal lawyers updated by the Chamber of Advocates.

While public authorities inform individuals of their right to a lawyer in the executing state, they do not provide information on the right to have a lawyer in the issuing state. It is usually upon the defence lawyer in the executing state to inform their client of this right. Two interviewees directly mention that neither police officers nor the court inform requested persons of their right to dual representation.

**(Prosecutor, Malta)** states: *“Maltese authorities do not provide assistance or information about legal aid with the appointment of a lawyer in the issuing Member State. Prosecutors are not obliged to inform the requested person about the right to be legally assisted in the state where the EAW was issued.”*

Another prosecutor explains why the information is not provided:

**(Prosecutor, Malta)** affirms: *“The issue of dual representation doesn’t really pop up. (...) EAW is quite a simple forward procedure. We do not go into the merit of the case, we see the arrest*

warrant as it is, and executed as it is for mutual cooperation and trust between the signatories.”

Table 7: Are persons informed of their right to access a lawyer?

	Lawyer 1	Lawyer 2	Lawyer 3	Lawyer 4	Judge 1	Judge 2	Judge 3	Total
<b>YES</b>	X	X	X	X	X	X	X	<b>7</b>
In writing	-	-	-	-	-	-	-	<b>0</b>
Orally	-	-	-	-	X	-	-	<b>1</b>
In writing and orally	X	X	X	X	-	X	X	<b>6</b>
<b>NO</b>	-	-	-	-	-	-	-	<b>0</b>
<b>Don't know/remember</b>	-	-	-	-	-	-	-	<b>0</b>
<b>Did not answer</b>	-	-	-	-	-	-	-	<b>0</b>

Table 8: Are persons arrested on an EAW informed by authorities on their right to have the assistance of a lawyer in the issuing Member State?

	Lawyer 1	Lawyer 2	Lawyer3	Lawyer4	Judge 1	Judge 2	Judge 3	Total
<b>YES</b>	-	-	-	-	-	X	-	<b>1</b>
<b>NO</b>	X	X	X	X	X	-	X	<b>6</b>
<b>Don't know/remember</b>	-	-	-	-	-	-	-	<b>0</b>
<b>Did not answer</b>	-	-	-	-	-	-	-	<b>0</b>

ii. **Legal assistance in the executing state (access, consultations, lawyer's tasks)**

Requested persons receive assistance and can meet with their lawyer from the time they are arrested to the time they are surrendered to the requesting country. Lawyers provide assistance in many ways, including liaising with family members and any attorneys engaged in the issuing state. In regard to the latter, this is done for several reasons, such as monitoring or assessing the court proceedings in the issuing state or challenging the national arrest warrant upon which the EAW was issued. The lawyer also checks the EAW for any errors, such as in the description of the crime(s) or whether the penalty which is listed for the crime(s) is correct according to the legislation of the issuing country. The lawyer in the executing state should further verify whether there are any grounds for extradition which might apply to their client (i.e., the existence of conditions and guarantees provided by law necessary for issuing an EAW). The grounds can be mandatory or optional. The mandatory grounds always apply to an EAW, while for the optional grounds the executing judicial authority can only invoke those which are transposed into its national law.

One lawyer complains that Malta has not transposed all the grounds for optional non-execution of the surrender, thus limiting attorneys' ability to defend the requested person. Those grounds allow the executing judicial authority to refuse to execute the EAW, gathering more information and considering the circumstances of the specific case as per Article 4 of the Framework Decision on EAW.<sup>96</sup>

**(Defence lawyer, Malta)** states: *“We obviously have to start off by checking whether there are any bars to extradition. And in our jurisdiction, we have very tied hands, we are very limited to the obligatory bars as we do not have optional bars.”*

Requested persons can privately consult with their lawyers at any time of the proceedings and before the interrogations. A lawyer highlights that they never experienced any challenges in communicating with their clients and were never obliged to consult their clients in the presence of someone else. A prosecutor also reports instances where requested persons were allowed to interrupt proceedings to consult with their lawyer privately.

**(Defence lawyer, Malta)** explains: *“So, in my case, I have never had a problem consulting with my client privately during the proceedings and before interrogation. I have never been asked to consult with my client in the presence of somebody.”*

*Table 9: Facilitating dual legal representation, interview findings (executing MS)*

Is assistance provided in appointing a lawyer in the issuing Member State when execution proceedings are ongoing? (When your country is an executing state)			
Interviewees	YES	NO	Didn't know/answer/remember
Lawyer 1		X	
Lawyer 2	X		
Lawyer 3		X	
Lawyer 4		X	
Judge 1		X	
Judge 2			X
Judge 3		X	
Total	1	5	1

### iii. Legal assistance in the issuing state (access, consultations, lawyer's tasks)

Requested persons are not informed of their right to have a lawyer in the issuing Member State, and Maltese authorities do not provide any assistance in this regard.

Only one prosecutor claims that requested persons are always informed that they can obtain the services of a lawyer in the issuing state. The interviewee is, however, not sure how the requested person can contact or choose a lawyer from the issuing Member State. Their only knowledge of this is that executing state lawyers identify a lawyer in the issuing state.

A lawyer confirms that the defence attorney in the executing Member State usually finds a colleague in the issuing Member State. The interviewee mentions two ways: research on the internet or referring to the embassy or the consulate of the issuing Member State. However, the biggest problem in EAWs

<sup>96</sup> Council Framework Decision 2002/584/JHA of 13 June 2003 on the European arrest warrant (EAW) and the surrender procedures between the Member States, Article 4.



is the time limit. Another lawyer points out that the timeframe imposed in EAW is not enough for the lawyer in the executing state to contact the lawyer in the issuing Member State, thus ensuring proper consultation. They reiterate the importance of having time to study the case and control that the information in the EAW is correct. Sometimes it is only possible with the help of a lawyer in the issuing Member State. The interviewee, therefore, suggests that there should be space for some peaceful requests for extensions.

**(Defence lawyer, Malta)** affirms: *“The timeframes imposed are not sufficient for us to do that. You need time to get in touch with relatives and lawyers. Time is too restricted. I understand that the whole procedure is about having a judicial expedition process and quick operations between states. However, I think there needs to be a space for derogations or at least possible requests for extensions, as there isn’t any possibility to do so at the moment.”*

Contrary to the dictate of **Article 355AUH (4)**,<sup>97</sup> both lawyers and prosecutors believe there is no legal obligation to inform the requested persons that they can benefit from the assistance of a lawyer in the issuing Member State. This burden falls upon the defence lawyer.

**(Prosecutor, Malta)** affirms: *“I do not recall a rule stating that they can benefit from the assistance of a lawyer in the other Member State. Because I would guess we wouldn't go into that in Malta. So, at that point requested persons would go to the issuing Member State and then find their own lawyer there according to their laws.”*

Table 10: Providing dual legal representation, interview findings (issuing MS)

Is assistance provided in appointing a lawyer in the issuing Member State when execution proceedings are ongoing in another MS? (When your country is an issuing state)			
Interviewees	YES	NO	Didn't know/answer/remember
Lawyer 1		X	
Lawyer 2			X
Lawyer 3		X	
Lawyer 4			X
Judge 1			X
Judge 2			X
Judge 3		X	
Total	0	3	4

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

Legal aid is available to anyone involved in criminal proceedings in Malta, regardless of their economic means. Interviewees confirm the right to legal assistance free of charge to those who request a legal aid lawyer. Upon arrest, if individuals do not hire a private attorney, the police will call the legal aid lawyers, appointed on the daily roster. However, requested persons do not have the right to choose a legal aid lawyer and this is an issue for some interviewees.

**(Defence Lawyer, Malta)** affirms: *“If the person has no lawyer, they are assigned one by the state. The person has no choice. For criminal cases in Malta, everyone can receive legal aid. So, persons can request a legal aid lawyer, but they have no possibility to choose a specific one.”*

<sup>97</sup> Malta, Article 355AUH (4) of the [Criminal Code](#), (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

An interviewee criticises how legal aid lawyers are selected as the arrestees do not choose the person representing them. They complain that the list of legal aid lawyers in the issuing state appointed on a daily roster does not provide information on the lawyers' experience.

**(Defence Lawyer, Malta)** states: *“You will not know the years of their experience or their age. You will not know their face. You will know nothing. You will just see a name and a surname, which is not good. Once arrested, they will take away your phone, and you won’t even be able to google them.”*

Table 11: Cost-free legal assistance, interview findings

Free of cost lawyer provided	When your country is an executing state		When your country is an issuing state for the purposes of procedures in the executing MS (e.g., to assist the lawyer in the executing state)	
	YES	NO	YES	NO
Interviewees				
Lawyer 1				
Lawyer 2	X		X	
Lawyer 3	X		X	
Lawyer 4		X		
Judge 1	X	-	X	-
Judge 2	X		X	
Judge 3	-	-	-	-
TOTAL	3	1	3	0

#### v. Communication between the lawyers in both states

Communication between lawyers in both states can be very helpful, providing as much information as possible, including court documents and officially translated copies.

**(Defence lawyer, Malta)** explains: *“During the proceedings, execution of judgement or even when investigating, my counterparts from the issuing state proved to be extremely helpful. They could provide full disclosure, court documents, and officially translated copies.”*

The assistance of lawyers in the issuing Member State is also crucial for another lawyer. The interviewee explains it can provide a complete account of what happened in the issuing state. By communicating with the lawyer in the issuing country, the lawyer in the executing state can establish an effective line of defence based on objective information. For instance, the two lawyers could cooperate and assess whether there are bars to executing an EAW.

**(Defence lawyer, Malta)** explains: *“If the requested person has already engaged a lawyer there, he can give you the full picture of what is happening. More importantly, it would mean that I could compare and contrast what the requested state has as opposed to what the requesting state has said.”*

In addition to the accounts of the lawyers, one prosecutor confirms that gathering additional information from the issuing state could assist the lawyer in the executing state to challenge the surrender.

### c. Challenges relating to legal representation in EAW cases

The interviewed lawyers mentioned the following aspects as the main challenges for a defence attorney in EAW cases: lack of correct and complete information, strict timeframes, and limitations of communication with the legal counterpart in the issuing state.

Interviewees agree that being a defence lawyer in the executing state is more challenging than in the issuing state. One lawyer explains that since the European arrest warrant is a tool for mutual assistance between Member States, and the primary scope is to simplify the extradition without the need for going into the merits, **lawyers are very limited**. It is hard to defend a person without going into the merit of the case.

Another lawyer discusses this challenge from a different perspective. The interviewee states that the direct consequence of not transposing the optional grounds to refuse the surrender into Maltese legislation is the inability to identify where some uncertainties or circumstances can prevent the right application of EAW mandatory grounds for extradition. This can be **particularly challenging when countries misuse EAWs** and issue them when the requested person is not yet wanted for prosecution or to serve a sentence but is still under investigation. It is difficult for defence lawyers in Malta to convince the courts to request supplementary information as this can be seen as inquiring into the merits of the case. The interviewee states that, in their opinion, Malta has done the bare minimum in transposing the Framework Decision and that if the goal for creating the EAW procedure was to harmonise surrender proceedings, then all elements should be mandatory. The rights a person has in EAW proceedings should not vary from Member State to Member State.

**(Defence Lawyer, Malta)** explains: *“In Malta we do not inquire into the merits of the case and the optional bars to extradition are not part of our legislation, so we can only consider the mandatory bars to extradition and whether the form was drawn up according to law and reflective of the situation. Generally speaking, that is the biggest challenge because we have our hands tied a lot.”*

Interviewees also lament that Malta has an extended issue with the right to disclosure granted to people arrested in EAWs. According to a lawyer, the law does not adequately address the provisions regarding disclosure. Although the police are obliged to submit all subject material, there are no consequences or sanctions for not complying with the law. This dynamic may result in police officers not delivering adequate disclosure information to defence lawyers requested to understand the case better.

**(Defence Lawyer, Malta)** affirms: *“Malta has a provision in which the police are obliged to give all subject material, but if it doesn’t provide the material, there are no sanctions. There’s no consequence. It can happen that the police, even if in possession of material that could help you understand the facts of the case, will not give you that information. So, disclosure in Malta is a big problem. Often, the only document you have to work with is the European arrest warrant itself.”*

A lawyer agrees that the lack of correct and complete information in both the issuing and executing state is a challenge in defending their clients. For instance, the issuing state is not obliged to share all the details in the investigative files. A defence lawyer may therefore miss certain aspects relevant to building an effective defence, denying the possibility of contesting the EAW. As a consequence, the

lawyer questions the quality of the service provided. They refer to the fact that attorneys in executing states cannot examine if they have elements to defend the client because they do not have access to basic information from the requesting state.

**(Defence lawyer, Malta)** explains: “Well I don't think there actually was an issue on the right to legal advice or the right to have a lawyer during proceedings *per se*. **The question is how effective your lawyer is in protecting your interest in terms of the EAW.** If the lawyer does not have access to certain basic information from the requesting state, it is useless sending a lawyer that does not have all the information.”

#### **d. Discussion of findings**

Findings demonstrate that when Malta is the executing Member State, requested persons receive legal assistance in a timely manner and can privately meet with their lawyer any time they want, including during the proceedings. Authorities thus ensure the right of access to a lawyer in the executing state as prescribed by Article 355AUH of the Criminal Code.<sup>98</sup>

All criminal cases in Malta are eligible for legal aid, regardless of the means of the accused person. The Criminal Code prescribes that the requested person can be assisted by a legal aid lawyer in both cases when Malta is either an executing or issuing state.<sup>99</sup> However, respondents criticised the criteria to select legal aid lawyers and the quality of the service.

While Maltese authorities generally respect the right to access to a lawyer, the interviewees are not aware of their obligation to inform the arrestees of their right to a lawyer in the issuing state.

Academic literature and findings from the interviews confirm that Malta does not enhance the right to dual legal representation as prescribed by **Article 355 AUH (4)** of the Criminal Code.<sup>100</sup> If a requested person wants to appoint a lawyer in the issuing state, the Office of the Attorney General should provide assistance and contact the authorities in the requesting state. However, **cooperation between lawyers depends solely on the financial resources of the requested party** and time limits imposed by EAW hamper the opportunity to consult with the lawyer in the issuing state. Interviewees claim that when Malta is the executing Member State, lawyers' ability to provide effective representation and challenge an EAW is limited, mentioning two reasons: communication difficulties with a lawyer in the issuing Member State and limited access to the case files.

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<sup>98</sup> Malta, Article 355AUH of the [Criminal Code](#), (Act No. LI of 2016), Chapter 9 of the Laws of Malta, 10 June 1854.

<sup>99</sup> Malta, Articles 570, 573 of the [Criminal Code](#), Chapter 9 of the Laws of Malta, 10 June 1854; Malta, Article 77 of the [Extradition Act](#), Chapter 276 of the Laws of Malta, 01 February 1982.

<sup>100</sup> Malta, Article 355AUH (4) of the [Criminal Code](#), (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

## 4. Issuing and execution of the EAW

### a. Legal overview

#### i. Legal proceedings to issue and execute the EAW

The **issuing of an EAW** is legally governed by Part III “*Extradition to Malta from Scheduled Countries*” of the Extradition (Designated Foreign Countries) Order.<sup>101</sup>

Article 62 on “*Issue of Part III Warrant*” lays down the procedure for issuing a European arrest warrant.<sup>102</sup> In order for a magistrate to approve a police officer’s application for an EAW, it must be consented to by the Attorney General and satisfy one of two conditions. **There must be reasonable grounds to believe that a person has either a) committed an extraditable offence; or b) has unlawfully fled Malta after being convicted for an extraditable offence.**<sup>103</sup> Extraditable offences are listed in Schedule 2, which is copied directly from Article 2 of the Framework Decision.<sup>104</sup>

To be considered extraditable, the offence must also carry a minimum possible sentence of 12 months imprisonment in the case of EAWs made for the purpose of prosecution.<sup>105</sup>

In the context of EAWs issued for the execution of a custodial sentence following conviction, the sentence imposed must be of at least four months detention.<sup>106</sup>

There is no statutory guidance beyond these purely procedural elements. **Issues such as proportionality are not addressed by legislation.**

**There are no legal avenues in place in Malta to effectively challenge the issuing of an EAW or request its withdrawal.** This was recognised by the Maltese respondent in the report analysing the implementation and practical operation of the EAW from the point of view of defence practitioners. One of the respondents stated, “*it is very hard to obtain any particular information (...) because the issuance of these orders is an administrative decision without a hearing, in which the person being surrendered does not have a locus standi to appear.*”<sup>107</sup> The Maltese respondent recently echoed his own comments in a chapter addressing the implementation of EU criminal law within Malta. He noted that “*there is no mechanism in local law to ask for a review of the decision for the issuance of an EAW or the insistence for the forcible return or surrender of an EU citizen.*”<sup>108</sup> As highlighted by the expert, this gap in Maltese law became apparent in the case of *Police vs George Clayton*.<sup>109</sup>

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<sup>101</sup> Malta, Articles 62 to 70A of the [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004.

<sup>102</sup> Malta, Article 62 of the [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004.

<sup>103</sup> Malta, Article 62 (2) of the [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004.

<sup>104</sup> Malta, Schedule 2 of the [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004; Council Framework Decision 2002/584/JHA of 13 June 2003 on the European arrest warrant (EAW) and the surrender procedures between the Member States, Article 2.

<sup>105</sup> Malta, Article 68 (1) (b) of the [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004.

<sup>106</sup> Malta, Article 68 (4) (b) of the [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004.

<sup>107</sup> Council of Bars and Law Societies of Europe, [EAW - Rights Analysis of the implementation and operation of the European Arrest Warrant from the point of view of defence practitioners](#) 2016, p. 209.

<sup>108</sup> Filletti, S. (2021), ‘The Implementation of EU Criminal Law in the Maltese Legal Order’ in: Sammut, I., Agranovska, J., *The Implementation and Enforcement of European Union Law in Small Member States*, Springer Nature Switzerland, p. 249.

<sup>109</sup> Filletti, S. (2021), ‘The Implementation of EU Criminal Law in the Maltese Legal Order’ in: Sammut, I., Agranovska, J., *The Implementation and Enforcement of European Union Law in Small Member States*, Springer Nature Switzerland, pp. 248-249.

In the referenced case, Maltese authorities issued an EAW against Mr. Clayton in 2011 for having defrauded several retailers.<sup>110</sup> Faced with possible surrender and prosecution, Mr. Clayton repaid the money owed to the victims. In light of this, the victims expressed to Maltese authorities that they no longer wished Mr. Clayton to face criminal proceedings. The repayment of the funds also meant that, according to Maltese precedent, Mr. Clayton would face significantly reduced penalties upon return.<sup>111</sup> Maltese authorities refused to withdraw the warrant despite the victims' wishes and the limited likelihood Mr. Clayton would receive a custodial sentence. With no official legal methods to challenge the EAW, and informal discussions having failed, Mr. Clayton was surrendered to Malta from the UK and brought to court.<sup>112</sup>

Part II of the Extradition (Designated Foreign Countries) Order disciplines **the execution** of European arrest warrants in Malta.<sup>113</sup>

Article 5 specifies the content of a relevant arrest warrant for prosecution or executing a custodial sentence or detention order. **The judicial authority from a requesting country must send a statement detailing the purpose of the EAW and the punishment imposed if the person is found guilty.**<sup>114</sup>

After receiving the warrant, the Attorney General reviews said statement to ensure the information is in line with Article 5 and issues a certificate to order the arrest of the requested person.<sup>115</sup> Under Article 8 (3) of the Order, **a copy of the EAW “must be given to the person arrested as soon as practicable after his arrest.”** Otherwise, the requested person can ask the court to refuse the execution of an EAW for lack of information received.<sup>116</sup> **The court has the discretion to grant or refuse this request. At the same time, according to Article 8 (6) the court must approve a discharge application if a requested person is not brought before the court within 48 hours of the arrest.**<sup>117</sup> The court must also order the release of the individual if it finds that either the person appearing in court is not the requested person or the offence in the warrant does not constitute an extraditable offence.<sup>118</sup> If these conditions are satisfied, the court must then consider whether any bars for extradition may apply.

Articles 13 (1) and 13 (1A) of the Order set out seven possible or mandatory bars for extradition, with Articles 14-22 providing guidance on their application.<sup>119</sup>

Starting from the mandatory grounds for refusal, Article 13 (1) identifies the following three cases: (a) the rule of *ne bis in idem*, under which a person cannot be punished and be subject to several procedures twice for the same facts; (b) refusal of extradition if the offence was committed when the person was below Malta's age of criminal responsibility; (c) if the person has amnesty and the Maltese courts have the necessary jurisdiction to try the case.<sup>120</sup>

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<sup>110</sup> *Ibid.*

<sup>111</sup> *Ibid.*

<sup>112</sup> *Ibid.*

<sup>113</sup> Malta, Articles 5, 61 of the [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004.

<sup>114</sup> Malta, Article 5 of the [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004.

<sup>115</sup> Malta, Article 7 of the [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004.

<sup>116</sup> Malta, Article 8 (5) of the [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004.

<sup>117</sup> Malta, Article 8 (6) of the [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004.

<sup>118</sup> Malta, Article 10 (4), 12 (3) of the [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004.

<sup>119</sup> Malta, Article 13 (1), 13 (1A), 14 to 22 of the [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004.

<sup>120</sup> Malta, Article 13 (1) of the [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004.

Article 13 (1A) identifies four discretionary grounds for refusal: (a) prescription or lapse of time; (b) speciality; (c) the person's earlier extradition to Malta from another European country; (d) the person's earlier extradition to Malta from another non-EU country.<sup>121</sup>

The first reason the court may consider is if the offence in question would be barred from prosecution by prescription under Maltese law and the Maltese courts have the necessary jurisdiction to hear the case.<sup>122</sup> Article 18 further specifies that the court may refuse the EAW if the rule of speciality is not applied after considering some circumstances on a "*balance of probabilities*."<sup>123</sup>

## ii. Rights to a fair trial

The Extradition Order outlines the criteria to assess whether there is any risk of breach of the fundamental right to a fair trial.<sup>124</sup>

As described in Article 19, the court can dismiss an EAW if a) the person is in Malta because they were surrendered from another EU country; b) that country and Malta have made an agreement requiring the country's consent for subsequent surrender; and c) that consent for extradition has not been given by the executing country.<sup>125</sup> Likewise, Article 20 states that the court can dismiss an EAW on the same grounds if the person has been sent to Malta from a non-EU country, there was a previous agreement between the two states or "*consent has not been given on behalf of the extraditing territory*".<sup>126</sup>

Where the court is satisfied the bars to extradition do not apply, it must then consider if the EAW is for the purpose of prosecution or execution of a custodial sentence.<sup>127</sup> If the EAW is for the former, the court should execute the warrant.<sup>128</sup> On the other hand, if an EAW has been issued for the purpose of executing a custodial sentence, the court must then determine whether the person was convicted in person or *in absentia*.<sup>129</sup> If the person was present when the judgement was passed, then the court should order the requested person's surrender.<sup>130</sup> However, **if the requested person was tried *in absentia*, the Order requires the court to consider whether their rights to a fair trial were respected.**

For the court to determine that a person had the right to a fair trial protected, one of the following four circumstances must exist: **a) the person was given adequate notice and fully informed of the time and place the trial would take place, and that a judgement could still be passed in their absence; b) that the person was defended at trial by a chosen lawyer with their consent; c) the person was informed upon receipt of the conviction of their right to appeal or retrial and either expressly refused to challenge the decision or did not respond within the necessary timeframe; or d) the person was not personally informed of the decision, but once surrendered will be promptly told of the judgement, their right to appeal, and the timeframe in which an appeal must be filed.**<sup>131</sup>

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<sup>121</sup> Malta, Article 13 (1A) of the [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004.

<sup>122</sup> Malta, Article 16 of the [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004.

<sup>123</sup> Malta, Article 18 of the [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004.

<sup>124</sup> Malta, [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004.

<sup>125</sup> Malta, Article 19 of the [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004.

<sup>126</sup> Malta, Article 20 of the [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004.

<sup>127</sup> Malta, Articles 13 (4), 13 (5) of the [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004.

<sup>128</sup> Malta, Articles 13 (5), 24 of the [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004.

<sup>129</sup> Malta, Articles 13 (4), 23 (1) of the [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004.

<sup>130</sup> Malta, Articles 23 (2), 24 of the [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004.

<sup>131</sup> Malta, Article 23 (3) of the [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004.

If the court finds that one of these four circumstances applies, the EAW must be executed.<sup>132</sup> If not, the person should be discharged.<sup>133</sup>

If, at any point during the proceedings, the court determines that a requested person's physical or mental health is such that extradition would pose a threat to their health or life, then execution of the warrant must be postponed until this danger no longer exists.<sup>134</sup>

### iii. Detention Conditions

While the legislation does not specifically address detention conditions, the issue is one that the court has examined in several cases, albeit only when raised by the requested person. **The courts in Malta do not appear to ever inquire into detention questions of their own volition.** This was the case in both *The Police (Inspector Mario Cuschieri) vs Angelo Frank Paul Spiteri* and *Christopher Guest More vs The Attorney General*.<sup>135</sup>

In *The Police (Inspector Mario Cuschieri) vs Angelo Frank Paul Spiteri*, facing surrender to Lithuania, Mr. Spiteri appealed the first court's decision on the grounds of Article 3 of the European Convention of Human Rights prohibiting inhuman or degrading treatment.<sup>136</sup> Mr. Spiteri also cited Recital 13 of the Preamble to the Framework Decision that "*No person should be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.*"<sup>137</sup> He introduced independent reports documenting the questionable conditions of Lithuanian prisons, and cited judgements of the Strasbourg court supporting these allegations, asking the court to discharge him. In its decision, the Court of Appeal dismissed the argument, citing several reasons.

First, the court considered that while Lithuanian prisons did have a documented history of inhumane conditions, improvements and modernisation measures were underway. They also highlighted that oversight methods and remedies were recently introduced, such as a new Ombudsman. Therefore, if Mr. Spiteri was subject to negative conditions, he could make use of these redress options. The second factor the court considered was that although potentially harmful conditions existed within Lithuanian prisons, Mr. Spiteri had failed to show that he faced a "*specific, personal and significant (that is substantial, real)*" risk of inhuman or degrading treatment.<sup>138</sup> The court reasoned that the mere existence of human rights violations was not sufficient to establish that an individual would themselves experience them. The third and final reason the court highlighted in dismissing Mr. Spiteri's argument was that in fact, the warrant issued by Lithuanian authorities included an assurance that should Mr. Spiteri be convicted, he would be sent back to Malta to serve his custodial sentence.

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<sup>132</sup> Malta, Articles 23 (4), 24 of the [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004.

<sup>133</sup> Malta, Article 23 (5) of the [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004.

<sup>134</sup> Malta, Article 31 of the [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004.

<sup>135</sup> Malta, Court of Criminal Appeal, (*Appeal Number: 9/2016*) [The Police \(Inspector Mario Cuschieri\) v Angelo Frank Paul Spiteri](#) (2016), 17 February; Constitutional Court, (*Application Number: 133/19GM*) [Christopher Guest More v The Attorney General](#) (2020), 27 March 2020.

<sup>136</sup> Malta, Court of Criminal Appeal, (*Appeal Number: 9/2016*) [The Police \(Inspector Mario Cuschieri\) v Angelo Frank Paul Spiteri](#) (2016), 17 February; Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, CETS No. 2013, 1953, Art 3.

<sup>137</sup> Council Framework Decision 2002/584/JHA of 13 June 2003 on the European arrest warrant (EAW) and the surrender procedures between the Member States, Recital 13 Preamble.

<sup>138</sup> Malta, Court of Criminal Appeal, (*Appeal Number: 9/2016*) [The Police \(Inspector Mario Cuschieri\) v Angelo Frank Paul Spiteri](#) (2016), 17 February, p. 20.



This reassured the court that any potential violations of Mr. Spiteri's Article 3 rights would be avoided.<sup>139</sup>

In *Christopher Guest More vs The Attorney General*, Mr. Guest More appealed his surrender order to the UK to the Constitutional Court on grounds which included alleged inhumane conditions at HMP Manchester.<sup>140</sup> Mr. Guest More introduced an independent report which showed the prison to be in a very poor state. The court was able however to identify a more recent report which highlighted the many changes prison staff had affected during the new reporting period.<sup>141</sup> The report recognised that while some problems were not yet rectified, the state of the prison was significantly improved. The court therefore concluded that Mr. Guest More's argument was unfounded, as the conditions do not "exceed the threshold of severity" needed to find a violation of the prohibition against inhuman and degrading treatment.<sup>142</sup>

## **b. Issuing and execution of the EAW in practice**

### **i. Factors considered when issuing the EAW**

When describing the factors considered to issue an EAW, the interviewed prosecutors mention that they assess the conditions listed in Article 2 of the Council Framework Decision on EAW. A prosecutor, in particular, describes the procedure they follow before they issue a warrant. The first thing they examine is whether basic conditions for an EAW are met. Provided such conditions are met, the interviewee states that two alternatives are in option. If the EAW would be for prosecution, they consider a transfer of proceedings to the state where the person is residing. When deciding whether to transfer the proceeding or issue an EAW, they may consider different factors, such as whether the physical evidence from the case is of sensitive or dangerous nature. If the EAW is for a custodial sentence, they may decide to rely on the Framework Decision that allows for the transfer of custodial punishments. Other factors assessed are whether the crime makes the effort of an EAW worth it or whether the person is requested for additional purposes, such as testifying against other defendants. The interviewee presents organised crime cases as an example of the latter situation.

One lawyer confirms that authorities in Malta consider the elements of the Framework Decision when deciding whether to issue an EAW, while the others do not answer the question. One of them claims that prosecutors deal with this matter, so lawyers are restricted in the extent of their answer.

The prosecutors state that proportionality plays a role in the decision of whether to request a person. One of them claims that a proportionality check is prescribed by law, therefore they always consider it before issuing an EAW.

**(Prosecutor, Malta)** states: *"Proportionality (...) is a key factor. So, it depends on the severity of the case (...). We do not really issue EAWs frivolously because we understand what it entails.*

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<sup>139</sup> Malta, Court of Criminal Appeal, (*Appeal Number: 9/2016*) [The Police \(Inspector Mario Cuschieri\) v Angelo Frank Paul Spiteri](#) (2016), 17 February, p. 12.

<sup>140</sup> Malta, Constitutional Court, (*Application Number: 133/19GM*) [Christopher Guest More v The Attorney General](#) (2020), 27 March 2020.

<sup>141</sup> Malta, Constitutional Court, (*Application Number: 133/19GM*) [Christopher Guest More v The Attorney General](#) (2020), 27 March 2020, p. 12.

<sup>142</sup> Malta, Constitutional Court, (*Application Number: 133/19GM*) [Christopher Guest More v The Attorney General](#) (2020), 27 March 2020, p. 15.

*We understand we are restricting another person's liberty in another country to be returned to Malta. Therefore, even if a considerable amount of time passes and we do not deem it to be proportional together with the crime, we would not issue any EAW."*

On the other hand, some lawyers disagree with the prosecutors and claim that the national authorities often dismiss proportionality. According to the Framework Decision, one of the lawyers explains that it is only indirectly considered when the national authorities examine whether the sentence for the crime meets the minimum threshold or if the offence is extraditable. The interviewee notes that prosecutorial discretion does not exist in Malta.

According to most of the lawyers, requested persons cannot challenge the issuing of an EAW on the basis of proportionality in Malta. The only exception is when the judge refuses to surrender the person to the issuing state because there is evidence of a risk of human rights violations. Prosecutors have different opinions on this aspect. They agree that the requested person (or their lawyer) can challenge the issuing of an EAW because of proportionality concerns based on the particular facts of the case.

**(Prosecutor, Malta)** explains: *"The defence attorney can argue that the EAW was not issued in good faith, but rather because of discriminatory motivations such as an individual's race, gender, or political beliefs."*

The remaining prosecutor foresees the challenging of the issue, due to proportionality, as an argument used in future.

## **ii. Factors considered when executing the EAW**

On the aspects considered by the Maltese authorities when executing the EAW, lawyers restate their concern: proportionality is not a factor that influences decisions in EAW proceedings. The main reason is the *"ticking the box approach"* the court uses without assessing other elements.

**(Defence lawyer, Malta)** states: *"No, proportionality is not something which has been absorbed in our system. We did not sign up for proportion as being a bar. So, it's not in the tick box. The magistrate tries to deal with it in a very tick-box approach, probably that is the way it was designed."*

Another lawyer explains why authorities have difficulty assessing elements that may raise proportionality concerns. According to the interviewee, human rights are subjective factors, and the court prefers to focus on the objective aspects of the procedure, such as the judgment, certificate, translation, and Letter of Rights.

**(Defence lawyer, Malta)** affirms: *"The authorities? So, it's just ticking all the right boxes. I mean, human rights and oppression are subjective elements. The authorities love to stick only to the objective line of procedure, which means controlling if the right documents are in place: the judgement, certificate, translation, and Letter of Rights."*

Interestingly, prosecutors agree with lawyers on this point but define the approach in a different manner. A prosecutor states that from their experience, the authorities in Malta try to respect the foundational principles of EAWs of mutual trust and cooperation between the Member States. Therefore, where proportionality may be an issue, they (prosecutors) allow the court to address these

concerns rather than contacting the authorities in the issuing state and expressing such doubts. Another prosecutor responds that they might discuss amongst themselves the disproportionality of the case but implies that this is the extent of any reaction. The interviewee clarifies that they only received EAW cases of a serious nature, therefore, proportionality has not been relevant in their experience.

**(Prosecutor, Malta)** states: *“From my side, as a prosecutor, no. The thing is, the EAW is really based on mutual trust and cooperation. So, it goes back and forth. We have to trust the authority from which the EAW came from and they will have to trust us if we have to issue one.”*

Prosecutors thus tend to discuss with the issuing authorities the factors that do not encompass proportionality. One of the lawyers explains that the possibility of withdrawing the EAW is hardly discussed. **This is because there is a general embarrassment in deciding to stop the procedure after having spent time and resources.**

**(Defence lawyer, Malta)** states: *“It doesn’t look good on the requesting state that it withdraws it after all this hassle and cost. And therefore, the processing state would say “now it's too late, for instance, too messy to withdraw”, which is wrong. This process and feeling of embarrassment should be discouraged, but they would never say it officially.”*

### iii. Conditions of detention

Respondents report that Maltese authorities do not assess detention conditions in the issuing Member State. It is usually upon the defence lawyer to gather and bring the evidence forth on the conditions of the prisons. However, it is nearly impossible to prove that a state does not respect human rights within the European Union, regardless of the facts.

**(Defence lawyer, Malta)** states: *“I would find it extremely hard ever to conceive that within the European Union with this CDPC and the council watching over, that there is someone who can legitimately claim, “within the European borders, there's a prison which don't respect human rights”. Regardless of the facts, I find it hard to prove it.”*

Prosecutors agree that when deciding on the execution of an EAW, the court may consider detention conditions if the requested person (or their attorney) raises this as a matter of concern. However, they believe that prisons within the EU comply with acceptable standards.

**(Prosecutor, Malta)** explains: *“We do consider detention conditions, but not for European arrest warrants because European Member States are pretty well-behaved. When it comes to prison, we do our best as everyone else. We take this into consideration, but we understand that it's 2022, and there are not so many serious problems in the EU.”*

Besides these considerations, lawyers do not feel they have access to sufficient and reliable data regarding conditions of detention. One of them mentions the reports by the Council of Europe Committee as a source that is regularly consulted but which is not comprehensive or actualised with current information.

**(Defence lawyer, Malta)** suggests: *“From my point of view the system of the United Kingdom is the best system to check vis-a-vis the detention conditions and facilities in every jurisdiction. Why? Because in the British system they issue a report per prison facility, which is publicly available, because the supervisor is an officer of parliament. Other states do not have this model. Here we are working on the basis of a status report for a whole jurisdiction, which is on average one to two years late; and not specific to the place of confinement where the individual will be when extradited.”*

None of the interviewees has ever heard of the FRA database on detention. In particular, one of the lawyers maintains that the court will not consider the source to be a valid document, questioning the quality of the data and the authors. The only resources they would use, and the court would consider are the Recommendations elaborated under the authority of the Council of Europe (CDPC). However, findings show it is not comprehensive or actualised with current information.

**(Defence Lawyer, Malta)** explains: *“Reports of the Council of Europe Committee aren't real and sufficient, as they are not up to date. For example, if I had to check the country status reports of detention conditions in Italy, I will not find a report that explains what the conditions are regarding 2022, but I will find a report published in 2021, referring to 2020.”*

#### iv. Rights to a fair trial (rule of law)

As for detention conditions, lawyers and prosecutors believe Maltese authorities do not usually consider the procedural rights of the requested person in the issuing state unless the defence lawyer raises the issue. Since the EAW is based on the principle of mutual recognition and mutual trust, Member States agreed not to question the systems of other European countries. This also applies to the right to a fair trial because Maltese authorities will not judge a foreign judicial system member of the EU.

**(Prosecutor, Malta)** states: *“We have this kind of mentality that a European arrest warrant is a mechanism to be used between EU Member States. And we are all obliged under the same laws, under the same charter. So, the procedural rights of the requested person, when it comes to an EU member country, we are sure that if his rights are not respected, he has answers and remedies even by EU law. So, when it comes to procedural rights in the issuing state if we are receiving an EAW. Do we really go into them? Not really.”*

In spite of this approach, **the right to a fair trial is considered when the defence counsel can prove that the requested person has been convicted *in absentia***. Malta does not admit and accept trials *in absentia*, and therefore there could be a chance of successfully contesting the EAW on this ground. This finds its legal basis in article 23 (3) of the Extradition Order, and it is confirmed by all the lawyers and prosecutors.<sup>143</sup>

**(Defence lawyer, Malta)** states: *“If the trial was in absentia, we do not extradite. This is a BAR in our national extradition act; but the individual is still arrested and taken to court.”*

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<sup>143</sup> Malta, Article 23 (3) of the [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004.

In the case of a conviction *in absentia*, a prosecutor explains that the court is required to consider whether the person's rights to a fair trial were respected. They confirm that the Court won't return the requested person to the issuing state unless summoned in due time and informed that the Court decision would be taken in their absence.

**(Prosecutor, Malta)** affirms: *"The law says that if the person was convicted in absentia, there are some legal grounds to follow. Such as whether he was summoned in due time and informed that the decision might be handed down in his absence. Only if that is proved, the court may still send the person to the requesting country."*

#### v. Individual situation

Respondents agree the individual circumstances of a requested person are considered when issuing or executing an EAW. Prosecutors implicitly refer to Article 31 of the Extradition Order, stating that the court will assess whether there are health issues that would endanger the life of the person during the extradition.<sup>144</sup> The court would only order the suspension of the timeframe imposed by law due to serious health reasons.

**(Prosecutor, Malta)** affirms: *"Because of COVID and his medical situation. We suspended the 10 days, the time period, in which he had to be discharged because of this reason for his health and the court allowed us to do so. We managed to get him back to the requested country safely and without any problems, but later than those 10 days."*

It is interesting to note that a prosecutor excludes individual characteristics such as gender orientation. In his opinion, Member State authorities no longer discriminate against persons under these categorisations; if they do, there are adequate laws to protect the person.

The lawyers maintain that the Court examines the individual situation of a requested person only if the defence council can demonstrate serious health issues or the conviction or the prosecution against them is based on gender, political, or religious discrimination.

**(Defence lawyer, Malta)** states: *"Our law allows the objection of the execution of an EAW proceeding, if proven that the physical transfer of the arrested person could be detrimental to their health; but it has to be put forward by the individual as a request, and it is NOT the court or other judicial authority who does it but the individual (it is always the defence lawyer)."*

The lawyer continues by explaining how the Court makes decisions in this regard:

**(Defence lawyer, Malta)** states: *"Extradition can be suspended. If for instance there are serious issues regarding an individual's health during the transfer procedure. If the reasons are not detrimental to his health but potential violation of their rights, then it can be denied. Suspension occurs only on occasion of physical or mental health issues. Denial is only for potential violation of human rights."*

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<sup>144</sup> Malta, Article 31 of the [Extradition \(Designated Foreign Countries\) Order](#), 07 June 2004.

### c. Lack of proportionality when considering the issuing and execution of the EAW

Respondents largely criticise the court for failing to consider the severe consequences that the execution of an EAW has on a person's liberty and family. Lawyers are very dismissive of the approach taken by prosecutors in the Office of the Attorney General, describing them as being guided by a “DHL package station” mentality.

**(Defence lawyer, Malta)** explains: *“The way our legislation handles the EAW procedure reflects the mentality that any EAW is believed to be a ‘DHL package’ procedure, where they arrest, bound, gag, and send them over as fast as possible. This is wrong and against the spirit of the directive. As defence lawyers, we strongly contest the way Malta has implemented the Framework Decision because truly Malta has made a mess of the Directive.”*

To address this approach, one of the interviewees suggests the **introduction of a proportionality bar for EAW cases containing specific parameters and limits to be imposed when deciding on issuing an EAW**. The requirement of proportionality of EAW is hard to justify under the current legislation and lawyers ask for more clarity in this context. On the other hand, the element of subjectivity should be considered according to the single case. The interviewee expresses concerns regarding the issue of EAWs for minor offences resulting in the deprivation of liberty for individuals, which is disproportionate to the gravity of the offence. They refer to those cases in which requested persons are extradited for crimes for which they will not face imprisonment in the issuing country but only fines, community service orders or conditional discharge. Besides this, imprisonment and extradition may also affect individuals, family members, and children.

The interviewee mentions practical cases to describe his concerns about proportionality and to support the idea of imposing specific criteria.

**(Defence lawyer, Malta)** explains: *“So if you have committed a crime for which you are not going to get a punishment of imprisonment, why execute an EAW? Also, when it is a punishment of imprisonment, but there are suspended sentences. Academically it is a punishment of effect in prison. So, the EAW will work, but in practice, I'm arresting a person and pulling him out of his job, which he potentially will lose because he will go completely absent for two to six weeks if all goes well. I had a situation whereby there was a child, a man and a wife who was going to give birth in eight weeks. There was another one where a woman was requested, but she was heavily pregnant and could not physically withstand it. In all these cases, most of those were suspended sentences of imprisonment. They were not serious crimes.”*

### d. Discussion of findings

Findings suggest Malta's authorities consider the core elements of the Framework Decision before issuing an EAW.

While respondents have different opinions when speaking about proportionality and detention conditions, they have similar views on the arrestee's right to a fair trial and how the court assesses individual circumstances.

When Malta is the executing country, lawyers agree that **proportionality is not a factor** that influences decisions in EAW proceeding. Authorities use the ticking-the-box approach without assessing the subjective elements of the proceedings. Respondents suggest this happens because it is generally

embarrassing to stop a procedure after spending time and resources on it. To address this pattern, a lawyer **proposes the introduction of a proportionality bar for EAW cases detailing specific parameters and limits when deciding on issuing an EAW.**

Authorities do not examine detention conditions in EAWs because they believe that prisons within the EU comply with acceptable standards. On this aspect, lawyers argue they do not have sufficient and reliable data to assess whether the conditions of the single prison their clients would stay in is compliant with EU law. Furthermore, Maltese law does not directly address the topic, and the **courts in Malta do not appear to ever inquire into detention questions if not requested by the defence attorney.** A lawyer suggests that EU Member States should provide annual reports for each prison and that those documents should be produced by independent bodies, referring to the approach used in the United Kingdom.

In Malta, respondents agree that authorities do not usually consider the procedural rights of the requested person in the issuing state but that **the court considers the right to a fair trial** when the defence counsel proves that the defendant was convicted *in absentia*. As Malta does not admit trials *in absentia*, lawyers believe this could be the only chance of successfully contesting the EAW on procedural grounds.

## 5. Use of digital and technological tools in EAW proceedings

### a. Legal overview

There are no legal standards in Malta governing the use of digital tools during EAW proceedings.

Table 12: Use of technological tools (in laws)

National laws providing for:	Conducting EAW hearings (when an executing state)	Facilitating the provision of interpretation	Remote examination of witnesses or the person arrested (when an issuing state).	Communication with involved foreign authorities (both executing – issuing states).	Facilitating transmission of documents (issuing - executing)	Facilitating access to a lawyer in the issuing Member State (when an executing state)	Facilitating access to a lawyer in the executing Member State (when an issuing state)
Country	-	-	-	-	-	-	-
Malta							
TOTAL							

### b. Interview findings

In Malta, digital and technological tools do not have a significant role in EAW proceedings.

#### **Some interviewees believe that digitalisation will not influence the decision of issuing an EAW.**

A prosecutor explains that digitalisation will not lead to fewer EAWs, as it is a surrender procedure for prosecution, executing a custodial sentence or a detention order. Therefore, the executing state does not go into the merit of the case, and technology would only serve to expedite the process.

Digitalisation played a limited role also during the COVID-19 pandemic. All court proceedings were conducted in person, and there were no substantial differences to standard proceedings before the outbreak of the pandemic. A prosecutor reports that digital tools were not used in EAW proceedings in Malta during the pandemic. Requested persons were still physically brought before the court within 48 hours of their arrest.

**(Prosecutor, Malta)** explains: *“We didn't really do anything digital during the COVID-19 pandemic. Although every procedure was slower because of the pandemic, time limits imposed in the legislation and framework directive were still respected, and persons were still arrested. We had to arrange them in court within 48 hours.”*

The only exception was where defendants or judges were COVID-positive or under quarantine and thus appeared via video conference.



**(Defence lawyer, Malta)** states: *“Digitalisation helped in instances where the individual could not join the proceeding as they resulted positive to COVID-19. In such cases, they would connect remotely with the court. In the instance where judges or magistrates were under mandatory quarantine, they would also attend remotely.”*

**All the interviewees agree that digitalisation could speed and facilitate EAW proceedings.**

A prosecutor envisions digitalisation facilitating the participation of issuing authorities in execution proceedings. For example, if a requested person’s argument relies on negative statements about the issuing authority (that they are acting in *mala fide*), this would give the issuing state the opportunity to refute such accusations directly. The interviewee speculates this would streamline proceedings. The interviewee also expresses approval for the creation of a secure document cloud where authorities could upload documents rather than relying on postal mail.

**(Prosecutor in Malta)** states: *“I would like live links to be provided to both the issuing and executing authorities, including the defence council in the issuing country. This way, they can all follow the procedures in Malta and vice versa. Do you know why? By streaming the hearing, defence lawyers cannot use false evidence because the issuing authorities are there and can refute their arguments.”*

Furthermore, digitalisation could be especially helpful in determining questions of identity and to gather evidence from the issuing state.

**(Prosecutor, Malta)** explains: *“Identity is the first and the most important thing to be confirmed in EAW proceedings because you have to be sure that the person in front of you, that you are sending to a country, is the right one. And so, I think digitalisation would play a most important part in those situations, even when you need to get some witness statements, proof, or evidence from foreign countries.”*

**Some lawyers agree that technology can help attorneys to better assist their clients.**

In the interviewees’ view, if digitalisation includes full disclosure rooms, limited time frames could still be imposed in EAWs and not affect the ability to provide adequate defence. The more information one has, the stronger would be the defence. They suggest digitalisation can serve to find a lawyer abroad through an online database which could simplify the process. Another defence lawyer states, instead, that the European Criminal Bar Association (ECBA) already provides a highly satisfactory level of assistance in finding counsel in the issuing Member State.

**Different respondents focus on the risks associated with digitalisation during EAW proceedings.**

Some interviewees mention data protection issues. According to a prosecutor, the right to privacy could be affected by digitalisation but, at the same time, it would ensure clarity and certainty in proceedings and strengthen the right to a fair trial. Everything depends on how online platforms would be monitored and regulated.

Interviewees believe that EAW proceedings are naturally suited to taking place in person. A prosecutor presents a hypothetical situation where the requested person does not understand English or Maltese and thus requires the assistance of an interpreter. They note that if the requested person had to appear via video link, translation/interpretation would be particularly challenging, and it would probably be impossible to ensure confidentiality.

**(Prosecutor, Malta)** affirms: *“I think the whole process of EAWs is something that works better*

*in-person. This is because it is also hard when someone does not understand English or Maltese. If someone does not understand what is going on in the national language of the court and appears by video conference in front of the court, instead of in person, it will be hard also for the interpreters. Even ensuring confidentiality between the translator and the person would be difficult.”*

Interviewees are also sceptical about fully digitalised criminal proceedings. They explain that cross-examination of prosecution witnesses is integral to an adequate defence, and if this is not done in person, someone could potentially be present off-camera prompting the witness to answer in a certain way. One interviewee adds remote defendants would not be beneficial. They claim that simplifying the questioning process may decrease the safeguards in place for requested persons.

**(Defence Lawyer, Malta)** affirms: *“It can help, but I cannot see holding a full court proceeding digitally happening, it is dangerous. especially when there is cross examination with witnesses, even for the reaction time, to ensure that nobody is prompting off-camera the witness.”*

*Table 13: Use of digital tools, interview findings.*

Interviewees per Country	Conducting EAW hearings (when an executing state)	Facilitating the provision of interpretation	Remote examination of witnesses or the person arrested (when an issuing state).	Communication with involved foreign authorities (both executing – issuing states).	Facilitating transmission of documents (issuing – executing)	Facilitating access to a lawyer in the issuing Member State (when an executing state)	Facilitating access to a lawyer in the executing Member State (when an issuing state)
	YES/NO	YES/NO	YES/NO	YES/NO	YES/NO	YES/NO	YES/NO
LAWYER 1	NO	YES	YES		-	NO	NO
LAWYER 2	NO	NO	YES		YES	NO	NO
LAWYER 3	NO	NO	NO		YES	YES	NO
LAWYER 4	NO	NO	NO	NO	NO	NO	NO
JUDGE 1	NO	NO	YES		YES	NO	NO
JUDGE 2	NO	NO		YES	YES	DOES NOT KNOW	NO
JUDGE 3	NO	NO	YES		YES	YES	NO
TOTAL	4/3	1/6	4/2	1/1	5/1	2/4	0/7

### c. Discussion of findings

In Malta, there are **no legal standards for the use of digital tools during EAW proceedings**. Despite no legal requirements, research shows that **digitalisation could benefit EAW proceedings**.

Findings demonstrate that although digitalisation does not influence the decision of issuing an EAW, it could **expedite the process**. Interviewees mention telecommunications as a tool to facilitate **the participation of issuing authorities in the execution proceedings**.

Lawyers agree that online databases **can help attorneys assist their clients**. Digitalisation could be **crucial in determining questions of identity and acquiring evidence from the issuing state**. Digitalisation could also allow **timeframes to be imposed** without jeopardising lawyers' ability to provide adequate defence.

The research finds that digitalisation is also associated with some risks. Data protection and privacy can be obstacles and inhibit the right to privacy. Interviewees agreed that proceedings are best suited to take place in person and cite possible challenges regarding online interpretation and cross-examination as potential issues. Furthermore, simplifying the questioning process through digitalisation could decrease the safeguards in place for requested persons.

## CONCLUSION

This paper reviews the Maltese legal framework on procedural rights in EAW proceedings, with a closer look at the right to access a lawyer. Besides the legal analysis, the interviews with judicial authorities and legal practitioners describe how procedural safeguards for requested persons in EAWs apply in practice. This paragraph discusses the good practices and the recurring issues outlined in this research. The section ends with an overview of the suggestions proposed by the respondents to improve gaps and shortcomings in the application of procedural safeguards in EAWs.

Requested persons in Malta are informed of their procedural rights by judicial authorities and defence attorneys, and the right to translation of documents and interpretation is guaranteed during EAW proceedings. Furthermore, requested persons do not face issues in accessing legal representation when Malta is the executing state. However, academic literature and findings from the interviews highlight shortcomings in providing adequate legal assistance in both the executing and issuing state. Respondents agree several issues are hindering the ability of the defence lawyer to build an effective line of defence: lack of dual representation, lack of correct and complete information, and lack of proportionality when considering the issuing and execution of the EAW.

Maltese authorities **fail to guarantee the right to dual legal representation** as prescribed by Article 355 AUH (4) of the Criminal Code. In practice, authorities believe there is no legal obligation to inform the requested persons that they can benefit from the assistance of a lawyer in the issuing Member State. Besides this, the timeframe imposed in EAW is not enough for the lawyer in the executing state to contact the lawyer in the issuing Member State. Furthermore, the financial means of the requested person determine the extent of cooperation between dual representatives. In order to facilitate this type of contact, the requested person must independently secure legal representation in both states rather than relying on legal aid. The respondents lament this gap in the quality of representation, recognising the role such communication can play in guaranteeing effective legal assistance.

Legal assistance in the issuing state would help gather additional information. **The lack of correct and complete information is a challenge for lawyers defending their clients.** Interviewees report that inconsistencies regarding the case exist in both the issuing and executing states. Since the issuing state is not obliged to share all the details in the investigation, defence lawyers may miss certain aspects relevant to building an effective defence for their client, diminishing the possibility of contesting the EAW. Respondents claim Malta has a general problem with the right to disclosure granted to people arrested in criminal proceedings. Despite the obligation of the police to submit all subject material, non-compliance has no consequences or sanctions. Often the only document lawyers work with is the European arrest warrant itself.

**There are no legal avenues in place in Malta to effectively challenge the issuing of an EAW or request its withdrawal.** According to the lawyers interviewed, this gap in Maltese law is evident in every case they defend. An example is the case of *Police vs George Clayton*, where Maltese authorities refused to withdraw the warrant despite the victims' wishes and the limited likelihood that Clayton would receive a custodial sentence. Lawyers are very dismissive of the approach taken by prosecutors in the Office of the Attorney General, describing them as being guided by a 'DHL package station' mentality, meaning that procedures and protocols are followed mindlessly instead of using a case-by-case approach. Prosecutors, on the other hand, do not question the requests of the other Member States as long as the crime meets the minimum threshold or if the offence is extraditable. They all mention the principle of mutual recognition based on mutual trust and respect for fundamental rights, which applies in these cases.

**On the way forward**, respondents mention the lack of culture to review cases with proportionality issues in numerous EU countries. They refer to situations in which the ultimate effect of the EAW

would be minimal, without a significant punishment that justifies the deprivation of liberty and the expenses afforded to execute the EAW. In these cases, the extradition has the sole purpose of respecting the procedures of EAW without reasoning about the disproportionate consequences the executions could have. To change this trend, a lawyer **proposes the introduction of a mandatory proportionality bar for EAW cases listing specific parameters and limits when deciding on issuing an EAW.** The requirement of proportionality of EAW is hard to justify under the current legislation, and lawyers ask for more clarity in this context.

National experts highlighted the importance of forming a network of EAW defence practitioners to deal with the dual representation in issuing and executing states. Communication between lawyers in both states would significantly improve EAW proceedings. Executing states could make more informed decisions and defence lawyers would better understand the grounds to contest the EAW. Lawyers in the issuing Member State can provide a complete account of what happened there. This way, the defence attorney in the executing state can compare what the issuing state is claiming with what they have in hand. By communicating with the lawyer in the issuing country, the lawyer in the executing state can establish an effective line of defence based on objective information.

Strict time frames in EAW proceedings are beneficial to avoid delays in court proceedings in Malta. However, respondents argue there should be more room for some derogation and possibilities to extend these terms, especially to enhance communication between lawyers living in two different states. Imposed time frames should not hinder the necessary exchange of information but function as a tool for improvement.

Authorities do not question detention conditions in EAWs, as they suppose that prisons within the EU respect minimum standards and are adequately regulated. However, lawyers argue that they do not have access to reliable and updated sources to consult the conditions of every single prison within the EU. Therefore, they propose that EU Member States should provide annual reports detailing the conditions of each prison in the country, following the model used in the United Kingdom.

Digitalisation does not have a role in EAW proceedings, and no legal standards for the use of technology exist. However, **respondents agree that digitised tools can speed up and facilitate EAW proceedings.** Digitalisation could improve communication between lawyers, lessen the burden of language barriers, and manage time constraints more effectively. Digitalisation could also aid in solving questions of identity and acquiring evidence in the issuing state. Overall, the benefits of faster data transmission and significant improvements in the assistance of the requested person outweigh the risks mentioned by the respondents, such as concerns about data protection. Development in this field holds great opportunities for EAW proceedings in Malta, especially by facilitating the participation of issuing authorities in execution proceedings.