

# THE EUROPEAN ARREST WARRANT BETWEEN MUTUAL TRUST AND FUNDAMENTAL RIGHTS: AN ANALYSIS OF THE JURISPRUDENTIAL DEVELOPMENTS OF THE COURT OF JUSTICE OF THE EUROPEAN UNION AND THEIR EFFECTS

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## Abstract

Amid a European landscape increasingly marked by eroding mutual trust among certain Member States, the protection of fundamental rights within the European Arrest Warrant (EAW) mechanism has undergone notable consolidation. This study explores the extent to which the Court of Justice of the European Union (CJEU) has managed, since the inception of the EAW, the structural tension between the principle of mutual trust and the imperative of fundamental-rights protection. To this end, it examines the evolution and recalibration of the CJEU's case law, which now enables executing judicial authorities to refuse the enforcement of a warrant where the observance of fundamental rights is at stake.

Through the theoretical lens of the “rights as trumps” doctrine and the application of the “two-step test,” fundamental rights have progressively ceased to be perceived as abstract norms of primary law lacking binding effect and have instead become operational limits capable of tempering the automatism of judicial cooperation. By identifying the determinants of inter-state distrust and assessing their influence on the capacity of fundamental rights to counteract “blind trust,” this research traces the CJEU's jurisprudential transition toward a more balanced and contextualised understanding of mutual trust.

Accordingly, the paper advances the argument that the principle of mutual trust should be reconceptualised to encompass both trust and distrust as complementary instruments for managing uncertainty among Member States. From this perspective, mutual distrust—albeit exceptional and context-specific—emerges not as an obstacle but as a catalyst for the effective protection of fundamental rights. In so doing, it reinforces the European framework for their safeguarding and contributes to shaping the future orientation of judicial cooperation within the European Union.

## 1, INTRODUCTION

The principle of mutual trust occupies a pivotal position within the Union's constitutional architecture, serving as the cornerstone of numerous mutual recognition mechanisms that underpin the Area of Freedom, Security and Justice (AFSJ).

Although the centrality of mutual trust is undisputed, its precise normative scope and concrete legal implications continue to provoke sustained doctrinal and judicial debate. The principle is neither expressly mentioned nor defined in the Treaties but rather emerges as a jurisprudential construct progressively shaped by the CJEU. Through successive rulings, the Court has delineated its content, purpose, and limits—an evolutionary process in which preliminary references from national courts have played a decisive role. These references, often reflecting functional distrust among judicial authorities, have provided the Court with opportunities to clarify the contours of mutual trust and the conditions under which it may be restricted.

At the heart of this debate lies the challenge of reconciling the obligation of mutual trust with the protection of fundamental rights and the rule of law. This dialectic exposes a structural tension between the automaticity inherent in mutual recognition and the individualized scrutiny required by fundamental-rights standards. As Wendel observes, these tensions have a “quasi-federal” dimension, insofar as they reshape the distribution of responsibilities among Member States within the AFSJ and redefine the horizontal dynamics of rights protection.

The balance struck between automatic recognition and the possibility of refusal effectively determines the allocation of accountability for compliance with fundamental rights. Where trust is imposed, responsibility rests primarily with the issuing Member State; conversely, when distrust is permitted, the executing authority shares responsibility by verifying the compatibility of the measure with EU fundamental-rights guarantees.

This judicial dialogue between the courts from UE states and the CJEU has been pretty powerful regarding the EAW — a “quick” procedural path which, from its inception, has provoked real earthquakes regarding its compatibility with constitutional and human-rights principles. The EAW Framework Decision (FDEAW) revolutionised extradition by introducing a system of automatic recognition of judicial decisions, significantly restricting the discretion of executing authorities. Refusal of surrender is permissible only on the basis of an exhaustive list of mandatory and optional grounds, which notably does not include explicit references to fundamental rights.

Although Article 1(3) FDEAW provides that the instrument shall not affect the obligation to respect fundamental rights as enshrined in Article 6 TEU, early case law such as *Radu* (C-396/11) rejected the notion that fundamental-rights violations could constitute implicit grounds for refusal. *Radu* thus exemplified a phase of “blind trust,” privileging the efficiency of cooperation over fundamental-rights scrutiny. Yet the judgment failed to resolve the underlying question of whether mutual trust admits limits grounded in rights protection—a question that has since defined the evolution of CJEU jurisprudence.

Over the past decade, this issue has gained renewed urgency against the backdrop of rule-of-law backsliding in certain Member States. The presumption that all Member States “share and respect” the common values of Article 2 TEU has increasingly been challenged by empirical realities, prompting national courts to question whether trust imposed by law can substitute for trust earned through adherence to those values.

In response to this changing landscape, the CJEU has progressively refined its approach. Faced with the need to reconcile mutual trust with the protection of fundamental rights, it has developed a structured framework—the so-called “two-step test”—allowing, in exceptional circumstances, the suspension of EAW execution where systemic deficiencies in the issuing state create a real risk of rights violations. This evolution reflects a gradual shift from the ideal of unqualified trust toward a model of conditional and reasoned confidence, capable of accommodating legitimate distrust without undermining the efficiency of judicial cooperation.

Against this background, the present study analyses the CJEU’s jurisprudential trajectory concerning the EAW, with particular attention to cases addressing judicial independence. This area provides a compelling illustration of the tension between normatively imposed trust and empirically grounded distrust, amplified by democratic backsliding and institutional fragility. The analysis identifies the inconsistencies inherent in the CJEU’s reasoning—arising from the disjunction between legally presumed trust and factual distrust—and advances proposals for reconciling the legal obligation of mutual trust with the empirical realities of judicial cooperation within the European Union.

## **II. The CJEU’s Jurisprudential Evolution and Its Effects.**

In its early jurisprudence on the EAW, the CJEU appeared to endorse a model of almost unconditional or “blind” trust among Member States. In landmark cases such as *Radu* and *Melloni*, the Court interpreted the FDEAW strictly, excluding the possibility that fundamental-rights considerations could operate as autonomous grounds for refusal even if such grounds were not legislated by FDEAW. Within this paradigm, the principle of mutual trust prevailed even in circumstances where the protection of individual rights might have warranted further scrutiny.

However, this rigid conception of mutual trust did not remain unchallenged. Mounting criticism from national courts and from the European Court of Human Rights (ECtHR) compelled the CJEU to refine its approach. The decisive turning point came with the twin judgments in *Aranyosi* and *Căldăraru*, which concerned systemic deficiencies in detention conditions in Hungary and Romania. For the first time, the Court recognised that executing authorities could suspend, and ultimately refuse, the execution of a EAW where such deficiencies created a real risk of inhuman or degrading treatment, contrary to Article 4 of the Charter of Fundamental Rights of the European Union.

This doctrinal innovation introduced a critical nuance into the operation of mutual trust: while the FDEAW contained no explicit human-rights ground for refusal, the Court interpreted Article 1(3) as implicitly authorising such an exception in exceptional cases. The resulting “two-step test” requires, first, that the executing authority determine whether there are systemic or generalised deficiencies in the issuing state’s legal system; and second, that it assess whether, in the particular circumstances of the individual case, the requested person would face a real risk of a rights violation. This structured reasoning—anchored in the Charter and in the constitutional traditions of the Member States—signalled a transition from absolute to conditional trust, introducing a limited but meaningful space for “legitimate distrust.”

The *Aranyosi* and *Căldăraru* judgments thus marked a fundamental shift in the CJEU’s philosophy, bridging the gap between mutual recognition and fundamental-rights protection. The Court reaffirmed that mutual trust is not absolute and must yield, in exceptional situations, to the imperatives of rights protection. Subsequent case law, including *Generalstaatsanwaltschaft (Conditions of detention in Hungary)* and *Dorobantu*, confirmed this line of reasoning and provided further operational guidance for national authorities assessing the risk of rights violations.

This jurisprudential evolution reached a new stage with *LM (Celmer)*, in which the CJEU extended the *Aranyosi* logic to the field of judicial independence. Against the backdrop of rule-of-law deterioration in Poland, the referring Irish court questioned whether it could refuse execution of an EAW on the ground that the issuing state’s judiciary lacked independence. In its judgment, the CJEU reaffirmed the two-step test as the governing framework. The first step requires establishing the existence of systemic or generalised deficiencies affecting judicial independence in the issuing state; the second step mandates an individualized assessment of whether the requested person faces a real risk that such deficiencies will compromise the fairness of their trial, in violation of Article 47 of the Charter.

Crucially, the Court confirmed that even where systemic deficiencies are proven, refusal of execution cannot be automatic. National courts must still ascertain, based on specific and concrete evidence, whether those deficiencies would affect the individual case. In so doing, the Court sought to preserve the delicate balance between upholding mutual trust and preventing impunity—the core rationale of the EAW system. Although this approach attracted criticism for being overly formalistic and insufficiently responsive to the gravity of rule-of-law erosion in Poland, it nevertheless provided a consistent analytical structure for national courts grappling with similar dilemmas.

Subsequent references from the Dutch *Rechtbank Amsterdam* further tested the boundaries of this framework. In 2020 and 2022, amid escalating concerns over judicial independence in Poland, the Dutch court asked whether the second step could be dispensed with when systemic deficiencies are so severe that any individual is presumed to face a real risk of an unfair trial. The CJEU, while acknowledging the worsening situation, maintained that the two-step test remains indispensable: general deficiencies cannot automatically justify refusal, as such a finding would effectively amount to a collective suspension of the EAW mechanism—a decision that lies with the EU’s political institutions under Article 7 TEU, not the judiciary.

Nonetheless, the Court gradually refined the operational content of both steps. It clarified that the first step requires a comprehensive, evidence-based assessment of the issuing state's judicial system, taking into account a wide range of sources, including European Commission reports, CJEU and ECtHR judgments, and national constitutional decisions. At the second step, the requested person bears the burden of demonstrating that systemic deficiencies have concretely affected, or are likely to affect, the handling of their case. However, where such proof is incomplete but credible indications exist, the executing authority must engage in dialogue with the issuing authority under Article 15(2) FDEAW. The absence of genuine cooperation in this dialogue may itself reinforce the finding of a real risk.

The CJEU's subsequent ruling in *Puig Gordi* confirmed the resilience and adaptability of the two-step test beyond the Polish context. In that case, Belgian courts refused to execute EAWs issued by the Spanish Supreme Court against Catalan political figures, citing doubts about the issuing court's jurisdiction and impartiality. The CJEU reiterated that the two-step test applies whenever fundamental-rights concerns arise, including those related to the right to a "tribunal established by law" under Article 47 of the Charter. Importantly, the Court clarified that deficiencies may also be group-specific rather than systemic, provided they affect an identifiable category of persons to which the requested individual belongs.

Taken together, these judgments illustrate both the continuity and the sophistication of the CJEU's approach. While the space for legitimate distrust remains narrowly circumscribed, the Court has progressively endowed national judges with clearer procedural and evidentiary tools for its exercise. The result is a jurisprudential equilibrium: mutual trust remains the default paradigm, yet it is now tempered by a structured and reasoned mechanism that allows fundamental rights to prevail in exceptional cases.

Through this evolution, the CJEU has transformed mutual trust from an unconditional legal fiction into a dynamic principle that must coexist with empirical realities of rights protection and rule-of-law compliance. The two-step test thus serves as both a procedural safeguard and a constitutional safety valve—preserving the functionality of the EAW while ensuring that cooperation does not come at the expense of fundamental rights.

### III. CONCLUSIONS

Although the theoretical possibility for national courts to refuse the execution of a European Arrest Warrant (EAW) on grounds related to the protection of fundamental rights was first recognised in *Aranyosi* and *LM (Celmer)*, its effective implementation initially proved both conceptually and practically challenging. National judicial authorities faced difficulties in determining the scope of their discretion within the CJEU's framework, caught between the imperative of judicial cooperation and the equally binding duty to ensure compliance with fundamental rights. Over time, however, successive clarifications in the Court's jurisprudence have gradually rendered the exercise of this discretion more coherent and operational. National courts now possess both the normative foundations and the interpretative tools necessary to substantiate and justify refusals based on "legitimate distrust."

The analysis undertaken in this study demonstrates that the CJEU's evolving case law has progressively redefined the contours of mutual trust, moving it away from a dogmatic presumption and towards a more nuanced and context-sensitive principle. The resulting balance acknowledges that mutual trust cannot exist in isolation from the factual and institutional realities within Member States. Where the rule of law or judicial independence is compromised, the presumption of trust must yield to a duty of verification. This recalibration does not undermine the principle itself; rather, it ensures its continued legitimacy and functionality within a pluralistic legal order.

Our central claim is that mutual trust, as a cornerstone of the Area of Freedom, Security and Justice, should not be construed as a rigid or self-contained obligation. Instead, it must operate within a relational framework which assure

that trust and distrust are reasonable joined in order to find a way for managing uncertainty among Member States. In this sense, distrust—when grounded in objective and reasoned assessment—functions not as a negation of trust, but as its necessary corrective, ensuring that cooperation remains consistent with the Union’s foundational values.

The jurisprudential trajectory examined here confirms that the CJEU has succeeded in maintaining this equilibrium, albeit within a narrow doctrinal corridor. The Court’s insistence on the exceptional nature of departures from mutual trust preserves the systemic coherence of the EAW mechanism, while its recognition of limited exceptions reinforces the primacy of fundamental rights and the rule of law. This dual movement reflects a deeper constitutional dynamic: the gradual Europeanisation of distrust as an instrument of accountability and rights protection within the Union’s judicial architecture.

Ultimately, the principle of mutual trust cannot be sustained through legal presumption alone. Its durability depends on the continued fidelity of Member States to the shared values of Article 2 TEU, and on the CJEU’s willingness to adapt its jurisprudence to evolving realities. As this study has argued, maintaining mutual trust in its current, largely one-dimensional form no longer suffices to safeguard the legitimacy of judicial cooperation in Europe. Recognising mutual distrust as an exceptional but integral component of the system represents not a weakening, but a maturation of the principle a shift from imposed confidence to earned reliability.

In this respect, the evolution of the CJEU’s case law offers both a doctrinal framework and a normative horizon for the future of the European Arrest Warrant: a model of judicial cooperation that remains efficient and effective, yet fully consonant with the Union’s constitutional commitment to the protection of fundamental rights and the rule of law.

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