

Social Fieldwork Research (FRANET)

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

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EXECUTIVE SUMMARY

Interviews with defendants allowed to explore the implementation of the European Arrest Warrant (hereinafter EAW) in Italy, providing some useful insight on the guarantee of fundamental procedural safeguards listed below.

Right to information

Defendants reported to be generally informed about their procedural rights at the moment of the arrest in Italy by police officers. Information was provided either orally or using written forms, depending on the practice in place in each police headquarters. No major issues emerged on this when the situation of Italian-speaking defendants was considered; however, defendants speaking other language complained about the lack of adequate translation of such information which impeded their comprehensive understanding of the situation. Information on the content of the EAW and about the charges, as well as on the consent to surrender and the speciality rule, was, on the opposite, rarely provided: this gap was often filled by criminal lawyers assisting the defendants.

Right to interpretation and translation

Defendants reported a mild satisfaction towards interpretation and translation services in Italy. Interpreters were physically present during judicial hearings, but often not available during the very first contact with public authorities during the arrest or the detention period. Moreover, interpreters are not provided to assist consultations with criminal lawyers: when needed, arrangements in this respect must be made by the lawyers themselves. As far as translation is concerned, none of the defendants reported that judicial documents were translated in a language they could understand if this was different from the languages of the issuing or the executing countries (with the exception of the EAW form itself that is generally available in English). Some of them even reported they had to pay for the translation of specific judicial documents which were needed by the lawyers in Italy or by the Italian Courts.

Right to access to a lawyer

Legal assistance is mandatory in Italy: all defendants reported being assisted by public defenders at the beginning who were later on replaced by entrusted private lawyers. Confidential consultations are generally guaranteed, including in detention facilities (not so in police headquarters during the arrest). Defendants stressed – thus confirming the results of the first phase of the research project – that a specific expertise is required to adequately assist defendants in EAW proceedings and that such expertise is often missing not only among public defenders but also among private lawyers. Lawyers are reported to play a crucial role in guaranteeing in practice dual legal assistance, thanks to their professional connections and networks, contacting and cooperating with colleagues in the issuing countries. Lawyers are also pivotal in providing clear and understandable information to the defendants on the EAW procedure, especially the most technical aspects (such as the consent to surrender and the speciality rule) that are often only generically and concisely mentioned by public authorities.

Execution of the EAW – factors considered

None of the interviewed defendants was surrendered to issuing judicial authorities and none of the EAW was executed. All defendants succeeded in having the EAW execution suspended either complaining against judicial mistakes or proving their long-lasting residence in the executing Country.

Despite slightly diverging from the focus of this research, some defendants complained against detention conditions in Italy and in Greece, reporting severe abuse of their fundamental and procedural rights. On one occasion, detention conditions in the issuing country were used as an argumentation to have the EAW suspended before Italian judicial authorities.

INTRODUCTION

In total, **5 eligible interviews** were carried out in the timeframe of January to March 2023. All interviews were conducted online, via electronic platforms that allowed for a videoconference that could provide as much as possible the sensation of an ordinary face-to-face conversation. The audio of the interviews was recorded using an external recording device with the informed consent of the interviewees, as to allow the correct interpretation of the contents of the interview together with a reinforced protection of the privacy of the interviewees. The choice to conduct the interviews online was not due to Covid-19 precautions, but rather to the fact that all interviewees lived in different EU Member States and none of them was in Italy making it impossible for the interviewer to meet them in person.

○ PREPARATION OF FIELDWORK, IDENTIFICATION AND RECRUITMENT OF PARTICIPANTS

The recruitment process developed in phases. First, the research team resorted to the criminal lawyers interviewed during the first phase of the research project, asking them whether their clients would be available to participate in the fieldwork as interviewees. Moreover, the National Association of Criminal Lawyers (*Unione Camere Penali Italiane* – UCPI) was also contacted in order to widen the area of recruitment, involving more criminal lawyers with professional experience in this field. This first attempt provided with scarce results but allowed the research team to conduct the pilot interview. Secondly, the research team proceeded in contacting relevant Italian associations engaged in the protection of detainees, namely “A buon Diritto”, “Antigone” and “Nessuno tocchi Caino” that, unfortunately, could not support the research. Thirdly – thanks to the support provided by the Fundamental Rights Agency (FRA) team working on this project – we expanded the network of stakeholders contacting two international associations of criminal lawyers (Fair trial international and the European Young Bar Association) and other FRANET partners asking them whether the criminal lawyers they were in contact with had assisted defendants in EAW cases where Italy was either the issuing or the executing Country. Finally, we directly contacted the criminal lawyers involved in an extremely well-known EAW case concerning an EAW issued by Italian authorities: thanks to the impact the case has on the Italian public opinion, the names of defenders were available online.

The efforts were significant however, the research team succeeded in interviewing four defendants and only one criminal lawyer. As for the characteristics of the interviewees, one defendant is an Italian citizen living in France; another one is an Italian citizen living in Italy; the other two are foreign citizens living in other EU Member States. The fifth interviewee is a French criminal lawyer whose professional activity is based in France: when reporting and discussing the information emerging from this interview in the final report, reference will be made directly to experience of the defendant assisted by the lawyer. The interviews were conducted in Italian, English or German depending on the preference of the interviewees. One major shortcoming of the research concerns the gender composition of the sample which is unbalanced: only one interviewee identifies as a female; the others as males. This roughly reflects the general composition of defendants in EAW cases.

Despite the difficulties in recruiting participants, those who were eventually interviewed were extremely keen on sharing their experiences and points of view. Defendants reported sensitive information concerning the treatment they received by both police and judicial authorities during the arrest or while detained. The decision to share such information can be interpreted as a sign of an adequate level of trust between the interviewees and the interviewer. The average length of the interviews was 43 minutes: this is a bit lower than expected (60 minutes); however, it must be considered that interviewees might be reluctant to report and go back to past experiences that often are difficult or to comment on open judicial proceedings.

Table 1: Characteristics of interviewees

| ITALY | Requested person 1 | Requested person 2* | Requested person 3 | Requested person 4 | Requested person 5 |
|--|--------------------|---------------------|--------------------|--------------------|--------------------|
| Gender | Male | Male | Female | Male | Male |
| Country Issuing the EAW | Italy | Italy | Greece | Greece | Greece |
| Country Executing the EAW | Italy | France | Italy | Italy | Italy |
| Country where the defendant was arrested | Italy | France | Italy | Italy | Italy |
| Nationality | Italian | Italian | Italian | Dutch | German |
| Was the defendant surrendered to the Issuing Country? | N/A | No | No | No | No |

* This interview was conducted with the defendant’s defence lawyer who reported about the defendant’s experience with the EAW procedure.

○ **DATA ANALYSIS**

The present country report was drafted following a qualitative and thematic analysis of the five interviews carried out during the fieldwork.

The preliminary step of the analysis consisted of a cross-comparison analysis of the results emerging from the first phase of the research project, the legislative framework governing EAW in Italy (as resulting from the legal desk analysis conducted at the beginning of the first phase) and the results emerging from this fieldwork. This comparison was useful to point out the relevant issues emerging from the practical experiences of the defendants and the improvements that the EAW procedure would need. The comparison was also useful to validate the conclusion to the first phase of the project, especially as far as the improvements suggestions are concerned.

The proper analysis of the interviews followed a thematic approach, that is each thematic section was dealt with separately retrieving information from the interviews. It was important to carefully distinguish the cases where Italy was the executing or the issuing authority as to figure out whether the treatment the defendants received and the protection of their procedural rights were somehow different depending on the type of EAW procedure.

In order to draft the conclusions and the executive summary – the two sections that were completed at the end – all thematic sections were considered together as to have a complete overview of the EAW system in Italy from the points of view of the defendants.

○ **BRIEF OVERVIEW OF THE REPORT’S CONTENTS**

The structure of the report accounts for the most crucial themes concerning procedural safeguards in the EAW procedures.

Each section of the report provides the analysis of the information emerging from the defendants and lawyer participating in the fieldwork, highlighting critical aspects, as well as strong points, good practices and suggestions of improvement. More specifically, the sections of the report focus on the right to information of people requested under an EAW issued and executed by Italian authorities;

their right to interpretation and translation; and their right to legal assistance; as well as on the execution of the EAW. Eventually, the role of digitalisation and digital tools in the EAW procedure in Italy is analysed.

The report is introduced by an Executive Summary which briefly summarises the main elements emerging from the fieldwork and the conclusions of the research. A concluding chapter is included at the end of the report, pointing out the main recurring themes of the interviews and an overall assessment of the level of safeguards for persons requested under an EAW issued or executed by Italian authorities. The conclusion also presents the most crucial critical aspects of the procedure, as well as the promising practices and the ways forward suggested by the professionals.

RESEARCH FINDINGS

1. Right to information

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

Four interviewees were arrested in Italy due to EAWs either issued (one of the interviewees) or executed by Italian judicial authorities. Only one of the interviewees was arrested in another EU Member State – France – due to an EAW issued by Italian authorities. When referring to the information provided by authorities, interviewees consequently generally refer to the information provision activity carried out by Italian police officers at the moment of the arrest, as well as by prosecutors and judges, especially those in charge of the judicial hearing validating the arrest within 48 hours, as established by the Italian legislation.

Interviewees have confirmed that **information about fundamental procedural rights was generally provided at the moment of the arrest**: they were informed about the right to be legally assisted by a lawyer, to contact their families, to remain silent, as well as about the reason of the arrest. However, in at least two cases such information – which is crucial in terms of procedural safeguards especially when it comes to the first contact with public authorities – **was provided in a language the defendants could not understand**.

As for the means of provision of such information, some of them mentioned a written form delivered by police officers where procedural rights were listed, others reported that information was provided orally by the officers. One interesting experience was reported by a defendant arrested in Italy due to an EAW issued by Greek authorities: the interviewee was provided with a bilingual (Italian and English) written form by police officers where all procedural rights were listed. Officers identified her asking for the identity document and made sure she could understand Italian. They informed her there was a SIRENE (the national SIS-II database) entry against her and provided the number of the entry; they also informed her about the formal accusation against her made by Greek judicial authorities. They asked if she had a lawyer to appoint and make her contact him. They informed her about the right to receive information. She made her sign the arrest's report and the police officer signed it as well.

“At the time of my arrest, basically the policemen came while I was having lunch with my mother and my children in Bologna at our place. We went to the police headquarters and basically they explained to me with a document. So, first they made sure that I was the person. And then they explained to me that there was a SIRENE (Supplementary Information Request at the National Entry) and they told me the number. And then they asked me: Do you understand your rights? Do you have a lawyer? You know, I think he [the police officer] even talked to my lawyer. So and then basically, they made sure that I could understand what they were saying, that I chose my lawyer.” (Requested person, Italy)

A very negative experience was reported on this issue by a Dutch defendant arrested in Italy due to an EAW issued by Greek authorities. The interviewee reported that **the officers who arrested him did not explain the reasons for the arrest**: none of them could speak any other language than Italian which the interviewee does not speak nor understand. An interpreter was called to the police headquarters some hours after the arrest. During these first hours, the interviewee did not understand why he had been arrested and what the police was saying. He could overhear a conversation between the officer and his chief: he did not get the meaning of the conversation but he caught a word that is

similar to English and could understand that the arrest was connected with the judicial proceeding he is involved in Greece. When the translator arrived at the police headquarters, she explained to the interviewee the situation and the reason of the arrest.

A similar experience was also reported by a German defendant arrested in Italy due to an EAW issued by Greek authorities: information about his rights was indeed provided by police officers; however, it was in Italian, a language the interviewee cannot understand:

„Nachdem Sie in Italien festgenommen wurden, hat die Polizei Sie über Ihre Rechte aufgeklärt?“

„Nein, so direkt nicht. Man hat mir Schriftstücke hingelegt zur Unterschrift, aber die waren ja nicht in meiner Sprache verfasst. Also ich konnte die Schriftstücke nicht lesen. Wahrscheinlich war das eine Aufklärung über meine Rechte, nehme ich mal an, aber eben nicht in Deutsch. Und ich kann nur Deutsch.“

"After you were arrested in Italy, did the police inform you of your rights?"

"No, not exactly. They gave me documents to sign, but they were not written in my language. So I could not read the documents. It was probably an explanation of my rights, I suppose, but not in German. And I only know German." (Requested person, Italy)

The situation of the only defendant arrested in France must be dealt with separately: in his case, immediately after the arrest, the defendant was brought before the Court of Appeals where he met one of the Public Prosecutors dealing with his case. The public prosecutor officially notified the EAW and informed the defendant about the EAW and about his right to legal assistance.

Table 2: Were the requested persons informed about their procedural rights?

| COUNTRY | Requested person 1 | Requested person 2 | Requested person 3 | Requested person 4 | Requested person 5 | Total |
|--|---------------------------|---------------------------|---------------------------|---------------------------|---------------------------|--------------|
| YES | X | X | X | | X | 4 |
| In writing (letter of rights) | | | X | | X | |
| Orally | X | X | | | | |
| In writing (letter of rights) and orally | | | | | | |
| NO | | | | X | | 1 |
| Don't know/remember | | | | | | |
| Did not answer | | | | | | |

b. Information about the EAW – content and procedure

Overall, **defendants reported being informed about the reasons of the arrest and about the existence of an EAW against them.** However, this information was not always provided in a

straightforward and clear manner, and **further information provided by lawyers was needed to have a thorough picture of their judicial situation.**

For instance, one of the defendants who was arrested in Italy due to an EAW issued by Italian judicial authorities stated that police officers who arrested him did not provide detailed information on the case, they just mentioned generally the existence of an EAW justifying the arrest. Fortunately, the interviewee also stressed that he was already aware of the judicial proceeding against him, and that he obtained more detailed information from his lawyers.

“La polizia non è entrata nei dettagli mi hanno solo spiegato globalmente qual era il procedimento. Io già sapevo di cosa si trattava. [...] Le informazioni poi me le ha date l'avvocata e ho aggiunto altri avvocati, ne avevo più di uno.”

“The police did not go into details, they just explained to me in general terms what the procedure was. I already knew what it was about. [...] The information was then given to me by the lawyer and I added other lawyers, I had more than one.” (Requested person, Italy)

More information seems to have been provided by police authorities to another defendant arrested in Italy due to an EAW issued by Greek authorities who reported that, at the moment of the arrest, she was informed by Italian police officers that there was a SIRENE entry against her due to a criminal charge for child abduction issued by Greek authorities. She was explained that the EAW was connected to an ongoing proceeding started in Greece because of her ex-partner's police report for child abduction.

Language barriers were reported to have a major impact on the possibility to provide this kind of information, as it was the case of procedural rights dealt with in the previous sub-sections. One of the defendants – arrested in Italy due to an EAW issued by Greek authorities and speaking only English and Dutch – confirmed that information on the EAW's contents was not provided by the police but rather by the interpreter who arrived some hours after the arrest.

“The Italian police or anybody else in the police office doesn't speak English or doesn't want to speak English. They didn't want to explain to me why I got arrested. After a little bit of fog between the officers and someone in command, I overheard a word that's similar to an English word. I don't remember exactly anymore, but at that point I knew it had something to do with the case I had it in Greece.” (Requested person, Italy)

Similarly, another German-speaking defendant arrested in Italy reported that he could not get the reason for the arrest since the officers could not communicate with him in a language he could understand. He recalled being delivered documents in Italian, a language he does not speak. His lawyer then accompanied him to the first hearing with the judge who validated his arrest: during the hearing, the lawyer took care of communicating and translating everything to the interviewee. The same applied to later court hearings: the lawyer translated and communicated all the information to the interviewee.

Q: „Hat Ihnen die Polizei zu diesem Zeitpunkt erklärt, wegen welcher Straftat Sie verhaftet wurden oder welcher Straftat Sie verdächtigt wurden?“

A: „Nein, weil in der Polizeistation konnte ja auch niemand Deutsch. Einer von denen konnte ein paar Brocken und Wörter auf Deutsch, dem ich zu verstehen geben konnte, dass ich mal auf die Toilette muss, oder dass ich was essen und trinken muss. Aber

deutschsprachig war ja niemand in der Polizeistation und englischsprachig auch nicht. Das setzte sich dann später im Gefängnis noch in dramatischer Weise fort.“

Q: "Did the police explain to you what crime you were arrested for or what crime you were suspected of?"

A: "No, because nobody at the police station knew German. One of them knew a few words in German, and I could tell him that I had to go to the toilet, or that I had to eat or drink something. But there was no German-speaking person in the police station and no English-speaking person either. This continued later in prison in a dramatic way." (Requested person, Italy)

The only defendant arrested in France was informed about the EAW's contents by the prosecutor dealing with his case: he was informed about the existence of an EAW against him in the SIS-II database, that he had to serve a 12-year definitive sentence for an episode occurred in 2001. He was also aware of the Italian definitive judicial sentence.

Table 3: Were the requested persons informed of the contents of the EAW against them?

| COUNTRY | Requested person 1 | Requested person 2 | Requested person 3 | Requested person 4 | Requested person 5 | Total |
|----------------------------|--------------------|--------------------|--------------------|--------------------|--------------------|----------|
| YES | X | X | X | | | 3 |
| In writing | | | | | | |
| Orally | X | | X | | | |
| In writing and orally | | | | | | |
| NO | | | | X | X | 2 |
| Don't know/remember | | | | | | |
| Did not answer | | | | | | |

c. Information on consenting to surrender

The functioning of the EAW procedure and the principles governing consent to surrender and the speciality rules emerged as the most technical part of the information-provision activity: as such, **information – when provided – was often generic and needed always further clarifications by criminal lawyers assisting the defendants.**

Only four defendants commented on this issue since one of them was arrested in Italy due to an EAW against him issued by Italian authorities: he spent five months in detention in Italy before his lawyer succeeded to have the EAW annulled.

Two of the defendants arrested in Italy due to EAWs issued by Greek authorities were generally informed about the possibility to refuse surrender to issuing authorities; both have been refusing throughout the EAW procedure. One of them, specified that information about consent to surrender was included in the written form she was delivered by police officers at the moment of the arrest. As stated above, information was quite generic and more details were provided by criminal lawyers who

helped defendants comprehensively understand the consequences of their choices on consent to surrender.

Q: Did someone tell you that you could either agree or refuse to agree to being handed over to Greece? Did they explain what consenting would mean?

A: "No, they did not. But I knew this was coming, so I had been informed by my lawyer of what the EAW meant. So I knew that I absolutely did not want to go there [to Greece]. But, I have to say that, they didn't explain what it would mean for me if I consented, if I go to Greece." (Requested person, Italy)

One of the defendants – a German citizen arrested in Italy due to an EAW issued by Greek authorities – **was not informed by police officers** at the moment of the arrest: it was his lawyer to provide information on consent to surrender when he visited him in the detention facility where he had been transferred.

Q: "Als es um die Auslieferung ging, hat man Ihnen gesagt, dass sie dieser zustimmen können oder sie ablehnen können?"

A: „Ja, als ich den Anwalt angerufen hatte, der kam dann gleich, ein oder zwei Tage nachdem ich verhaftet worden war dahin. Und der sprach Deutsch. Der hat mir natürlich gesagt, dass man der Auslieferung widersprechen kann und das wir das natürlich umgehend machen, beim Haftrichter schon.“

Q: "About the extradition, were you told that you could agree or object to it?"

A: "Yes, when I called the lawyer, he came right over to the prison, a day or two after I was arrested. And he spoke German. Of course, he told me that you can object to the EAW execution and that we will do it immediately, of course, with the custodial judge." (Requested person, Italy)

As in previous sub-sections, the case of the defendant arrested in France must be dealt with separately. The prosecutor in charge of his case informed him about the right to refuse to be surrendered to Italy during their very first meeting. He was also informed that consent cannot be revoked. The defendant was also informed about the speciality rule and the date of the following hearing before the Court.

Table 4: Were the requested persons informed about what consenting to their surrender entailed?

| | Requested person 1 | Requested person 2 | Requested person 3 | Requested person 4 | Requested person 5 | Total |
|----------------------------|--------------------|--------------------|--------------------|--------------------|--------------------|----------|
| YES | | X | X | X | | 3 |
| NO | | | | | X | 1 |
| Don't know/remember | | | | | | 0 |
| Did not answer | X | | | | | 1 |

d. Understanding of information

Defendants have an adequate understanding of their situation, of the reasons of the arrest and on the EAW's contents and procedure when they speak the language of the country executing the EAW or performing the arrest; in the other cases, comprehension is achieved only with the support of their lawyers. This general perspective was confirmed by the experiences of the defendants participating in the fieldwork. The same was also confirmed by the only defendant who was arrested in France due to an Italian EAW.

Q: Did you understand all the information that the police, the prosecutor, or the judge gave you?

A: "In terms of the difference between Greece and how they did the arrest and Italy, I can say that at least the forms were in a language that I could understand. I had time to read. I wasn't pressured to sign. I wasn't locked in a dark room with lights on my head saying sign, sign. So in that sense, I had time to read, but the details were not necessarily explained." (Requested person, Italy)

Together with the **language competencies**, also the **awareness of the existence of a judicial proceeding in the issuing Country** helped defendants to understand the situation: one of the defendants reported she was expecting the EAW to be issued by Greek authorities; so, she had been informed and prepared by her lawyer about what might have happened. Otherwise, she admitted that the details of the procedure might not be very clear and understandable for a person who is arrested out of the blue for an EAW.

Q: Did you understand all the information that the police, the prosecutor, or the judge gave you?

A: "I did. But I have to be very honest, I'm a bit biased because I knew this was coming and I was informed quite a bit beforehand. In retrospect, if you're not familiar, I don't know if someone gets arrested, if they know all the consequences of what they're signing." (Requested person, Italy)

Another defendant added that a poor **level of education** might hinder the understanding of the technical aspects of the EAW procedure:

"Le informazioni sono troppo tecniche per una persona che non ha studiato. Io ho capito tutto, ho capito perché ero lì. La storia è stata chiara in sé."

"The information is too technical for someone who has not studied. I understood everything, I understood why I was there. The story was clear in itself." (Requested person, Italy)

e. Additional best practices or challenges

The defendant arrested in France due to an Italian EAW reported about a very interesting practice adopted by the French prosecutor in charge of his case who informed him about the functioning of the surrender and of the speciality rule in EAW cases. The public prosecutor office has designed and developed specific informative materials to help defendants understand these technical aspects of the procedure. This is for sure a practice that could be replicated and transferred in all police headquarters and prosecutors' offices.

Q: And when they asked him about the consent to surrender and the specialty rule, in your opinion, did they explain the meaning of these procedures and the consequences of the choices your client was asked to make?

A: "Yes. The information is very detailed. There are four, five, six slides explaining it very clearly. I'm sure that my client was able to understand. Okay. He had a lawyer and he also had the interpreter in Italian." (Defence lawyer of one of the requested persons)

f. Discussion of findings

According to legal requirements in place, defendants arrested in Italy must be informed about their procedural rights – including the right to be legally assisted by a lawyer – since their first contact with public authorities, i.e., police officers. According to the participants in the fieldwork, this requirement is generally respected with some major shortcomings.

First, information is sometimes provided using a written form; in other cases, it is provided orally. The impression is that each police headquarters adopts different communication approaches and instruments.

Secondly, language represents a major barrier when it comes to communication on procedural rights. Only one defendant reported that the form on procedural rights was provided in a language different than Italian; in the other cases, the information was available only in Italian with officers not able to speak other languages. When an interpreter was not available during this phase, information was actually provided by lawyers in following stages of the EAW procedure.

These remarks apply both to information concerning procedural rights and the EAW's contents and procedure. The situation is even more critical when it comes to information on consent to surrender, a more technical aspect of the EAW procedure: information provided to the defendants is generally quite generic and needs integrations and clarifications by criminal lawyer.

The general level of understanding reported by the defendants can be considered sufficient only when defendants were able to speak the same language of police officers; in the other case, defendants complained about not being able to comprehend their legal situation until their lawyer provided further clarifications.

2. Right to interpretation and translation

a. Provision of interpretation (decision and means)

Only two of the five defendants who were interviewed for this research project needed interpretation to communicate with public authorities. The others were either Italian citizens who were arrested in Italy or could perfectly understand and speak the language of the executing authorities, namely French police officers and prosecutor who dealt with the defendant's case.

One of the two Italian citizens reported that police officers performing the arrest made sure she really did not need an interpreter: she has a foreign surname and the officers asked her to confirm she could adequately understand them. Moreover, she was informed about the possibility to have an interpreter assisting her.

Despite not being needed, interpretation services were nonetheless provided as proven by some of the experiences reported by the interviewees. This is the case of the Italian citizen arrested in France due to an Italian EAW: the defendant was able to communicate with French public authorities; however, an interpreter was physically present and available during the first meeting with the public prosecutor and during all judicial hearings.

The situation was more critical for the two defendants who needed interpretation to communicate with the police officers who arrested them. One of them – a Dutch citizen arrested in Italy due to a Greek EAW against him – reported that an interpreter was summoned at the police headquarters some hours after the arrest:

“When I got arrested, it took a couple of hours before the translator arrived because I got arrested at the end of the afternoon, so they had trouble finding somebody. And so somebody showed up early in the evening.” (Requested person, Italy)

The same interviewee also reported that police officers asked whether he needed an interpreter and which language he preferred:

“I told him [the police officer] at the beginning, when they ask me if I need somebody to interpreter for me, and I told them yes. So they asked me for which language. I told them English. For me, it's fine. If they can arrange somebody in Dutch, it would be better. But okay. English is fine for me.” (Requested person, Italy)

The other defendant needing interpretation, could not speak any other language than German and **was not provided with an interpreter neither during the arrest nor during the initial phase of his detention period in Italy**, causing a major impact on the defendant's psychological and physical wellbeing:

„Ich hatte darum gebeten, dass jemand im Gefängnis mich versteht, weil ich bin chronisch krank, mit Epilepsie und Diabetes. Und die Ärzte und Schwestern, die konnten alle nicht Deutsch oder Englisch in dem Maße, um sich fachlich medizinisch zu verständigen. Eine Ärztin konnte ein bisschen Englisch, mit der konnte ich kommunizieren, wenn sie da war. Und vom Personal im Gefängnis in Bozen konnte nur ein Wärter Deutsch, aber der hat natürlich auch nicht immer Dienst. Der war in der Woche vielleicht drei oder viermal da für nen halben Tag, und den hab ich selten zu fassen gekriegt. Und weil ich mich nicht verständigen konnte, hat man mir andere Häftlinge geschickt, die mehrsprachig waren, als Hilfe zur Übersetzung. Aber das ist auch keine verlässliche Hilfe, wenn mir ein anderer Häftling sagt, was ungefähr der Polizist oder die Krankenschwester gerade von mir wollen.“

Das ist natürlich nicht verlässlich. Das war noch schlimmer als auf der Polizeistation, weil es ja um mehr geht, denn ein Diabetiker muss rund um die Uhr sich versorgen können und da ging es ja um eine Menge, und mir ging es gesundheitlich schlecht.“

"At the prison, I had asked for someone who would speak my language, because I am chronically ill, with epilepsy and diabetes. And the doctors and nurses, they all did not know German or English to the extent that they could communicate about medical technicalities. One doctor knew a little English, and I could communicate with her when she was there. And of the staff in the prison in Bolzano, only one guard knew German, but of course he was not always on duty. He was there maybe three or four times a week for half a day, and I rarely got hold of him. And because I could not communicate, they sent me other prisoners who were multilingual to help translate. But that is no reliable help either, if another prisoner tells me what the police officer or the nurse wants from me. Of course, that is not reliable. That was even worse than at the police station, because there is more at stake, because a diabetic has to be able to take care of himself around the clock and there was a lot at stake, and my health was bad." (Requested person, Italy)

Only when his lawyer intervened and could translate for him, it was possible for the defendant to understand what judicial authorities were communicating on his case. An ordinary interpreter was made available and physically present in a later stage of the EAW procedure, during the last two days of his final court proceedings against the EAW execution. The interpreter had been arranged by his lawyer though, not by the Italian authorities.

"Naja, ich habe mehr verstanden durch die Worte des Anwalts, weil er sehr präsent ist und von links auf mich eingeredet hat und mir die Sachen schneller übersetzt hat als die Übersetzerin Zeit hat, was zu sagen.“

"Well, I understood more through the lawyer's words because he's very present and talked to me from the left and translated things for me faster than the translator had time to say anything." (Requested person, Italy)

b. Translation of documents

Translation of EAW and judicial documents was an issue that defendants did not consider as crucial, allegedly because of the role played by criminal lawyers who mostly dealt with documents and procedural aspects. However, **none of them received the translation of the documents in a language different from those of the issuing and executing countries.**

This approach was vehemently confirmed by a Dutch defendant arrested in Italy because of a Greek EAW against him: judicial documents of his were either in Greek or Italian; the most relevant documents concerning the judicial proceeding were in Greek; Italian authorities did not receive any documents in English or Italian. Moreover, the decision adopted by Italian Courts were issued in Italian.

When provided, **translation of documents was nonetheless partial, concerning mostly the EAW form** transmitted by issuing judicial authorities. This is what was reported, for instance, by the defendant arrested in France who stated that the EAW documents were translated into French; however, the document providing the additional information requested to Italian judicial authorities were not translated into French. The defendant and his lawyers did not have access to the original version of this additional information document: it was later on translated into French and they could only have access to the translated version. This case was quite exemplary since the defendant helped his French

lawyers to understand the Italian Courts' decisions and the meaning of the criminal charges against him (which do not exist in the French criminal system).

"As far as the additional information is concerned, it was Italian documents. And surprisingly, we didn't get the originals, we only received the document translated from Italian into French. It was not a problem for us. Even if when we talked about devastation and plunder, the article of the Italian penal code is not very precise and all the information is in the decisions of the Supreme Court, which explained it. And sometimes the translation was not good. But we managed to use it. It was not impossible to use it. And. Well, my client lives in France, has been living in France for more than ten years, and it wasn't a problem for us." (Defence lawyer of one of the requested persons)

An Italian defendant arrested due to a Greek EAW stressed that all documents – with the exception of the EAW form which was in English – were transmitted in Greek, a language neither her nor her lawyers could understand. Interestingly, her lawyer had to have them translated into Italian so that the Italian Court could use them to assess the case: **the cost of the translation was borne by the defendant herself.**

"My lawyers had judicial documents translated in Italian and have the translation certified for the Court. Greek authorities, it was like a joke. The Greeks were sending documents in Greek to Italian authorities. So, obviously the Italian Court to decide what to do with me needed it in a language they could understand. So we had all these documents translated and certified for the Italian Court. [...] I provided these documents. I had to pay a hefty translation fee." (Requested person, Italy)

A similar experience was reported by a German defendant arrested in Italy: he received the German translation of the documents only thanks to the support of his lawyer:

"Im Verfahren hab ich Unterlagen bekommen, aber die kamen aus der Kanzlei meines Anwalts und die waren natürlich zweisprachig. Die kamen zweisprachig bei mir an im Gefängnis. Das war nach dem ersten Termin, der vertagt wurde wegen weiterer Informationsbeschaffung. Das lag aber an meinem Anwalt. Das Recht wurde für mich nur wahrgenommen durch den Anwalt. Weil vom Gericht, von der Polizei, von der Gefängnisleitung kam... die wollten mich ja nicht mal zum Prozess hinfahren, weil sie zu faul waren oder so. Die haben mir dann immer am selben Tag erklärt, dass ich auch gerne darauf verzichten kann. Und haben dann versucht, mich abzuwimmeln. Ich habe aber drauf bestanden, ich wollte unbedingt dabei sein. Dann habe ich drauf bestanden und dann mussten sie."

"During the proceedings I got documents, but they came from my lawyer's office, and they were bilingual, of course. They were sent to me in prison in bilingual form. That was after the first appointment (with the custodial judge), which was adjourned for further information gathering. But that was thanks to my lawyer. The right was ensured for me only by my lawyer. Because the court, the police, the prison administration... they did not even want to drive me to the trial appointments because they were too lazy or something. They always explained to me on the day of the trial appointments that I could abstain from going. And then they tried to get rid of me. But I insisted, I really wanted to be there. Then I insisted and then they had to take me." (Requested person, Italy)

c. Interpretation of consultations with lawyers

As reported above, only two defendants participating in the fieldwork needed interpretation because they could not speak the language of the country where they were arrested, i.e., Italy.

As emerging from the first phase of this research project, translation and interpretation are procedural rights that are formally guaranteed in Italy when defendants deal and communicate with public authorities; **this safeguard does not apply to consultations with lawyers**. When needed, either defendant and lawyer agree on a language they can both speak, or an interpreter is appointed and paid for by the defendant.

The interviews highlighted some major shortcomings of this system. This is the case of a Dutch defendant arrested in Italy because of a Greek EAW against him: he was left without an interpreter during the arrest and the initial phase of his detention; moreover, the **public defender appointed by Italian judicial authorities could not speak English adequately** and was able to provide only basic information concerning the proceeding and the validation of the arrest.

“The inmates tried the best to help out, figure out what is going on. I was totally in shock. I had a lawyer appointed by the government because at that time I didn't have my own lawyer, but he [the public defender] also didn't speak English. Therefore, also there needed to be an interpreter present. But the first day I met my lawyer, it was in court and it was the first court date saying that I got arrested because of what would be an arrest warrant. And just basically explaining an explanation from the Italian government what had happened to me and why, but still not the definitive information. What I needed to know exactly what is going on.” (Requested person, Italy)

The situation improved when the public defender was replaced by an entrusted lawyer who could speak English and thus communicate with the defender.

d. Additional best practices or challenges

One of the interviewees – an Italian defendant arrested in Italy because of a Greek EAW – commented on a good practice implemented by the police headquarters of the locality where she was arrested:

“One thing that I have to say: the documents that I signed about my rights in the police headquarters in Bologna are written in Italian because, you know, obviously I do understand it. But, the list of rights is also in English. Okay, So if a Pakistani is arrested, let's say, he has a list of rights he can understand. These rights include, you know, medical care, consular authorities assistance, the interpreter, right to appoint a lawyer, possibility to give their consent to be handed over to the issuing judicial authority. So, the rights part is also in English.” (Requested person, Italy)

Such a practice would not respond to the need of defendants speaking other languages than English and the language of the country where the arrest is performed; however, it represents a measure that is easy to implement and replicate that might help defendants who speak sufficient English to immediately understand their procedural rights, even if police officers are not able to communicate with them.

e. Discussion of findings

Only two of the defendants needed interpretation when dealing with Italian police and judicial authorities. One of them reported receiving the assistance of an interpreter some hours after the

arrest; the other did not benefit from interpretation at all, neither during the arrest, nor during the initial phase of his detention period.

Interpretation is generally provided in English and not in the mother-tongue of the defendants. Moreover, the Italian legal system does not extend the right to interpretation to consultations with lawyers. Interviewees confirmed that they were able to communicate with their lawyers because they could speak English or the language they speak/understand.

As far as translation of documents is concerned, interviewees referred that the EAW form was generally provided in English to executing judicial authorities. All other documents were in the language of the issuing Country: where needed, they had to be translated by the defendants at their own expenses. None of the interviewees reported that judicial documents were translated in a language different from those of the issuing and executing countries (or English).

3. Right to access to a lawyer

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

Information about legal assistance is one of the core information rights defendants are entitled to in the Italian legal assistance; this procedural safeguard also applies to defendants involved in EAW proceedings who are arrested in Italy.

Two of the defendants arrested in Italy reported being informed about the possibility to appoint an entrusted lawyer or to be appointed a public defender by police officers at the moment of the arrest. One of them – an Italian citizen arrested in Italy due to an EAW issued by Italian authorities – reported being informed orally and also being allowed to contact his lawyer from the police headquarters. A similar experience was reported also by the other defendant arrested in Italy due to a Greek EAW: she could choose her entrusted lawyer and communicate with him by phone from the police headquarters where she was identified.

A different experience was reported by the two defendants arrested in Italy who are not Italian citizens and could not speak Italian. One of them – a Dutch citizen arrested in Italy due to a Greek EAW – reported having understood he was entitled to legal assistance and to appoint a private entrusted lawyer while in prison, thanks to the information provided by other inmates. At the moment of the arrest, he was indeed informed about the right to legal assistance. However, the information he could collect from police officers were incorrect, allegedly due to language barriers: during the interview he reported having understood that he could benefit from a public defender appointed by the State and that this service is free of charge. This is not how free legal assistance works in Italy though: both public defenders and private lawyers can be paid by the State if the defendant has a low income. The situation of the other defendant – a German citizen arrested in Italy due a Greek EAW – was even more critical: due to language barriers (police officers could not speak German and an interpreter was not available), the defendant was not informed about the right to legal assistance at the moment of the arrest; he was only handed a list of available public defenders.

The only defendant who was not arrested in Italy reported that French police officers and the prosecutor dealing with his case informed him about the right to legal assistance he was entitled to both in Italy (the issuing Country) and in France (the executing Country). Moreover, a public defender was immediately appointed and later on replaced by the defendant with an entrusted lawyer who was recruited thanks to the solidarity committee supporting the defendant's cause and opposing the EAW execution.

Table 5: Were the requested persons informed of their right to access to a lawyer in the executing Member State?

| | Requested person 1 | Requested person 2 | Requested person 3 | Requested person 4 | Requested person 5 | Total |
|----------------------------|--------------------|--------------------|--------------------|--------------------|--------------------|----------|
| YES | X | X | X | X | | 4 |
| In writing | | | X | | | |
| Orally | X | X | | X | | |
| In writing and orally | | | | | | |
| NO | | | | | X | 1 |
| Don't know/remember | | | | | | |
| Did not answer | | | | | | |

Table 6: Were the requested persons informed by authorities of their right to access to a lawyer in the issuing Member State?

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

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

Legal assistance in the executing state – Italy or France in the context of this framework – was generally guaranteed to all defendants, even if the quality of the assistance was diverse depending on each specific case.

Italian lawyers are reported to be present at all court hearings, even if – in at least one case reported by the interviewees – they met the defendant shortly before the first judicial hearing, the one validating the arrest. In following hearings of the EAW proceeding, after the defendants are released, the consultations with the lawyers are reported to be more frequent in order to shape the legal defence strategy.

Q: "Hatten Sie in dem Verfahren immer die Möglichkeit, mit ihrem Anwalt unter vier Augen zu sprechen? Also auch bevor Sie von den Behörden befragt wurden?"

A: "Im Verfahren selbst? Also ich weiß nicht... er kam zu mir ran, er kam dicht an mich ran und hat mit mir geredet, aber wir waren nicht separat in einem extra Raum, die Polizisten waren immer in der Nähe. Die haben die Handschellen abgenommen, im Gerichtssaal, aber wir waren nicht separiert, wir waren immer im Gerichtssaal mit allen zusammen. Aber so dicht dran, dass nur ich das hören konnte. Und der erste Anwalt, der mich im Gefängnis besucht hat, der hat natürlich immer mit mir unter vier Augen geredet, vor den Prozessen."

Q: „Im Gefängnis hat er sich nur mit Ihnen getroffen, in einem getrennten Raum?“

A: „Genau, genau.“

Q: „Wissen Sie noch, wie lang diese Gespräche gedauert haben, die Sie nur mit dem Anwalt hatten unter vier Augen?“

A: „Die dauerten so lange wie wir wollten. Da wurden wir nicht behindert, da wurden wir allein gelassen. Wir mussten nur beide vorher durch die Sicherheitskontrolle gehen, wegen Waffen und Telefon und so.“

Q: "During the proceedings, did you always have the opportunity to speak privately with your lawyer? Meaning, even before you were questioned by the authorities?"

A: "During the proceedings themselves? I do not know... he came close to me, he came close to me and talked to me, but we were not in a separate room, the police officers were always close by. They took off the handcuffs, in the courtroom, but we were not separated, we were always in the courtroom with everybody. But so close that only I could

hear. And the first lawyer who came to see me in jail, of course he always talked to me in private, before the trials."

Q: *"In prison, he only met with you, in a separate room?"*

A: *"Exactly, exactly."*

Q: *"Do you remember how long those private conversations lasted that you had with just the lawyer?"*

A: *"They lasted as long as we wanted. We were not hindered by anyone, we were left alone. We just both had to go through security beforehand, because of weapons and phones and stuff." (Requested person, Italy)*

One of the recurring themes emerging from the interviews – and confirming the results of the first phase of the research project – is the **higher quality of legal assistance provided by private entrusted lawyers** – especially those with a specific expertise in international judicial proceedings – compared to public defenders appointed by judicial authorities. For this reason, some of the defendants participating in this fieldwork decided to replace the public defenders with entrusted lawyers at the very early stages of the EAW proceeding.

One of the major challenges reported by some of the interviewees was the **impossibility to contact the lawyer by phone from Italian detention facilities**: this is a major shortcoming of the Italian detention system since prison administration requests detainees to pay for the phone calls using phonecards; some of the defendants reported not having money with them when transferred to the prison, thus making it impossible to communicate with their lawyers.

"I spent two nights in prison, and I couldn't contact my lawyer because I couldn't make phone calls. I had to get a card to make a phone call. I had no idea what was going on. I didn't know that my lawyer was trying to get me out. But because it was a Friday, I had to wait until Monday because the judge was not there." (Requested person, Italy)

"I think the Italian police had to communicate to me that I need to bring some personal belongings. We were on holiday, so I left everything with my wife so she could take care of it. Also, my new phone and everything. And so to have any contact with the outside world from prison, I needed to have money with me so I could make a phone call or anything. I didn't have any money, and it was like the ongoing circle: I needed to call to get money, I had no money so I couldn't call. And at some point I got a lawyer from the Italian government. But of course, I wasn't happy about it. So I tried to arrange with inmates if they know a good lawyer, a private lawyer, that we have to pay to change it and somebody who really and help me. And so I started that procedure. But also my wife, she started her procedure from her side and arranged me a private lawyer. And that got a little bit mixed up. So I think after a good week of detention the lawyer came to visit me the first time." (Requested person, Italy)

Once the detention period was concluded, the defendants had the opportunity to freely communicate with their lawyers in Italy.

The only defendant who was not arrested in Italy reported that legal assistance was provided since the early stages of the EAW proceeding and during his detention period in France: the defendant was in detention for three months and he was guaranteed the possibility to contact the lawyer, to meet him and to talk to him by phone from the detention facility.

“The defendant was sent to prison and we [the lawyers] got authorization to visit him. We could also have authorization to make phone calls. Maybe we did it, but I don't remember. He stayed in prison only three months: after that, every time we needed to talk, it was in our office or in the village where he lived. There were no problems to communicate.”
(Defence lawyer of one of the requested persons)

Communication was easy mostly because the defendant could speak French; otherwise, an interpreter would be needed whose costs though would be borne by the State.

“The biggest difficulty is when people don't speak French and they don't speak a language that you [the lawyer] can speak too. If it's English, it's okay for me. If it's another language like Romanian, I can have an interpreter come with me in prison. But I have to arrange it myself. He will be paid by the state. Okay, No problem. No problem. It is a defence, right? But I have to arrange the meeting, which means finding myself an interpreter, call them, ask them to come to prison with me.” (Defence lawyer of one of the requested persons)

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

The difficulties to contact the lawyers from Italian detention facilities due to the costs of the phone-calls and to administrative impediments represented a barrier to legal assistance also for the only defendant who was arrested in Italy due to an Italian EAW. The defendant had appointed a lawyer both in Italy and in France (the country where he ordinarily lives). He was arrested and detained in Italy and, during his detention period, he was not given the opportunity to contact his lawyer in France. According to the prison administration, they could not allow a phone-call to a French number because they could not be sure that the defendant was actually contacting the lawyer; however, the French lawyer might have visited the defendant in prison if he wanted to. According to the interviewee, this decision was a violation of his rights. The French lawyer was therefore contacted directly by the defendant's Italian lawyers.

“Una cosa che purtroppo non è stata possibile è contattare il mio avvocato in Francia. Questa cosa non me l'hanno lasciata fare: in carcere [a Torino] mi hanno detto che non era possibile chiamarlo perché è un avvocato francese. Ma scusa se io ho più avvocati e ho un avvocato in Francia, perché non posso avere il diritto di chiamarlo? Mi dicevano che era un numero francese che non potevano essere sicuri che fosse davvero il numero dell'avvocato e che serviva l'autorizzazione della procura. Che però poteva venire a visitarmi in carcere. Un casino.”

“One thing that unfortunately has not been possible is to contact my lawyer in France. They wouldn't let me do that: in prison [in Turin] they told me it wasn't possible to call him because he's a French lawyer. But excuse me if I have several lawyers and I have a lawyer in France, why can't I have the right to call him? They told me it was a French number that they couldn't be sure was really the lawyer's number and that they needed authorisation from the public prosecutor's office. That he could visit me in prison, though. A mess.”
(Requested person, Italy)

Despite these difficulties, he had no problem in receiving the assistance of the Italian lawyer: he could call him and confidentially communicate with him, except during the arrest when the consultation was witnessed by the officers at the police headquarters.

Q: Ha avuto la possibilità di parlare con il suo difensore in via confidenziale?

A: "In caserma controllano tutto, devono ascoltare cosa dici. [...] In carcere no il colloquio è confidenziale: l'avvocato veniva, parlavamo, non c'era nessun problema."

Q: Did you have the opportunity to talk to your lawyer in private before the authorities questioned you?

A: "In the police headquarters they control everything, they have to listen to what you say. [...] In prison they do not, the communication is confidential: the lawyer came, we talked, there was no problem." (Requested person, Italy)

A crucial element emerging from the fieldwork is that all three defendants arrested in Italy due to an EAW issued by another Member State, i.e., Greece, were not informed about the possibility to have a lawyer also in the issuing Country. And in fact, they did not have one until their entrusted lawyer in Italy personally contacted a colleague in the other Country and have them appointed by the defendant. **Dual legal assistance seems to be depending on the personal connections and networks of the criminal lawyers in the executing country:** this result confirms what emerged during the first phase of the research project. In this respect, one of these defendants clearly stressed that it is not enough to be a good criminal lawyer to deal adequately with EAW cases: it is necessary for the lawyer to have a specific expertise in the international judicial cooperation field.

"You can't just be a criminal lawyer. I think you have to know exactly this field and what you're doing. And I chose my lawyer in Italy exactly for that purpose, because he's quite a known person who helps people in this kind of procedures". (Requested person, Italy)

Another critical issue was highlighted by the defendant arrested in France due to an Italian EAW: he was indeed informed by French authorities about the possibility to appoint a lawyer in the issuing State, i.e., Italy, and he had an entrusted lawyer there whose name was communicated to the public prosecutor after the arrest. However, this information and the name of the appointed Italian lawyer were never communicated to Italian authorities. An Italian lawyer was officially appointed thanks to the support of the defendant's solidarity committee: the committee helped finding two Italian lawyers willing to work on this case and also helped with the communication between lawyers, since some members of the committee are Italian. The defendant's lawyer tried to file a complaint against this omission before French judicial authorities – arguing a violation of the defendant's right to legal assistance –; however, this complaint was not accepted as a ground for the suspension or annulment of the EAW.

"Police officers asked the defendant if he wanted a lawyer in Italy. And he said: If I am sent back to Italy, I appoint Mr. XX in Milan. Why is it important? Because it is the law and the European law which say that it's necessary to provide this information. But it's very interesting because the information about this appointment [of the Italian lawyer] was never transmitted to Italy. Never." (Defence lawyer of one of the requested persons)

d. Communication between the lawyers in both states

The interviews with the defendants confirmed another result emerging from the first phase of this research project: **communication and cooperation between lawyers in the issuing and executing States are not encouraged or facilitated by public authorities; they primarily depend on the expertise, will and personal connection of the lawyers themselves.**

In some cases, this communication proved to be crucial to effectively assist the defendant, as it was the case of the Italian citizen arrested in France due to an Italian EAW. As reported by his lawyer, cooperation with Italian colleagues was key: they provided information and interpretation of the Italian original judicial case, helping French lawyers to understand the specific case in its cultural and political context. Moreover, they explained French lawyers the origin and meaning of the criminal charge of devastation and plundering (which does not exist in France), helping them to find an equivalent in the history of the French criminal system.

“Italian lawyers helped us on two topics. First, explain, in their point of view, which is not the point of view of the authorities, which we use, of course, because it's what the judges have in mind. But speaking about information about what happened in Italy, what led to this sentence. So we wanted their point of view as lawyers, but also as Italian people. [...] And then, they explained us what devastation and plundering is. Is it equivalent with something we have in France? And we discovered that we had such an offense in France at least twice, first in 1830 after the second French Revolution and it was sentenced with life penalty. And then you knew what happened in Algeria. And it was in 1960 that we created, again, this crime to, let's say, “pacify” Algeria and this offence was absolutely cancelled in 1994 when we had our new penal code and then never introduced again. So, they were very helpful to understand the offence” (Defence lawyer of one of the requested persons)

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

Preliminarily, it is worth reporting that legal aid is guaranteed in Italy to all defendants, including those involved in EAW proceedings. Legal aid can be used to pay for the costs of legal assistance provided by both public defenders and private entrusted lawyers. Defendants are requested to file a request to judicial authorities proving an income that is lower to the threshold established by law and periodically updated. As far as EAW cases are concerned, legal aid can be used to cover only the costs of Italian lawyers, not those of the legal assistance provided in the other EU Member State involved in the procedure.

All defendants participating in the fieldwork personally paid for their lawyers and **none benefitted from legal aid in Italy**, nor in the other Countries concerned by their cases. When it comes to the fees they had to pay, some of them referred they amounted to **several thousands of Euros**.

Two defendants reported that having **sufficient financial resources to pay for expert lawyers is crucial to obtain high-quality legal assistance** and, consequently, have the chance to successfully challenge the execution of the EAW.

“Se fossi stata una persona che non aveva le risorse finanziarie per pagare l’avvocato, rimanevo in prigione quattro anni. Una persona che non ha i fondi se li faceva e stava zitta [...] I soldi ti fanno strada nel mare. Senza i soldi non puoi avere un buon avvocato. Un avvocato d’ufficio non mi avrebbe mai fatto uscire [di prigione].”

“If I had been a person who did not have the financial resources to pay the lawyer, I would have been in prison for four years. A person who didn't have the funds would do it and shut up. [...] Money makes your way into the sea. Without money you cannot have a good lawyer. A public defender would have never got me out [of prison].” (Requested person, Italy)

Similarly:

“I'm extremely lucky because I have a quite a good lawyer that I knew I could rely on when the time came. He had already known that this could have happened. He had already prepared a memorandum for the prosecutor. He had already prepared to go and get me out of prison. And it took him still two days. So, I really don't know for people who don't have the means to have legal assistance.” (Requested person, Italy)

f. Additional best practices or challenges

An interesting practice was reported by the defendant arrested in France due to an Italian EAW when commenting on the legal assistance he received. More specifically, he reported that **criminal lawyers in France – both public defenders and entrusted lawyers - are organised in a professional order and according to their field of expertise**. Thanks to this organisational approach, the defendant could immediately benefit from the assistance of a public defender with a solid expertise in EAW cases. This practice allows defendants to be adequately assisted by lawyers who are trained and expert in their situation, also considering the EAW procedures have some peculiar aspects that differentiate them from ordinary judicial proceeding. This practice should be replicated in other EU Member States – including Italy – as to respond also to some of the challenges emerging from both phases of the research project, namely the lack of specific expertise of public defenders and the necessity to have sufficient financial means to pay for high-quality legal assistance which might cause a discrimination between wealth and low-income defendants.

g. Discussion of findings

Information about the right to be legally assisted in Italy was generally provided to the defendants, and some of them also had the opportunity to contact their lawyers from the police headquarters at the moment of the arrest. However, the two defendants who could not speak Italian could not properly understand this right and became fully aware later, thanks to other information channels.

Lawyers in Italy were reported to be present during judicial hearings, even if the confidentiality of consultations was not always guaranteed at police headquarters. A major shortcoming concerns the impossibility to contact the lawyers by phone from Italian detention facilities, since detainees must pay for phone-cards.

Moreover, defendants highlighted that the quality of legal assistance provided by public defenders is generally lower compared to entrusted private lawyers: specific expertise is reported to be requested to deal with EAW cases, confirming one of the results of the first phase of the research project.

As far as legal assistance in the issuing State is concerned, information about dual legal assistance was not provided to most defendants. The possibility to appoint a lawyer in the other concerned State was generally made possible thanks to the professional connections of the Italian lawyers. The same applies to communication and cooperation between lawyers which is not generally arranged or encouraged by Italian judicial authorities.

Eventually, none of the defendants benefitted from legal aid in Italy; on the opposite, some of them reported that sufficient financial means are necessary to obtain high-quality legal assistance.

4. Execution of the EAW

a. Crucial aspects of the EAW execution

As reported in the introductory section to this report, none of the defendants interviewed for this research consented to surrender, none was surrendered, and none of the EAWs they were concerned by was executed. The information they provided on the development of the EAW procedure though provided some interesting inputs on how the procedure itself is implemented in Italy and, more broadly, on the state of the art of the protection of rights of defendants in Italy.

Some **judicial mistakes** were reported to have been committed by Italian judicial authorities and used by lawyers to have the EAW annulled or suspended. This is the case of an Italian defendant arrested in Italy due to an Italian EAW which was annulled in 2022: according to the defendant, the EAW issued by Italy wrongly reported the judicial act justifying the arrest – namely, a detention order instead of a home-custody order, moreover, the Warrant was issued after four years from the beginning of the proceeding in Italy and its implementation would have caused an unreasonable removal of the defendant from France, the country where he moved in 2017 and where he currently works.

With regard to the **treatment received by Italian police officers** at the moment of the arrest, the two defendants speaking Italian and having the Italian nationality reported being treated respectfully. According to one of them, an Italian citizen of Moroccan origins, this was because he is highly integrated, he is an Italian citizen and he behaves well. He explained that at the moment of the arrest he was staying in a luxury hotel and he had an expensive car: in his opinion, his social condition influenced the opinion and conduct of the officers who treated him with respect.

“Sinceramente, io sono un marocchino italiano, sono un cittadino italiano. Il razzismo lo crei: se sei una persona integrata, vestita bene, pulita, educata non dai la possibilità agli altri di mancarti di rispetto. Le forze di polizia mi hanno trovato in un hotel a quattro stelle, ho una BMW, non si mettono a comportarsi in una irrispettosa. Non mi hanno messo le manette, mi hanno portato in caserma, tutto con rispetto. Hanno fatto il loro lavoro correttamente.”

“Honestly, I am a Moroccan Italian, I am an Italian citizen. You create racism: if you are an integrated person, well dressed, clean, polite you don't give others the chance to disrespect you. The police found me in a four-star hotel, I have a BMW, they didn't act disrespectful. They didn't put me in handcuffs, they took me to the police headquarters, all with respect. They did their job properly.” (Requested person, Italy)

“In the executing country - Italy - the police treated me actually well; it would be really unfair to say otherwise. They've been extremely respectful. They told me about my rights. They were almost reading the details. They were almost embarrassed to execute this arrest, but they had to by law. And they were very kind.” (Requested person, Italy)

A respectful treatment was reported also by the other two defendants arrested in Italy: however, in this case officers failed to provide information about procedural rights, mostly due to language barriers and lack of adequate interpretation, as reported in previous sub-sections.

“Out of the moments of my arrest, I was treated well. Okay. I had no complaints about the police. Also, I didn't struggle to go with them because, quite honestly, I didn't know why I had the arrest warrant. So the police didn't explain to me why they were going to arrest me. I thought I already closed everything from my past, but apparently not. And so,

I wasn't afraid to go with them or anything. And they didn't handcuff me. They were nice to my wife, to my children." (Requested person, Italy)

"Die Polizei in Meran, die mich ursprünglich verhaftet hat, die hat mich sehr vernünftig behandelt. Ich habe Ihnen erklärt, dass ich Diabetiker bin und etwas zu essen brauche. Erstmals haben die mich nur aus der Hütte geholt und haben mich nichts mitnehmen lassen, weil sie auch nicht hundertprozentig wussten, ob ich derjenige bin. Da hab ich erstmal ein bisschen gefroren. Dann haben sie mich mit auf die Wache genommen, haben mir aber was zu essen besorgt, zu trinken, und ein Ladekabel für mein Phon, damit ich erstmal noch schnell meiner Familie Bescheid sagen konnte, dass es Probleme gibt."

"The police in Merano, who originally arrested me, they treated me very reasonably. I explained that I was diabetic and needed something to eat. At first, they just took me out of the cabin and didn't let me take anything with me, because they also didn't know one hundred percent whether I was the one. So I was cold for a little. Then they took me to the police station, but got me something to eat, something to drink, and a charger for my phone, so that I could quickly tell my family that there were problems." (Requested person, Italy)

Very negative treatment was reported to be inflicted upon the defendants both in Italian prisons and by police officers in other EU Member States, especially Greece.

This is the case of an Italian citizen arrested in Italy due to a Greek EAW:

"I cannot say the same about Greece. It was shameful and inhumane condition whatsoever. I have terrible things to say about Greece. Not only they issued an absurd accusation against me, a warrant on completely baseless things. When I was arrested there, I was arrested actually with three of my children. They put us in detention with a in conditions that I cannot begin to explain. There was human excrement on the floor. Um, they literally treated us like dogs. I was afraid of my life and my children's safety. We were put without food, without any facilities for 48 hours in a hole, in a dark hole. Being a mother with three kids, I did not sleep for 48 hours because I didn't know what would happen there, both from the people with whom we were sharing the cell and from the guards themselves. The policemen, they called me bitch. They questioned me in Greek, which I did not understand. They kept accusing me of things, and they'd make me and my 12-year-old son sign some signed papers that we did not, to this day, understand. They arrested us at 4 a.m., and then they just threw us in a hole and locked the door for 48 hours." (Requested person, Italy)

Inadequate detention conditions in Greece were also the ground put forward before Italian judicial authorities to successfully suspend the execution of the EAW concerning another defendant:

"In Italien haben wir die menschenunwürdigen Bedingungen in den Gefängnissen, gerade in Kreta, angeführt. Weil ich ja damals, direkt nach der Tat, die Erfahrung gemacht habe wie das so abläuft in so einem Gefängnis. Dann hat der Anwalt natürlich versucht, diese menschenunwürdigen Haftbedingungen als Grund für den Widerspruch gegen die Auslieferung anzuführen, und natürlich im Zusammenhang damit meine schweren chronischen Erkrankungen. Das waren die Gründe, warum wir widersprechen wollten. [...] Die Richterin in Bozen hat es nicht berücksichtigt, die haben mich den Prozess verlieren lassen und damit haben sie es nicht berücksichtigt. Und haben nach der Antwort gesagt... die Griechen hatten einfach

die EU Richtlinien, die für so ein Gefängnis gelten müssen, diese Punkte wie Quadratmeter, ärztliche Versorgung, Freizeit, und Tageslicht und alles, die hatten die einfach abgeschrieben aus der EU Richtlinie und hatten die zurückgeschickt nach Bozen. Und damit hatte die Richterin die anerkannt und hat gesagt, ist doch alles in Ordnung, wir können den ausliefern, die Bedingungen sind doch super. So sinngemäß, so hat mir das der Anwalt übersetzt. Und damit haben sie nicht meine Gründe anerkannt, sondern gesagt, chronische Krankheit ist kein Grund um nicht inhaftiert zu sein und die Bedingungen in Griechenland passen mit den europäischen Richtlinien zusammen, und dann können wir auch ausliefern. Das war erstmal das Gericht in Bozen. Das in Rom hat ja dann anders entschieden. Und in Trient dann auch. Da haben dann die Anwälte unentwegt Unterlagen von Menschenrechtsorganisationen beigebracht, die aktuell waren, also von September und Oktober 2022, die das widerlegt haben, dass die Bedingungen so toll sind in Griechenland. Und deswegen hab ich dann letzten Endes den Prozess in Trient gewinnen können und meine Auslieferung verhindern können.“

"In Italy, we cited the inhumane conditions in the prisons, especially in Crete. Because at that time, directly after the crime, I had the experience of how things work in such a prison. Then, of course, the lawyer tried to cite these inhumane prison conditions as the reason for the objection to the extradition, and of course, in connection with this, my severe chronic illnesses. Those were the reasons why we wanted to object. [...] the judge in Bolzano did not take it into account, they made me lose the case and so they did not take it into account. And after the answer from Greece they said... the Greeks had simply copied the EU guidelines that have to apply to such a prison, these points like square meters, medical care, free time, and daylight and everything, they had simply copied them from the EU guidelines and sent them back to Bolzano. And with that, the judge recognized them and said, everything is okay, we can extradite him, the conditions are super. That is how the lawyer translated it to me. They did not recognize my reasons, but said that chronic illness is not a reason not to be imprisoned and that the conditions in Greece are in line with European guidelines, and that then we can extradite him. That was the court in Bolzano. The one in Rome decided differently. And in Trento, too. Then the lawyers kept bringing documents from human rights organizations that were up to date, i.e. from September and October 2022, which disproved that the conditions in Greece are that great. And that's why I was ultimately able to win the trial in Trento and prevent my extradition." (Requested person, Italy)

The Italian citizen arrested in Italy due to a Greek EAW mentioned above also negatively commented on detention conditions in Italy:

"So, the prison was awful. I had to spend two nights there. That was terrible. I have to say, it was some of the scariest time of my life. I was in the woman's block. The police assistant searched me, putting their hands in my vagina and in my back. I was shocked. The people I was with, it made me appreciate my life. They were there and they had no idea what was going on. They had no access to lawyers. They had no access to water. So I wanted to order water: but you can have it only filling this form and if you have money. I mean, I'm not talking about cigarettes or other whatever things. So, water was a currency, I realize. One of the inmates shared her water with me. It was time of COVID, so they had to have all the windows open. Thank God it was summer, but it was very, very cold. Still very dark inside. They locked me in because they were scared that I would be attacked. And I'm not exaggerating. I mean, I didn't get her name. There was a blond,

young policewoman who was doing the guard. There was an inmate who wanted to get close with me, I don't know if it makes sense to you. So, they locked me in so that other inmates could not come to me. I was alone, I was in isolation." (Requested person, Italy)

A very negative experience concerning detention conditions in Italy was reported also by other two foreign defendants who were arrested in Italy.

"At the point I got arrested and none of the guards spoke English. The ones who wanted to. The ones who spoke English. And at some point, they refused to speak English. I also told them straight up in their face, but they just ignore you and leave you. And then they don't explain to you exactly what is going on and what are your rights in the prison and what they can do for you. You have to find out everything by yourself and also everything by inmates. And of course, also, it didn't help that I was changing my lawyer and my wife was changing the lawyer, but still I couldn't call anybody. They didn't explain to me how or what. My wife, she couldn't contact me because they needed some legal documentation from the Netherlands, proving that she was my wife. Also arranging that kind of papers and sending it to the prison. It was like sent three or four or five times. They still denied receiving it. At some point, they also said that the prison director was on holiday. So I had to wait for a response before he comes back from holiday to see what happens and to see what will go on." (Requested person, Italy)

"Also aus meiner Sicht ist das Allerschlimmste natürlich gewesen, die Möglichkeit, sich nicht verständigen zu können. Am zweitschlimmsten war aufgrund der Tatsache, dass sich meine Krankheit dann negativ entwickelt hat, der Diabetes speziell, epileptische Anfälle hab ich nicht bekommen, aber mein Diabetes wurde durch die schlechte Nahrung in Verbindung mit der mangelhaften ärztlichen Versorgung, hat sich nicht positiv entwickelt. Ganz schlimm fand ich auch, dass ich nicht in eine deutsche Bibliothek gehen konnte, um mir deutsche Bücher zu holen, weil da niemand mehr arbeite im Gefängnis. ... Und was mich noch gestört hat, war, dass es keinen Bereich gab, wo man als Nichtraucher frei von Rauch sein konnte. Ich rauche nicht, ich kiffe nicht, ich nehme keine Drogen, das wurde aber in allen Zellen gemacht. Es gab keinen Platz in dem ganzen Gefängnistrakt, wo man als Nichtraucher mal Luft holen konnte. ... Selbst beim Commandante. Ich hab mal versucht, mich mit nem anderen italienischen Häftling mich zu beschweren, über die Missstände, und der hat dann mit ner Zigarre vor uns gesessen. Also nichts mit Gesundheitsschutz."

"Well, from my point of view, the very worst thing, of course, was the impossibility to communicate. The second worst thing was due to the fact that my illness then developed negatively, the diabetes in particular, I did not get epileptic seizures, but my diabetes was affected by the bad food in connection with the poor medical care, it did not develop positively. I also found it very bad that I could not go to a German library to get German books, because there was no one working in the prison. ... And what bothered me even more was that there was no area where you could be free from smoke as a non-smoker. I do not smoke, I do not smoke pot, I do not do drugs, but that was done in all the cells. There was no place in the whole prison wing where you could take a breath as a non-smoker. ... Even with the prison director. I once tried to complain to him together with another Italian prisoner, about the poor conditions, and he sat in front of us with a cigar. So there was no health protection at all." (Requested person, Italy)

At least one defendant commented on the possible **disproportionate use of EAWs**, an element which already emerged from the interviews with lawyers during the first phase of the research project:

"I apparently think Greece, I cannot speak about other European countries ... There are countries who abuse of this system [the EAW]. They issue warrants for whatever. And the burden of proof falls on you. And if you have a lawyer and money to prove you shouldn't be surrendered or you didn't do anything wrong, it's ok. And I think this is the biggest fault with the system. I think these especially with certain countries, there should be checks and balances on how they issue these warrants, on what grounds and how they even revoke them, because they never explain. They just sent, you know, two lines to the Ministry saying that it's been revoked. On what ground did you issue it? On what grounds you revoked it? It was almost like a joke because I spent two nights in the highest security prison in Bologna and my kids had to go to social services during that period. They were traumatized. You can't just joke around with people's lives like that, and now there's a risk that they might do it again." (Requested person, Italy)

As for possible **ways forward to improve the procedure**, defendants suggested some improvements that would be needed. For instance, one of them stressed the importance to foster a more effective communication between judicial authorities of the two concerned EU Member States: in his case, Italian authorities issued an EAW concerning pre-trial detention, whereas the judicial act of the file-case mentioned home-custody; moreover, the decision to annul the EAW was not properly registered, and this is the reason why the interviewee was arrested in Italy. He also stressed the importance of correctly editing and translating all communication (both judicial documents and emails) between judicial authorities of the two Countries as to reduce the possibility of mistakes that have a huge impact on the rights and lives of the defendants.

"Serve una buona comunicazione e una buona traduzione dei documenti, delle email, delle PEC inviate agli altri Paesi perché le cose siano chiare e non metti delle persone in difficoltà perché una persona che lavora e ha una vita, si trova in carcere perché c'è un PM o un giudice che ha sbagliato a mandare la mail?"

"You need good communication and good translation of documents, emails, certified emails sent to other countries so that things are clear and you don't put people in trouble because a person who works and has a life, is in jail because there is a prosecutor or a judge who sent the wrong email?" (Requested person, Italy)

b. Discussion of findings

None of the defendants consented to surrender, none was surrendered, and none of the EAWs they were concerned by was executed.

All defendants reported the treatment they received by Italian police officers at the moment of the arrest was appropriate and respectful. However, some complained about inadequate treatment received in Italian prisons and by foreign police officers.

One of the defendants complained about the disproportionate use of EAWs in some EU Member State, an issue that confirms one of the results emerging from the first phase of the research project.

CONCLUSION

The defendants interviewed for this fieldwork provided crucial insights on the effective implementation of EAW procedures in Italy, especially when it comes to procedural safeguards and fundamental rights of defendants. Even if procedural safeguards considered in this research project – i.e., right to information, right to interpretation and translation and right to legal assistance – seem to be formally respected overall, some major shortcomings emerged from the interviews.

Defendants were generally informed about their rights at the moment of arrest in Italy: the ways of provision of such information seem to vary though depending on the practices in place in each police headquarters. In some cases, the information is provided orally by the officers; in others, using written forms, sometimes available in two languages (Italian and English). The defendants who were arrested in Italy and who could not speak Italian (and in one case not even English) stressed that the Italian interpretation system has some relevant gaps that need to be addressed. These defendants were not able to comprehensively understand their situation, the reason of the arrest and the existence and contents of the EAW against them, until an interpreter intervened (some hours after the arrest) or thanks to the support of their lawyers. In view of this, interpretation services need to be reinforced in Italy, provided since the very first contact of the foreign defendant with public authorities and guaranteed in a language the defendant can understand, and not only in English.

Another element emerging from the interviews – which strongly confirms the results of the first phase of the research project – is the pivotal role played by private entrusted lawyers. Lawyers are mentioned by all interviewees as the professionals who help defendants understand the EAW procedure in its most technical aspects, especially when it comes to the consent to surrender and to the speciality principle. Lawyers are reported to inform the defendants about their rights, especially the right to benefit from legal assistance both in the issuing and in the executing countries (dual legal assistance). Private entrusted lawyers are also the professionals who allow an effective cooperation between lawyers in different countries, thanks to their professional connections and networks. When needed, interpretation is arranged by the lawyers themselves to communicate with the defendants or with the foreign lawyers. In this respect, defendants reported that the turning point of their EAW case was the intervention of an entrusted lawyer with a specific expertise in international judicial proceedings and EAWs to replace the public defenders appointed at the moment of the arrest. This latter element shows that being a criminal lawyer is often not sufficient to be able to deal with EAW cases: a specific expertise is requested to properly assist defendants. Closely connected to this remark is the fact that financial resources are needed to pay for high-quality legal assistance since legal aid in Italy can be accessed only in case of very low income and cannot be used to pay for legal costs in other EU Member States. One of the interviewees – referring to the French legal assistance system – suggested that lawyers (including public defenders) should be organised depending on their fields of expertise: this system could be introduced in Italy as well, as to allow defenders to choose a lawyer that can assist them in their specific case.

As far as legal assistance is concerned, another worrisome element was presented by the defendants concerning the possibility to communicate with the lawyers from detention facilities. No arrangements are made by public authorities and the prison administration as to allow defendants to contact their lawyers in Italy and in the issuing Countries: either the lawyers physically visit the defendants in prison, or the defendants must pay for the phone calls using phone-cards. Some of the interviewees reported being transferred to prison with no money with them, making it impossible to

contact their lawyers and family members until the judicial hearing validating their arrest where they could meet them in person.

To conclude, at least one defendant commented on the disproportionate use of EAWs by EU Member States, a complex judicial instrument that requires substantial financial and administrative resources and that should be therefore used to counter severe criminal offences.