

Carles Puigdemont and the European Arrest Warrant: Frequently Asked Questions

1. What needs to happen for the European Arrest Warrant ('EAW') to be sent to Belgium?

A Spanish prosecutor needs to request the issuance of an EAW to the Spanish judge dealing with the case. Under Spanish law, it is a necessary prerequisite that a detention order has been previously issued by the judge against the accused, or that there is a formal sentence. If the judge accepts the request, they will issue the EAW and will submit it directly to the competent judicial authority in Belgium.

2. What can Mr Puigdemont do to prevent the issuance of the EAW to Belgium?

Under the EU Directive on the Right of Access to a Lawyer, Mr Puigdemont has the right to be assisted by a lawyer in Spain. His role is to assist and advise the lawyer in Belgium concerning any grounds for refusal and any possibilities of the EAW being revoked or withdrawn. For instance, the EAW is considered invalid and must be refused if there is no national arrest warrant previously issued by Spain against Mr Puigdemont.

3. What other means does Spain have to get Mr Puigdemont to give evidence to the investigative judge?

There are other means that Spain could use to investigate Mr Puigdemont, instead of having him surrendered from Belgium. For instance, Spain could issue a European Investigation Order (EIO), which is a request to investigate a person in another member state, or ask Belgium to organise a hearing with Mr Puigdemont via video-link.

4. What happens when Belgium receives the EAW?

The Belgian federal police will firstly need to locate Mr Puigdemont, arrest him, and bring him to the investigative judge within 24 hours of the arrest. The investigative judge then informs Mr Puigdemont about the content of the EAW and notifies him of his rights. The judge interrogates Mr Puigdemont, and if he objects to the surrender, one of two things can happen:

- The judge refuses to surrender Mr Puigdemont to Spain, in which case he is released without any conditions.
- The judge makes an order to detain Mr Puigdemont or to release him with conditions (for example, bail, travel ban etc.) until a decision on the EAW is made. Mr Puigdemont may need to wait for up to 2 months until a decision is reached. During this period, the Belgian judge can ask for relevant information from the Spanish authorities to help them reach a decision.

If the judge decides to order Mr Puigdemont's surrender, he will be able to appeal the decision.

5. What arguments could Mr Puigdemont present to the court in Belgium to prevent the EAW from being executed?

There are several arguments that can be made to challenge an EAW. These include the following examples given below:

- a. The execution of the EAW could be refused if the facts of the alleged offence are not considered to be a crime in the executing state (the country that is being requested to surrender the individual). In this instance, Mr Puigdemont was charged in Spain for “rebellion” and “sedition”, but there are no direct equivalents of these offences under Belgian law.
On the other hand, Mr Puigdemont is also being prosecuted for misuse of public funds, which is recognised as a crime in Belgium.
- b. Mr Puigdemont could also challenge the EAW on the grounds that it is a ‘disproportionate’ measure (see below for an explanation of the term ‘proportionality’). He could argue that there are other measures that would enable his investigation without being surrendered from Belgium to Spain. These alternative measures include the EIO (see point 3). However, the Belgian courts have tended not to assess the proportionality of EAWs.
- c. Finally, Mr Puigdemont could also argue that his fundamental rights, as protected by the EU Charter on Fundamental Rights and the European Convention on Human Rights, would be put at risk if he were to be surrendered to Spain.

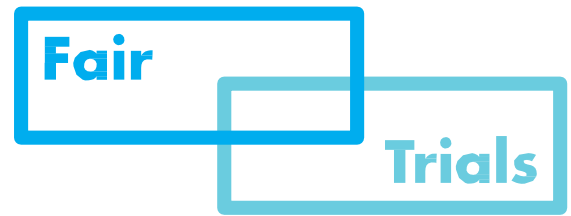
6. What fundamental rights arguments could Mr Puigdemont present?

In theory, Mr Puigdemont could argue that his surrender would violate a number of his fundamental rights, including his rights to liberty, to a fair trial, to freedom of expression. In addition, the European Court of Human Rights has found that excessive periods of pre-trial detention could be linked to degrading or inhuman treatment, in addition to the violation of the right to liberty.

7. What is Spain’s record on pre-trial detention?

A 2015 report coordinated by Fair Trials identified a number of issues regarding pre-trial detention in Spain including the following:

- a. Poor and belated access to the case-file for defence lawyers. Access to the case-file is not provided at all in *secreto de las actuaciones* procedures (secrecy proceedings) that are not uncommon in Spain, which is a significant disadvantage for the defence.
- b. Over-reliance by judges on arguments put forward by the prosecution at the expense of those of the defence.
- c. Abstract, unclear reasoning in judges’ decisions, without due attention to specific circumstances.
- d. Insufficient use of alternative measures to detention, like electronic tagging, or travel bans.
- e. Ineffective and irregular judicial reviews of pre-trial detention decisions.



8. What criticisms have been made by Fair Trials related to the EAW?

We have long been campaigning for the reform of the EAW in order to solve several critical situations, for instance when:

- People are extradited when there is a real risk they will be subjected to serious human rights abuses;
- The EAW is used when less severe alternatives could be explored;
- The EAW is disproportionately issued for minor crimes;
- Procedural safeguards, including a right to legal advice in both countries, are not respected.

9. What is proportionality?

In the context of EAWs, proportionality is the requirement that the EAW should not be used excessively, and be proportionate to its impact on the affected individual. EAWs can have a devastating impact on people's lives. For example, it can cause a person to lose their job and leave their family. An EAW issued for a very minor offence, or in circumstances where less detrimental alternatives are available, could be regarded as 'disproportionate'.

10. How are fundamental rights risks assessed in the context of an EAW?

When deciding on an EAW, courts must assess the implications on the fundamental rights of the individual wanted for surrender. This was recently sanctioned by the Court of Justice of the European Union in April 2016 in the joined cases of *Aranyosi* and *Caldararu*. According to this decision, the national court should refuse the surrender of the individual, if it finds that this would result in the violation of their fundamental rights. It is not yet fully clear how the courts should measure the risks of fundamental rights violations, and what sources of information they should rely on.

In the context of EAWs, the two fundamental rights that are most frequently threatened are the right to be free from inhuman and degrading treatment and the right to a fair trial. In order to ensure the smooth running of the EAW among EU Member States, the EU has adopted a set of binding laws to set minimum standards for procedural safeguards in criminal proceedings, such as the right of access to a lawyer and the right to be presumed innocent.