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Assessing mutual trust among EU members: evidence from the European Arrest Warrant

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ABSTRACT

International cooperation on criminal justice requires mutual trust: a belief that the partner's legal system functions adequately and adheres to fundamental norms. The European Union builds its judicial-cooperation efforts on a presumption of mutual trust: EU members are assumed to trust each other's justice system since they share a commitment to human rights and the rule of law. Skeptics argue, however, that such trust does not really exist given the wide variation in legal standards and practices across Europe. Yet such skepticism has not been supported by systematic evidence. This article seeks to offer such evidence and to quantify the impact of the lack of mutual trust. It does so by examining the record of British and Irish participation in the European Arrest Warrant: a fast-track process of surrender of fugitives between Member States. We find that judicial authorities in Britain and Ireland deviate from the mutual-trust presumption: they accord a more favorable treatment to Member States with a stronger rule of law or a better human-rights record – and this considerably affects the rate of surrenders. This finding offers important implications for the EU's justice policy and for understanding cooperation against crime more broadly.

KEYWORDS Britain; European Arrest Warrant; extradition; human rights; Ireland; trust

In the era of globalization, legal systems cooperate with each other in the resolution of civil disputes and in the prosecution and punishment of criminal offenders. Such cooperation may take various forms: from the enforcement of civil judgments rendered by foreign courts through assistance in the collection of evidence to the extradition of criminal suspects. While cross-border cooperation in justice affairs increases the efficiency and effectiveness of the law, it also raises important dilemmas. One of those concerns sovereignty costs. Legal authority goes to the heart of state power, and cooperative measures in this area could be seen as circumscribing national sovereignty (Dzankic 2015; Fichera 2009a). Yet another dilemma revolves around the issue of trust. If the foreign legal system is not trusted to uphold fundamental values and to conduct a fair legal process, cooperation with it might offend

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one's norms and taint one's own legal system. Extradition brings the trust dilemma into sharp relief, since it poses a potentially serious threat to human rights (Dugard and Van den Wyngaert 1998). By extraditing a person to a country where they might be physically abused or deprived of due process, a state might itself become complicit in human-rights violations.

But who defines what is a sufficient respect for human rights or a legal process that is fair enough to warrant trust and allow cooperation? In many cases, states decide for themselves. They examine the prospective partner's legal institutions, rules, and practices, and determine whether these are satisfactory (Efrat and Newman 2016). The European Union, however, has its own solution to the trust dilemma: a presumption of mutual trust. This presumption is key to the EU's Area of Freedom, Security, and Justice, which includes a wide array of measures for judicial cooperation in civil and criminal matters. These measures require courts in one Member State to recognize and give effect to decisions of courts in other Member States. Such mutual recognition, in turn, relies on mutual trust: Member States are assumed to trust each other's justice system, since all EU countries share a commitment to democracy, human rights, and the rule of law.

While the EU Commission has declared that a 'high level of trust is indispensable for smooth cooperation among the judiciary in different Member States' (European Commission 2013a), critics argue that such trust does not exist in reality. Given the significant differences between legal systems across Europe, it is simply impossible to assume that all of them adhere to similar standards of justice, fairness, and human rights (Alegre and Leaf 2004; Vernimmen-Van Tiggelen and Surano 2008). According to one analyst, 'mutual trust, although presumed to exist, has not yet acquired a normative status. It appears to be more like a declaration of intent, i.e., the result of a top–bottom approach' (Fichera 2009a, 80). To date, however, there has been little effort to assess mutual trust among EU members in an empirical, systematic manner.

This study seeks to conduct a more rigorous evaluation of mutual trust in the field of EU criminal justice. At the focus of the investigation stands the most important and far-reaching instrument in this field: the European Arrest Warrant (EAW). In force since 2004, the European Arrest Warrant creates a fast-track procedure for extradition between EU Member States – 'surrender' in EU parlance – based on mutual recognition of judicial decisions. This means that, under the EAW, national judicial authorities must accept a warrant issued by another EU member without inquiring into the underlying facts and circumstances. The EAW also removes some of the traditional barriers to extradition, such as the ability of the Executive to block extradition. Instead, the EAW's system of surrender relies on courts alone, with minimal formality and no involvement of the Executive. Such a system of speedy surrender reinforces the concerns that typically accompany extradition: whether

the extradited person will receive a humane treatment and a fair trial. The EAW thus rests on the presumption that criminal-justice systems are equivalent throughout the EU and that criminal-defense rights are protected adequately and in a comparable way EU-wide (Alegre and Leaf 2004). In the execution of the EAW, do judicial authorities really follow this mutual-trust presumption? In other words, do they give similar treatment to all EU members, irrespective of any differences between their legal systems?

To answer this question, we analyze data on EAW surrenders from Britain and Ireland. The analysis suggests that British and Irish authorities do not accord similar treatment to all EU members on the basis of mutual trust. Rather, they surrender considerably more individuals to those members with better-quality justice systems and a stronger respect for human rights.

This study contributes to several bodies of literature. Most directly, it advances our understanding of EU justice policy, which has triggered legal debates but little empirical analysis. Specifically, this study is the first to provide quantitative evidence demonstrating that judicial authorities indeed deviate from the mutual-trust presumption and, importantly, it quantifies the impact of such deviation: a one-point increase along a conventional human-right measure can raise the rate of surrenders by as much as 75%. This means that differences between the human-rights record of Member States carry significant consequences for judicial cooperation in the EU. More broadly, this study advances the analysis of international cooperation against crime. Cooperative efforts to suppress crime have risen in magnitude and importance in an era of expanding cross-border criminal activities. Only recently, however, have international relations (IR) scholars begun to turn their attention to this issue (Kelley and Simmons 2015). The findings here suggest that cross-country differences in legal standards and human-rights protections might impede joint efforts against crime.

Mutual trust within the EU: reality or fiction?

Mutual trust stands at the heart of the European Union's criminal-justice policy. It underlies the principle of mutual recognition – the core governance principle in the EU's Area of Freedom, Security, and Justice. Mutual recognition requires Member States to give full effect to judicial decisions made in other Member States. The giving of an effect to foreign decisions is possible if there is a sufficiently high level of mutual trust between Member States. As the 2001 Programme of Measures to Implement the Principle of Mutual Recognition of Decisions in Criminal Matters explains:

> Implementation of the principle of mutual recognition of decisions in criminal matters presupposes that Member States have trust in each others' criminal justice systems. That trust is grounded, in particular, on their shared

> commitment to the principles of freedom, democracy and respect for human rights, fundamental freedoms and the rule of law.[1]

This Program established a direct link between mutual recognition and mutual trust and introduced such trust as a *presumption*: Member States trust each other's criminal-justice system since all systems share a commitment to fundamental principles of human rights and the rule of law.

In following years, 'mutual trust has become a household term in the EU criminal justice vocabulary and is regarded to be a prerequisite for a successful application of the principle of mutual recognition' (Willems 2016: 211). Numerous statements of EU officials and organs emphasize the importance of mutual trust. The EU's Justice Commissioner Viviane Reding, for example, suggested that 'Building bridges between the different justice systems means building trust. A truly European Area of Justice can only work if there is trust in each other's justice systems' (European Commission 2013b). The Commission declared that 'Mutual trust among EU Member States and their respective legal systems is the foundation of the Union' and 'the bedrock upon which EU justice policy should be built' (European Commission 2014a, 2014b).

But does mutual trust among the justice systems of EU members really exist? Do 'citizens, legal practitioners and judges fully trust judicial decisions irrespective of the Member State where they have been taken'? (European Commission 2014b). The answer varies. The European Court of Justice (ECJ) has defended a presumption of trust, based on shared respect for human rights (Ostropolski 2015). In a case questioning the validity of the EAW, the Court upheld that instrument and argued that it was justified 'on the basis of the principle of mutual recognition and in the light of the high degree of trust and solidarity between the Member States' (Advocaten voor de Wereld, para. 57). In another case, The Court emphasized that 'the principle of mutual trust between the Member States is of fundamental importance in EU law,' and requires each Member State to consider all the other Member States as complying with EU law and, particularly, with the fundamental rights recognized by EU law. According to the Court, the mutual-trust presumption is firm: Member States are presumed to be observing fundamental rights, and no evaluation of their actual rights record is allowed (Opinion 2/13, paras. 191–192). Only recently has the Court carved an exception to this presumption. While emphasizing that departure from the mutual-trust principle is only possible in exceptional circumstances, the Court authorized a deviation from this principle if there is a real risk that the individual concerned might suffer inhuman or degrading treatment (Aranyosi and Caldararu, paras. 82–94; *C.K v. Slovenia*.; Lenaerts 2017).

Critics, however, point out that the mutual-trust presumption rests on shaky foundations and may be more of a hope than a reality. According to

Vernimmen-Van Tiggelen and Surano (2008: 20), 'mutual trust was simply assumed to exist … In reality, this trust is still not spontaneously felt and is by no means always evident in practice.' The trust presumption's fundamental flaw, critics argue, is its assumption of an equivalence in the quality of judicial decisions and criminal-justice safeguards across the EU. In practice, criminal-justice systems in Europe vary greatly, and the protections they afford to suspects, defendants or incarcerated individuals vary as well. Critics point out, for example, that while all EU members are parties to the European Convention of Human Rights, this in itself does not guarantee sufficient protection of criminal-defense rights:

> Respect for human rights, however, is not simply a matter of declaratory intent, the protections must be real, not simply apparent on paper. The vast majority of current EU Member States and accession states have had recent judgments against them in the European Court of Human Rights relating to their criminal justice systems. (Alegre and Leaf 2004: 216)

Responding to growing demands to consider criminal-defense rights, the European Commission, Council, and Parliament came to recognize that mutual trust cannot just be assumed: it has to be fostered and strengthened (Willems 2016: 227). One of the means to achieve mutual trust is the establishment of common, EU-wide minimum standards of procedural rights in criminal proceedings to ensure that the basic rights of suspects and accused persons are protected sufficiently. An important first step in that direction was the adoption in 2009 of the Roadmap for Strengthening Procedural Rights of Suspected or Accused Persons in Criminal Proceedings '[f]or the purpose of enhancing mutual trust within the European Union.'[2] The 2009 Stockholm Programme similarly treats mutual trust as *a goal* rather than existing reality. The Programme declared that mutual trust between 'the different legal systems in the Member States will … be one of the main challenges for the future' and proposed different ways to strengthen mutual trust.[3] The 2014 European Investigation Order (EIO) further erodes the mutual-trust presumption. This framework for the sharing of evidence between Member States explicitly recognizes that the presumption of compliance with EU law and, in particular, with fundamental rights is *rebuttable* and therefore the execution of an investigation order may be refused on human-rights grounds.[4]

Overall, we have seen that the assessment of mutual trust between the justice systems of Member States varies across institutions and over time. The ECJ holds a more sanguine view of mutual trust than other EU organs; over time, the mutual-trust presumption has weakened to the degree of being declared rebuttable in the EIO. Yet to date, the mutual-trust debate lacks empirical foundations. Indeed, the mutual-trust presumption has met doubt and criticism, but little by way of rigorous empirical evaluation.

We seek to conduct such an evaluation of mutual trust based on the European Arrest Warrant: the EU's extradition scheme. As the European Commission (2014b) acknowledged, 'EU instruments such as the European Arrest Warrant … require a high level of mutual trust between justice authorities from different Member States.' Mutual trust must undergird the European Arrest Warrant, since extradition potentially threatens the requested person's fundamental rights. First and foremost, the person may suffer violation of the right to a fair trial. Following the extradition, the person might be tried by a non-independent court, could be held in a long pre-trial detention or compelled to confess guilt, or might suffer discrimination or prejudice on the basis of race, nationality, or other factors. In addition, the person could suffer abusive or inhuman treatment, including poor detention conditions, harsh interrogation techniques, physical abuse, or torture (Dugard and Van den Wyngaert 1998; Sadoff 2016: chap. 7). Such concerns are particularly salient for the EAW, which establishes a simplified surrender procedure and removes some of extradition's traditional safeguards. The following sections explain how the EAW operates, examine existing anecdotal evidence of mutual trust in the EAW context, and conduct a more rigorous investigation of trust based on EAW surrenders data.

What is the EAW? How does it work?

On both sides of the European Arrest Warrant stand judicial authorities: a judicial organ issues the EAW (issuing authority) and a judicial body executes it (executing authority). The process begins with the issuing of the EAW by a judge or public prosecutor, requesting another Member State to arrest and surrender a person. The motivation for the request is the need to initiate criminal proceedings against that person or execute a prison sentence or detention order. The EAW itself takes the shape of a simple, standard form which constitutes the sole basis for the arrest and surrender of the requested person. In this form, the issuing judicial authority must specify, among others, the identity and nationality of the requested person, evidence of an enforceable judgment or an arrest warrant (on which the EAW is based), the nature of the offense, and the penalty prescribed or imposed. That EAW is then transmitted from the issuing authority to the executing authority. Upon receipt of the EAW, the executing judicial authority is supposed to arrest the requested person and inform them of the arrest warrant and its contents, including the possibility of consenting to surrender. If a consent is not expressed, the executing authority holds a hearing. According to the Council Framework Decision that established the EAW, an arrest warrant 'shall be dealt with and executed as a matter of urgency' within strict time limits. A decision on the execution of the EAW must be made within 60 days of the requested person's arrest, or within 10 days after consent has been given. The actual

surrender must then take place as soon as possible on a date agreed between the relevant authorities – typically, within 10 days following the decision on the execution of the EAW[5] (Fichera 2009b: 89–93; Klimek, 2015: 134–139).

Beyond the standardization of the EAW form and the speeding up of the proceedings, the EAW takes additional measures to simplify the process of surrender – by removing or curtailing some of the safeguards that extradition typically includes. First, the EAW removed the nationality exception. While most civil-law countries of Europe prohibit or restrict the extradition of their citizens (Plachta 1999: 87–93), the European Arrest Warrant requires them to surrender their own citizens.[6] Second, the EAW contains limited grounds for refusal. Importantly, it does not include human rights or fair-trial concerns among the grounds for non-execution. The Framework Decision mentions such considerations,[7] but does not include an express provision to refuse surrender on human-rights grounds (Fichera 2009b: 49, 85–86). Third, the Executive plays no role in the process of surrender under the EAW – a radical departure from the traditional model of extradition, in which the ultimate decision on surrender rested in the hands of the political authorities. The EAW establishes a surrender procedure that is entirely judicial, with minimal Executive involvement.

The different features of the European Arrest Warrant – from the minimum formality of the process through the strict time limits to the limited list of grounds for refusal – build on mutual trust among the justice systems of Member States. As the EAW Framework Decision notes, 'The mechanism of the European arrest warrant is based on a high level of confidence between Member States.'[8] A judicial authority in the requested state must trust that the legal system in the surrender-requesting state adheres to the common rules and norms of the EU, including fundamental principles of human rights and the rule of law. It also has to trust that foreign legal authorities have the competence and capacity to perform their tasks as the EAW requires, and in a manner not radically different from what would be done in similar circumstances in one's own legal system (Fichera 2009b: 191; Sievers 2007).

Does the operation of the EAW reflect the existence of mutual trust among Member States? Do national justice-systems surrender individuals to each other irrespective of the different institutions, rules, and practices in each state? Descriptive statistics are equivocal. While acknowledging that 'the EAW system is far from perfect,' the Commission argues that it has become 'a very useful tool for Member States in the fight against crime.' The short duration of the surrender procedure is, according to the Commission, an indication of the EAW's operational success: 16 days from arrest to a decision on surrender if the person consented to the surrender, and 48.6 days in case the person did not consent to the surrender (2009 data) – compared with a one-year average for extradition prior to the EAW (European Commission 2011). Yet the rate of surrender suggests a less optimistic conclusion:

Between 2005 and 2013, Member States issued a total of 99,841 warrants, but only 26,210 surrenders were carried out during that period: a surrender rate of 26% (Carrera et al. 2013; European Parliament 2014a). Such a low rate of surrender might indicate the absence of trust. Yet such crude statistics tell us little about how disparities in legal standards influence surrenders and whether judicial authorities treat countries with lower standards differently.

The following section provides anecdotal evidence suggesting that the variation in standards of justice could undermine mutual trust and affect the operation of the EAW. Next, we offer more systematic evidence demonstrating that judicial authorities may be reluctant to overlook the different standards of Member States.

The EAW and mutual trust: what we currently know

Work in organizational sociology conceives of interorganizational trust as the expectation that a cooperating partner will act in a predictable, reliable, and fair manner. That is to say, partner organizations will act consistently, fulfill their obligations, and avoid opportunism (Dyer and Chu 2003; Zaheer et al. 1998). A key source of interorganizational trust stems from the institutional context in which the cooperating partners are embedded. More specifically, interorganizational trust is often based on the similarity in the partners' institutions, since such similarity creates a common set of explicit and tacit knowledge about the behavioral practices of the cooperating partners. Political scientists have indeed demonstrated that states with similar regimes are more likely to cooperate (Gartzke and Weisiger 2013; Leeds 1999). Legal-system similarity has been shown to strengthen mutual legal assistance and cooperation against child abduction (Efrat and Newman 2016, 2017), and it also facilitates cooperation between states and international courts (Mitchell and Powell 2011). Mayoral (2017: 561) finds that national judges tend to trust the EU's Court of Justice when they believe that EU and national legal principles are compatible.

Yet anecdotal evidence suggests that actors within the EU often focus on the *differences* between the legal systems of Member States, and this may explain the lack of mutual trust. According to a 2013 Eurobarometer survey, for example, a majority of EU citizens believe that there exist large differences between national judicial systems in terms of quality, efficiency, and independence (European Commission 2013c: 13, 60). Controversies surrounding the EAW in certain Member States reflect this belief and cast doubt on the existence of mutual trust.

In Italy, the transposition of the EAW Framework Decision met with significant resistance, as academics and practitioners heavily criticized the new instrument. For example, some expressed concerns about discriminatory treatment: an Italian citizen surrendered under the EAW would not enjoy

the same legal protections as an Italian tried at home. As a result of such concerns, Italy's legislation implementing the EAW departs from the Framework Decision by establishing a high number of mandatory grounds for refusal (Fichera 2009b: 147–162).

Germany transposed the European Arrest Warrant in 2004, but a year later the Federal Constitutional Court declared the transposition void, since it provided insufficient safeguards for German nationals. When drafting the second bill, the parliamentary debate highlighted the differences between the EU legal systems and the absence of common procedural standards. Several parliamentarians emphasized the lack of trust in foreign legal procedures and demanded stronger safeguards in the legislation implementing the EAW. That legislation indeed established a more complex surrender procedure and additional safeguards (Sievers 2007: 13–14; Sievers and Schmidt 2015: 118–119). German judges have also expressed skepticism of the European Arrest Warrant and identified problems caused by the heterogeneity of legal systems and cultural differences: Poland's issuing of EAWs for minor offenses, the slowness and corruption of the Italian legal system, poor prison conditions in Latvia, and the different procedures in the British judicial system. Some judges doubted whether mutual recognition was the best strategy for creating a European judicial area (Sievers 2007: 22–23).

In Britain, the EAW faced sustained, fierce criticism from members of Parliament (especially Conservatives) and from nongovernmental organizations. Some argued that the Executive – not just judges – should have a role in the process to ensure a just outcome and to prevent the rubber-stamping of foreign countries' requests (House of Lords and House of Commons 2011a: 25, 53; 2011b: 117–118). Another concern stemmed from the fact that surrender requests need not present evidence establishing a basic case against the requested person. This, critics argued, opened the door for trumped-up or politically motivated charges against innocent people (Coles 2009; House of Lords and House of Commons 2011b: 97). Many critics highlighted the differing standards of justice across EU members and the variation in their respect for human rights and due process. Among others, they cited poor prison conditions in certain countries, long pre-trial detention, and the admission of evidence that was inappropriately obtained (House of Lords and House of Commons 2011b: 188–193). As one member of the House of Lords put it:

> Varying criminal justice procedures and standards across the EU have meant some of those surrendered under the EAW suffer unfair treatment and breaches of their human rights. … The mutual trust in standards and practices which lies at the heart of the EAW system cannot just be assumed, it must have a solid foundation in good criminal justice practice in all Member States (House of Lords 2015: 767).

These concerns have reached the Commission:

> The Commission has received representations from European and national parliamentarians, defence lawyers, citizens and civil society groups highlighting a number of problems with the operation of the EAW … despite the fact that the law and criminal procedures of all Member States are subject to the standards of the European Court of Human Rights, there are often some doubts about standards being similar across the EU (European Commission 2011: 6).

An assessment by the European Parliamentary Research Service noted that 'mutual trust has been called into question by the practical application of the EAW,' including the extensive use of the EAW for minor offenses by some Member States and differing standards regarding procedural safeguards and fundamental rights (European Parliament 2014b: 9).

Overall, these anecdotal pieces of evidence suggest that some EU citizens, groups, judges, and politicians harbor doubts about the justice systems in other Member States. But do such sentiments affect the actual operation of the EAW by judicial authorities? Are there fewer surrenders to Member States seen as less trustworthy due to their weaker adherence to the rule of law and human rights? The following section answers these questions through an analysis of the British and Irish record.

Data and method

If the EAW works as intended, on the basis of mutual trust, all Member States should receive a similar treatment, regardless of the quality of their legal system or their record of respect for human rights. In other words, all Member States – even those with lower standards of justice – should stand a similar chance of having their surrender requests executed. If, however, the mutual-trust presumption does *not* hold, we would expect to observe differential treatment: there would be fewer surrenders to states deemed to have lower standards of justice. Judicial authorities would surrender *more* persons to states where human rights or fair-trial protections are stronger.

Testing these expectations requires data on the number of persons that a Member State surrendered to each of the other Member States. Unfortunately, such data are not easily available. An important source of quantitative data on the European Arrest Warrant is the annual Council questionnaire on quantitative information on the practical operation of the EAW. Yet in their responses to the questionnaire, Member States report the *total* number of surrenders in a given year, without detailing the number of surrenders to each Member State. In addition, the information collected through the Council's questionnaire suffers from flaws that severely limit its usefulness. Some Member States report incomplete or inaccurate data, and there are inconsistencies between Member States (Carrera et al. 2013).

National-level sources for EAW data are scarce. Most EU members do not publicly report how many persons they surrendered to each of the other Member States. Britain's National Crime Agency (NCA) does, however, provide such data for the period 2010–2015 and the current analysis makes use of these data. The annual number of surrenders from Britain to each Member State serves as the dependent variable in the following analysis.

Figure 1 illustrates the total number of surrenders from Britain to each Member State during the period examined here. Poland received the highest number of surrendered persons (3,752), followed by Lithuania (614), Romania (332), Czech Republic (315), and Latvia (280).

Two sets of indicators serve as key independent variables. First, the analysis employs two different measures of the quality of the legal system. One is the World Bank's Rule of Law indicator: a widely used measure of legal-system quality, which captures the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence. The second measure of legal-system quality is the Rule of Law Index developed by the World Justice Project.[9] Based on household and expert surveys, this index measures legal-system performance across eight areas of law, including criminal justice. The criminal-justice factor captures characteristics that are critical for the establishment of mutual trust in criminal matters: the timeliness and effectiveness of criminal adjudication, the impartiality of the criminal-justice system, the absence of corruption or improper government influence, as well as due process and the rights of the accused.

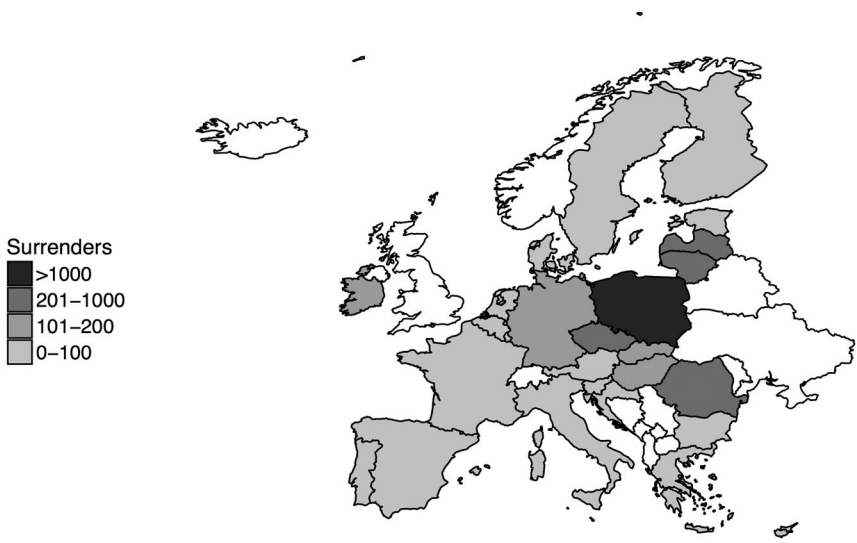

Figure 1. Surrenders from Britain, 2010–2015.

This variable therefore relates directly to the issue at hand: mutual trust in foreign criminal-justice systems.

The second set of key independent variables concerns human rights. Here we employ several measures of respect for human rights: Physical Integrity Rights Index (Cingranelli et al. 2014); Political Terror Scale (PTS) (Gibney et al. 2016); and Freedom House's measures of civil liberties and political rights. Note that the PTS and Freedom House measures are inverted, such that higher values indicate greater respect for human rights.

The analysis includes several control variables. We control for a country's population[10] and for the number of a country's citizens who reside in Britain[11] (since many of the people surrendered to a state are the state's own citizens who live abroad). GDP per capita is also controlled for;[12] so is the country's geographic distance from Britain, since the need to obtain fugitives may rise with geographic proximity. Fleeing criminals often seek refuge in near-by neighboring territories; more broadly, countries close to each other experience significant cross-border exchange, which raises the potential for criminal activity.

The number of persons surrendered to a Member State should correlate with the number of persons *requested* by that state, that is, the number of EAWs it issued. Our models therefore control for the number of surrender requests that Britain received from each Member State. The data come from the National Crime Agency.

A Member State's trade ties with Britain serve as another control variable.[13] Trade is generally known to increase cooperation among states (Robst et al. 2007), and it increases the likelihood of law-enforcement cooperation specifically (Efrat 2015).

Since the dependent variable is an annual count of surrendered persons, the analysis employs a count model as the primary model. Given the considerable variation in the number of surrenders across countries and over time, a negative binomial model is more appropriate than a Poisson count model. We therefore present the results of negative binomial regressions with standard errors clustered by country to account for potential dependence within units over time. To facilitate interpretation, we report incidence rate ratios (IRR). An IRR between zero and one represents a reduction in the expected count, given a one-unit increase in the independent variable; values greater than one indicate an increase in the expected count.

As a check, we also employ an alternative dependent variable: the ratio of surrenders, that is, the ratio between the number of persons actually surrendered to a Member State and the number of surrender requests that the Member State submitted. This dependent variable is modeled through a beta regression for fractional data.

Data sources and descriptive statistics of all variables appear in the online appendix.

Results

Mutual trust requires cooperation irrespective of the differences between legal systems. But if indeed the EAW suffers from a deficiency of mutual trust, the quality of the legal system or its human rights record should affect the number of surrenders to a Member State. Specifically, we should observe more surrenders to those Member States that rank higher on legal-system quality or human rights. Table 1 provides evidence to that effect by estimating the impact of justice-system quality.

Both measures of legal-system quality are positively and significantly associated with surrenders: Britain surrenders more persons to countries that have a better-quality legal system. In Model 1, a one-point increase in the rule of law nearly doubles the rate of surrenders. Model 2 employs the criminal-justice measure that is most directly relevant to the EAW. A one-point increase in the quality of the criminal-justice system raises the rate of surrenders by 9% [This variable ranges from 39 (Bulgaria) to 87 (Denmark)]. Increasing this measure by one standard-deviation would thus more than double the rate of surrenders. In short, these models strongly suggest that Britain's judicial authorities do not follow the mutual-trust presumption and do not treat all Member States equally. Instead, countries with a better-quality legal system receive a more favorable treatment and are more likely to have their surrender requests fulfilled.

This finding holds in Models 3 and 4, which employ an alternative measure of the dependent variable: the ratio between actual surrenders and surrender

Table 1. Influences on surrenders from Britain: quality of the requesting legal system.

	Model 1 Surrender count	Model 2 Surrender count	Model 3 Surrender ratio	Model 4 Surrender ratio
Rule of law	1.893*		0.648***	
	(0.703)		(0.25)	
Criminal justice		1.094***		0.087***
		(0.02)		(0.012)
Population	1.034	2.357***	−0.778***	−0.47
	(0.238)	(0.467)	(0.098)	(0.334)
Country's nationals in UK	1.844***	1	0.873***	0.419***
	(0.365)	(0.189)	(0.098)	(0.152)
Distance from UK	0.662	0.869	−0.283	−0.098
	(0.238)	(0.169)	(0.175)	(0.398)
GDP per capita	0.151***	0.07***	−0.464	−1.534***
	(0.096)	(0.028)	(0.287)	(0.27)
Surrender requests	1.001**	1.001***		
	(0.000)	(0.000)		
Trade with UK	1.449	2.982***	−0.095	0.35
	(0.63)	(0.791)	(0.196)	(0.401)
Observations	127	67	120	65
Prob > chi^2	0.00	0.00	0.00	0.00

Notes: Models 1 and 2: DV is the number of surrenders to a Member State; negative binomial regression; incidence rate ratios are reported. Models 3 and 4: DV is the ratio between actual surrenders and surrender requests; beta regression. *$p < 0.1$; **$p < 0.05$; ***$p < 0.01$. Robust standard errors in parentheses.

requests. A stronger rule of law or a better-quality criminal-justice system indeed correlates with a higher ratio of surrenders.

Looking at the human rights record of Member States, Table 2 offers a similar finding, as the four human-rights measures are all positively and significantly associated with surrenders. In Model 5, a one-point increase in respect for physical integrity rights raises the rate of surrenders by 75%. In Models 7 and 8, a one-point rise in respect for civil liberties or political rights, respectively, more than doubles the rate of surrenders. Once again, this record suggests a departure from the mutual-trust presumption and a non-equal treatment of Member States. Britain does not simply assume that all Member States respect human rights: it surrenders more persons to those states that actually have a stronger human-rights record – and the substantive effect of such differentiation among Member States is large.

Examining the controls in Tables 1 and 2, Britain tends to surrender more individuals to countries that submit more surrender requests, as one would expect, and to countries many of whose citizens reside in Britain. Trade ties with Britain are positively associated with the number of surrenders, but are only significant in Models 2 and 5. GDP per capita is negatively associated with surrenders, reflecting the fact that Britain surrenders many people to the poorer members of the EU in Eastern Europe. Whereas extraditions are often made between countries that are near each other, distance does not influence surrenders by Britain.

Table 2. Influences on surrenders from Britain: human rights.

	Model 5	Model 6	Model 7	Model 8
Physical integrity rights	1.746**			
	(0.388)			
Political terror scale		1.717**		
		(0.46)		
Civil liberties			2.083*	
			(0.789)	
Political rights				2.329**
				(0.959)
Population	1.5	0.92	0.958	0.904
	(0.379)	(0.192)	(0.198)	(0.191)
Country's nationals in UK	1.761***	1.929***	1.726***	1.769***
	(0.327)	(0.336)	(0.312)	(0.311)
Distance from UK	1.558	0.701	0.717	0.672
	(0.487)	(0.244)	(0.239)	(0.229)
GDP per capita	0.22***	0.216***	0.2***	0.206***
	(0.093)	(0.113)	(0.094)	(0.092)
Surrender requests	1.001*	1.001***	1.001***	1.001***
	(0.000)	(0.000)	(0.000)	(0.000)
Trade with UK	2.992***	1.445	1.613	1.482
	(1.242)	(0.575)	(0.616)	(0.58)
Observations	42	127	127	127
Prob > chi^2	0.00	0.00	0.00	0.00

Notes: Negative binomial regressions; incidence rate ratios are reported. *$p < 0.1$; **$p < 0.05$; ***$p < 0.01$. Robust standard errors in parentheses.

Overall, the findings here provide strong evidence against the mutual-trust presumption. The data suggest that EU Members may not receive the same treatment under the European Arrest Warrant. This comports with the anecdotal evidence above indicating serious concerns regarding the varying standards of justice across Europe. One might argue, however, that the statistical findings may be influenced by the British skepticism toward the EU – epitomized most clearly by the 2016 decision to leave the European Union. Do these findings hold for another EU Member?

An examination of the Irish record suggests that Britain is not the only country to diverge from the mutual-trust presumption: Ireland exhibits a similar tendency of cooperating more readily with better-quality justice systems. Annual reports of the Department of Justice and Equality provide data on the surrenders that Ireland carried out and on the surrender requests it received during 2008–2015. Table 3 shows that the number of surrenders increases with requests; it also increases with the number of citizens of the EU member who reside in Ireland.[14] Controlling for those, the quality of the legal system or its human rights record significantly affects the rate of surrenders. In Model 9, a one-unit increase in the rule of law raises the rate of surrenders more than fivefold. Model 10 employs the Law and Order measure from International Country Risk Guide. A one-unit increase along this measure nearly triples the rate of surrenders. A rise in the quality of the criminal-justice system (Model 11) or in respect for physical integrity rights (Model 12) similarly leads to a substantial increase in surrenders.

Table 3. Influences on surrenders from Ireland.

	Model 9	Model 10	Model 11	Model 12
Rule of law	5.314***			
	(3.18)			
Law and order		2.685***		
		(0.896)		
Criminal justice			1.151*	
			(0.095)	
Physical integrity rights				1.668**
				(0.367)
Population	1.012	0.879	1.794	0.954
	(0.127)	(0.13)	(1.826)	(0.156)
Country's nationals in Ireland	2.155***	2.485***	1.222	1.957***
	(0.424)	(0.486)	(1.334)	(0.435)
Distance from Ireland	0.924	0.761	0.241	0.593
	(0.466)	(0.422)	(0.491)	(0.436)
GDP per capita	0.117***	0.209***	0.038	0.272**
	(0.092)	(0.122)	(0.119)	(0.157)
Surrender requests	1.008***	1.007**	1.012*	1.007***
	(0.002)	(0.003)	(0.007)	(0.002)
Trade with Ireland	1.504*	1.432	1.352	1.632
	(0.327)	(0.318)	(0.626)	(0.503)
Observations	211	211	83	104
Prob > chi^2	0.00	0.00	0.00	0.00

Notes: Negative binomial regressions; incidence rate ratios are reported. *$p < 0.1$; **$p < 0.05$; ***$p < 0.01$. Robust standard errors in parentheses.

Conclusion

In April 2018, a German court denied Spain's request – based on the European Arrest Warrant – for the surrender of Catalan leader Carles Puigdemont (Eddy and Minder 2018). The German decision reinforces already-existing doubts in the EU's presumption of mutual trust. Critics argue that trust cannot be assumed to exist; EU institutions have vowed to foster and strengthen mutual trust instead of taking it as a given. To date, however, such skepticism has been based on anecdotal evidence. Looking at the British and Irish record, this study offers more systematic evidence against the presumption of mutual trust and, importantly, it shows the large impact of the deviation from this presumption: the number of surrenders to a Member State varies considerably with the quality of the legal system and its human-rights record. Future research may examine the generalizability of this finding to other Member States, if those make surrender data available. Future work may also clarify the causal mechanism behind this finding and trace the decision-making of judges in surrender cases: How judges actually evaluate the requesting country and based on what information.

What does this study imply for the EU and the EAW? One implication is that the EU should strengthen its efforts to foster mutual trust through means such as training judges and other judicial staff, facilitating contact and meetings between judges from different countries, and developing core minimum rules of criminal procedure. A more radical implication would be to simply do away with the mutual-trust presumption. In their study assessing the operation of the EAW, Carrera et al. (2013: 21–22) conclude that the mutual-trust presumption is no longer helpful or sustainable, and they 'call for a rebuttable and non-conclusive presumption about the integrity of member states' criminal justice systems.' The current study reinforces this conclusion by suggesting that judicial authorities indeed deviate from the mutual-trust presumption. Legitimizing this deviation by weakening the presumption may ultimately strengthen and boost confidence in the EAW. An instrument that recognizes the reality of differences and gaps between Member States may enjoy greater legitimacy than one based on an illusion of similar criminal-justice standards.

Beyond providing some empirical foundations to the EU's mutual-trust debate, the present study contributes to additional bodies of knowledge. First, it advances our understanding of the EU's justice initiatives – an area that has seen little empirical analysis to date. More broadly, it speaks to a small yet growing literature on the international efforts against crime (Andreas and Nadelmann 2006; Kelley and Simmons 2015). In an era of burgeoning transnational crime, states establish a variety of cooperative measures in order to enforce the law across borders and bring offenders to justice. Such measures, however, meet a formidable challenge: the need to

connect criminal-justice systems that vary in their institutions, rules, and procedures. Some studies suggest that the type and quality of domestic legal institutions matter for the establishment of law-enforcement cooperation (Efrat and Newman 2016, 2017). The current study similarly highlights domestic determinants of international cooperation: states cooperate more readily with those partners whose norms and institutions they consider satisfactory.

This article also advances the literature on judicial globalization, defined by Anne-Marie Slaughter (2000: 1104) as a 'process of judicial interaction across, above and below borders, exchanging ideas and cooperating in cases involving national as much as international law.' Legal scholars, however, have tended to focus on a specific, narrow type of interaction among courts: constitutional cross-fertilization, also known as judicial dialogue, in which judges cite foreign court decisions as a source of ideas and inspiration (Gelter and Siems 2014; Law 2015). Yet the practice of citing foreign rulings offers us little insight into judicial globalization, since it is a shallow form of cooperation: courts do not treat the foreign law they cite as authoritative or binding. More meaningful expressions of crossborder judicial interaction are those where courts accept each other's binding authority and thereby restrict their own sovereignty. This article examines the European Arrest Warrant as a case of deep, meaningful cooperation: State A's court puts its enforcement power behind an arrest warrant issued by State B's court. Looking at this case of significant cooperation among courts leads one to question Slaughter's (2003) vision of a 'global community of courts.' This study revealed that variation in respect for the rule of law and human rights might hinder cooperation among courts within the European Union – where all countries are democratic and generally respect the rule of law and human rights. In a worldwide community of courts, there is a much larger variation in the commitment to democracy, the rule of law, and human rights. This would make it much harder to establish trust and cooperation.

Notes

1. http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32001Y0115%2802%29
2. http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32009G1204(01), preamble, recital 8.
3. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:115:0001:0038:en:PDF, Arts. 1.2.1, 2.4, 3.2.
4. http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0041, preamble, recital 19.
5. Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA), Arts. 11, 13-17, 23 [hereafter EAW Framework Decision].

6. See Article 5(3) of the EAW Framework Decision.
7. EAW Framework Decision, preamble, recitals 10, 12, and 13; Article 1(3).
8. EAW Framework Decision, preamble, recital 10.
9. https://worldjusticeproject.org/
10. Source: Eurostat. This variable is logged.
11. Data on non-British population in the UK are from the Office for National Statistics. This variable is logged.
12. Source: World Bank's World Development Indicators. This variable is logged.
13. (export to UK+import from UK)/GDP. Trade data are from the Office for National Statistics. This variable is logged.
14. Source: Central Statistics Office.

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