

**SUZBIJANJE KRIMINALA U OKVIRU MEĐUNARODNE POLICIJSKE SARADNJE**  
Zbornik radova sa naučno-stručnog skupa sa međunarodnim učešćem

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# THE EUROPEAN ARREST WARRANT – A LEGAL INSTRUMENT TO COUNTER TRANSNATIONAL CRIME IN THE EU

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**Abstract:** Freedom of movement within Europe has a history of more than a half century. Some parts of Europe, named as “shelters”, are still used by the transnational criminal groups. They provide them logistic services; opportunities to recruit staff and groups have some benefits within the local bank system. Those circumstances, especially in divided and post-conflict societies, allowed the expansion on terrorism, money laundering and other forms related to organized crime. Faced with contemporary threats, Europe was forced to introduce new mechanisms in combat against these types of crime. Europe needed to establish the criteria - conditions and procedures that regulate its mechanisms as a part of police and judiciary cooperation. Among many solutions and initiatives of cooperation, it resulted in the creation of the European arrest warrant as a response to the expansion and intensity of the activities of criminal offenders. The paper deals with the factors that promoted the unique mechanism of the European arrest warrant, and provides an analysis based on review of EU legal acts. The preliminary impressions and experiences from the implementation of European arrest warrant will be presented shortly through the reports of the European Commission and Eurojust.

**Keywords:** European Arrest Warrant, European Union, procedure, authorities.

## Introduction

The objectives of cooperation in criminal matters within the European Union (EU) have existed for a long time. The concept of cooperation in this area is extremely sensitive and collides with the dilemma of the EU countries, especially regarding the question of intensity and scope of the derogation of national sovereignty. In 1977, the French President Valéry Giscard in the famous "Declaration of the European Council" envisaged a form of cooperation and assistance in criminal matters. In 1975, when the cooperation in criminal matters was proposed at a European level for the first time, it advanced, in concurrence with the establishment of the “Trevi Group”, as an intergovernmental forum to improve interstate cooperation in counterterrorism matters within the European Commission as response to the terrorism threat on the soil of Europe in the 70's.<sup>1</sup> The Treaty of Dublin signed on 04/12/1979 regarding the implementation of the European Convention of Strasbourg which was signed on 27/01/1977, represented a step forward in cooperation in criminal matters, but it referred only to the issues of repression and suppression of terrorism. During the 80's,

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<sup>1</sup> Oreste Pollicino., European Arrest Warrant and Constitutional Principles of the Member States: a Case Law – Based Outline in the Attempt to Strike the Right Balance between Interacting Legal Systems, German Law Journal, Vol. 09, No. 10, : 1316. [http://www.germanlawjournal.com/pdfs/Vol09No10/PDF\\_Vol\\_09\\_No\\_10\\_1313-1354\\_Developments\\_Pollicino.pdf](http://www.germanlawjournal.com/pdfs/Vol09No10/PDF_Vol_09_No_10_1313-1354_Developments_Pollicino.pdf) (accessed April 4, 2011).

the Single European Act (SEA) of 1986 provided a plan for political cooperation in internal affairs. Treaty of Maastricht in 1992 created the formal structure of the security cooperation's issues within chapter of "security and justice".

The Amsterdam Treaty<sup>2</sup> successively crystallized the objectives of the EU's "justice and home affairs" and created the concept of the "area of freedom, security and justice". The purpose of this step is to increase the democratic capacities of the Union within the area of intergovernmental cooperation on this field at the same time allowing minimal involvement of the European Parliament in the legislative process and minimal jurisdiction of the Court of Justice.<sup>3</sup>

One of the steps that emerged from a 1999 meeting of the European Council in Tampere was to create replacement of the procedure for extradition.<sup>4</sup> Based on these developments, the EU member states agreed in December 2001 to replace extradition within the EU with the European Arrest Warrant (EAW). This ensures the return of people in the state where they are accused of and/or have committed serious crimes or in the state where they are convicted. After six months, in June 2002, the EU agreed Council Framework Decision for the EAW demanding from member states EU to harmonize their national legislation according to solutions in the framework decision in order to create ground rules to apply the Warrant. According to the decision, all EU Member States are bound to produce results in terms of application of EAW by the end of 2003 in order to take effect from January 1st, 2004.<sup>5</sup> The adoption of this decision can be related to issues of global security threats, such as terrorism. The member states are called to cooperate as an adequate answer on temporary threats and risks. EAW is one of the instruments which creates strong basis. Along with the decision for establishing the EAW, the Commission also made decisions about: combating terrorism and drug trafficking, money laundering, fight against Euro counterfeiting, human trafficking, the European Communities against fraud and organized crime.<sup>6</sup> The need for the introduction of the EAW, as police-judicial instrument, was conditioned by the diversity of the national legislation and police procedures within EU in situations when they apply to offenses that have a transnational character.

EU institutions have rational, logical and at least understandable explanations for the necessity of maximum integration and centralization about issues related to criminal responsibility of a specific person for a specific criminal offence. Within the EU there are interconnections in many common areas, such as: economy, security, future, justice etc.

The necessity to construct the 'European criminal process', whose cornerstone is going to be provided by the EAW, is a reaction to the Community 'added values' such as free movements of persons. The rights of the individuals should, however, be associated with their obligations. The obligations which are indirectly brought upon

2 More on the significance and innovation of the Amsterdam Treaty in relation to third pillar issues see in: Oreste Pollicino; 1317,1318, [http://www.germanlawjournal.com/pdfs/Vol09No10/PDF\\_Vol\\_09\\_No\\_10\\_1313-1354\\_Developments\\_Pollicino.pdf](http://www.germanlawjournal.com/pdfs/Vol09No10/PDF_Vol_09_No_10_1313-1354_Developments_Pollicino.pdf) (accessed April 30, 2011).

3 Ester Herlin-Karnell, *The Lisbon Treaty and the Area of Criminal Law and Justice*, European Policy Analysis, (Swedish Institute for European Policy Studies, April Issue 3 – 2008), 2, [http://www.lissabonfordraget.se/docs/sieps-2008\\_3epa-the-lisbon-treaty-and-the-area-of-criminal-law-and-justice.pdf](http://www.lissabonfordraget.se/docs/sieps-2008_3epa-the-lisbon-treaty-and-the-area-of-criminal-law-and-justice.pdf), (accessed April 25, 2011).

4 The conclusions of the Council (point 35) stressed the urgent need to eliminate the procedure for extradition by replacing it with a simple one. European Council calls on the Commission's in order to take decision in order to prepare proposals in the spirit of the Schengen Agreement. Available at: [http://www.europarl.europa.eu/summits/tam\\_en.htm](http://www.europarl.europa.eu/summits/tam_en.htm) (accessed April 25, 2011).

5 European Arrest Warrant to replace extradition, European Commission – Directorate – General Justice and Home Affairs, page 1, Available at: <http://www.justice.org.uk/images/pdfs/eurschmidt.pdf> (accessed April 25, 2011).

6 See more about the motives, circumstances, discussions about the development of the idea of establishing EAW within the EU: Massimo Fichera, *The European Arrest Warrant and the Sovereign State: A Marriage of Convenience?*, (European Law Journal, Vol. 15, No. 1, January 2009), 70 – 72.

individuals within the scope of the 'European criminal law and process' result just from the common rights and values we have. Such values cannot be found in any other "international legal space".<sup>7</sup>

The Lisbon Treaty (also known as "the reform treaty"), if we apply deductive approach in regulating issues on EU legislative, creates the foundation, or provides legal basis for the existence of EAW. Specifically, in the chapter "Freedom, Security and Justice" (Article 63 of the Lisbon Treaty), it provides basis on issues for cooperation and legal assistance in criminal matters, especially police and judicial cooperation, comprising: 1) General Provisions, 2) Policies in border control, asylum and immigration, 3) Judicial cooperation in civil works, 4) Judicial cooperation in criminal matters and 5) Police cooperation. The Lisbon treaty also reinforces efforts to ensure higher level of security through measures aiming to prevent and combat crime, and by measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as mutual recognition of judgments in criminal matters and, if required, achieving this by amending national laws on this matter.<sup>8</sup>

Since December 2009, as a result of the entry into force of the Lisbon Treaty and the legally binding nature of the Charter of Fundamental Rights, the provisions in the Lisbon Treaty governing legislative instruments in the area of police and judicial cooperation have changed the context in which the EAW operates. In accordance with the Treaty, whenever a pre-Lisbon instrument such as the Council Framework Decision is amended, the Commission's power to take infringement proceedings and the jurisdiction of the European Court of Justice becomes applicable to the amended measure. In any event those powers will apply after 1 December 2014 at the end of the transitional period laid down in the Treaty. In addition, any amendment of the Council Framework Decision means that the new rules introduced by the Lisbon Treaty for the adoption of legislative measures in this area will apply. These rules include co-decision between the European Parliament and Council and the possibility of non-participation of some Member States.<sup>9</sup>

## **The Opportunities of Implementation of the European Arrest Warrant**

The European Arrest Warrant (EAW) is an instrument whose legal basis can be seen in Council framework decision of June 13, 2002.<sup>10</sup> EAW is implemented in all member states of the EU. Although initially it was supposed to be applicable starting from January 1, 2004, it was not achieved until April 22, 2005, or until all member states had harmonized their national legislation according to the requirements of the Framework Decision.<sup>11</sup> In order to achieve the preconditions in domestic legislation

7 Adam Górski, Piotr Hofmanski, *The European Arrest Warrant and its Implementation in the Member States of the European Union*, (Wydawnictwo C. H. BECK, Warszawa 2008), 388.

8 *Treaty of Lisbon, Amending the Treaty on European Union and the Treaty establishing the European Community*, Article 63 – Area of freedom, Security and Justice, (2007/c 306/1), Official Journal of the European Union, [http://bookshop.europa.eu/is-bin/INTERSHOP.enfinity/WFS/EU-Bookshop-Site/en\\_GB/-/EUR/ViewPublicationStart?PublicationKey=FXAC07306](http://bookshop.europa.eu/is-bin/INTERSHOP.enfinity/WFS/EU-Bookshop-Site/en_GB/-/EUR/ViewPublicationStart?PublicationKey=FXAC07306), (accessed April 25, 2011).

9 Report from the Commission to the European Parliament and the Council on the implementation since 2007 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, (European Commission, Brussels, 11.04.2011, COM (2011) 175 final), 4.

10 2002/584/JHA: Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (EAWFD).

11 David Dickson, *Mutual Recognition in Practice: the European Arrest Warrant*: 1, Available at: [http://docs.google.com/viewer?a=v&q=cache:kEm-FgRfRkgj:www.tm.gov.lv/jaunumi/Notikumi/mutual\\_recognition\\_in\\_practice\\_riga\\_280109\\_4.doc+Mutual+Recognition+in+Practice:+the+European+Arrest+Warrant&hl=en&pid=bl&srcid=A DGEESiwnuKRWUE5423fuj7iocALk4J6yiJap6aN3Uh3pEz5RQ5nMIsHhZ6U1GhrTR7EQYTrZYkaGw3mR3rQ0-](http://docs.google.com/viewer?a=v&q=cache:kEm-FgRfRkgj:www.tm.gov.lv/jaunumi/Notikumi/mutual_recognition_in_practice_riga_280109_4.doc+Mutual+Recognition+in+Practice:+the+European+Arrest+Warrant&hl=en&pid=bl&srcid=A DGEESiwnuKRWUE5423fuj7iocALk4J6yiJap6aN3Uh3pEz5RQ5nMIsHhZ6U1GhrTR7EQYTrZYkaGw3mR3rQ0-)

constitutions of Germany, Malta, Cyprus, Poland and the Czech Republic had been enacted with amendments referring to the issue of their nationals. Request for examination of legality on the Framework Decision was filed in front of the European Court of Justice, measure that Attorney General refused.<sup>12</sup> The framework decision has been challenged by Constitutional or Supreme Courts of some member states raising the question of being aligned/in compliance with Constitutional provisions.<sup>13</sup> Procedure that questioned the legal form of the instrument was filed (regarding the form of the framework decision as legal instrument of the European Commission), asking this issue to be regulated by a convention.<sup>14</sup> The Advocate General considers that Convention could be also the instrument for such issues in accordance with the principle of subsidiarity but the rationale for using instrument such as Framework Decision lies at its effectiveness versus international conventions. It carried a risk not to be ratified by all members - states.

The European Arrest Warrant (EAW) is the first and one of the most important instruments in the context of the European criminal justice, which is assigned for the implementation of bilateral acknowledgement of adjudications and pre-trial orders; it is a significant jump from the traditional extradition law towards the Member States' high mutual confidence in their struggle against criminality.<sup>15</sup>

The proposed procedure replaces the traditional extradition procedure among the member states referring to persons who should be arrested and surrendered if in one of the member states the specific person is convicted and sentenced to immediate imprisonment of four months or more or remanded in custody where the offence of which he is charged carries a term of more than a year. The system that promotes the framework decision demands the national judicial authorities (or other competent authorities) of each member state to recognize and execute the arrest warrant and surrender the person who is subject to a particular warrant. The system aims to remove the well-known complexity and the lengthy procedure under the rules of extradition, creating conditions and possibilities for a system of free "movement" of judicial decisions in criminal matters, for persons who are in investigative procedure (unconvicted) and convicts, within the sphere of freedom, security and justice.<sup>16</sup> EAW is the first legal instrument based on mutual recognition of decisions in criminal matters. The change in relation to the old system of extradition is radical. EAW is eventually connected with the objectives laid down in Article 29 of the Treaty on European Union.<sup>17</sup>

The central objective of EAW is to establish a system of efficient and effective tool for preventing and suppressing crime and it is to be used in accordance with the principle of proportionality, while respecting human rights and freedoms of suspects and convicts. This instrument is grounded on the restriction of freedom, basically designed

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<sup>12</sup> Ibidem, 1.

<sup>13</sup> Shortly after the Framework Decision came into force, three constitutional courts in Europe, those of Poland, Germany and Cyprus set the question. This is the epitome of the relationship between the understanding of state sovereignty and mutual recognition / mutual trust. On one hand states shall approve the framework decision showing political will to build this instrument, on the other hand by initiating a procedure for assessing the constitutionality, they showed their insecurity and mutual distrust. The discussions and decisions of constitutional courts of Poland, Germany and Cyprus are available at: Massimo Fichera.;81 – 84.

<sup>14</sup> See more discussions and arguments about the appropriateness of the Framework Decision as a "legal instrument" of the Union in relation to convention: Massimo Fichera.;84 – 87.

<sup>15</sup> : Massimo Fichera, 71; Vennemann, N. The European Arrest Warrant and its human rights implications. (Zeitschrift für ausländisches öffentliches Recht und Völkerrecht. 2003), 63(1): 103.

<sup>16</sup> Luisa Vierucci, The European Arrest Warrant – An Additional Tool for Prosecuting ICC Crimes, [http://www.studistato.unifi.it/upload/sub/didattica/Vierucci\\_on\\_EAW\\_JICJ\\_04.pdf](http://www.studistato.unifi.it/upload/sub/didattica/Vierucci_on_EAW_JICJ_04.pdf) (accessed April 30, 2011).

<sup>17</sup> European Handbook on how to issue a European Arrest Warrant, Council of the European Union, Brussels, 17 December (2010):4.

for further prosecution of perpetrators of serious crimes, or crimes that can impose serious consequences and eventually can justify its existence and use of applying the EAW in order only to implement the laws or judgments.<sup>18</sup> EAW defines the warrant as a judicial decision which is applicable within the European Union, requested by a member state on the foundation of common (mutual) recognition.

Since 1 April 2007 certain changes have been made in legal decisions regarding the implementation of EAW according to the recommendations of the Commission. The fact is that 14 states amended their national legislation referring to EAW. On the other hand, the Commission finds that 12 states did not amend their national legislation although they should have done it, especially having in mind the recommendations made in previous reports of the Commission and the Council. The states that were mentioned in previous reports and which, contrary to the recommendations, did not make any changes are: Cyprus, Denmark, Italy, Malta, the Netherlands and Great Britain.<sup>19</sup>

The European Arrest Warrant may be filed for acts that are punishable by imprisonment in the country requesting the arrest or for persons in custody charged with offenses for which sentences of at least 12 months' imprisonment or detention of at least 4 months can be imposed. If the acts are punishable in the state that requires delivering the person for a detention or imprisonment of at least 3 years the warrant will be executed no matter how the state defines the act under the terms of the framework decision. This will be done regardless of the principle of double incrimination (point 1 and 2).<sup>20</sup>

Due to the dynamics of crime's development and the daily expansion of the range of offenses, EAW was initially limited to offenses related to transnational crime and procedures for international prosecution of perpetrators. According to the framework decision, the acts where the principle of double incrimination is irrelevant are: Participation in a criminal organization; Terrorism; Trafficking in human beings; Sexual exploitation of children and child pornography; Illicit trafficking in narcotic drugs and psychotropic substances; Illicit trafficking in weapons, ammunition and explosives; Corruption; Fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Community's financial interests; Laundering of the proceeds of crime; Counterfeiting currency, including of the euro; Computer-related crime; Environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties; Facilitation of unauthorized entry and residence; Murder, grievous bodily injury; Illicit trade in human organs and tissue; Kidnapping, illegal restraint and hostage-taking; Racism and xenophobia; Organized or armed robbery; Illicit trafficking in cultural goods, including antiques and works of art; Swindling; Racketeering and extortion; Counterfeiting and piracy of products; Forgery of administrative documents and trafficking therein; Forgery of means of payment; Illicit trafficking in hormonal substances and other growth promoters; Illicit trafficking in nuclear or radioactive materials; Trafficking in stolen vehicles; Rape; Arson; Crimes within the jurisdiction of the International Criminal Court; Unlawful seizure of aircraft/ships; Sabotage.<sup>21</sup>

18 European Handbook, 4.

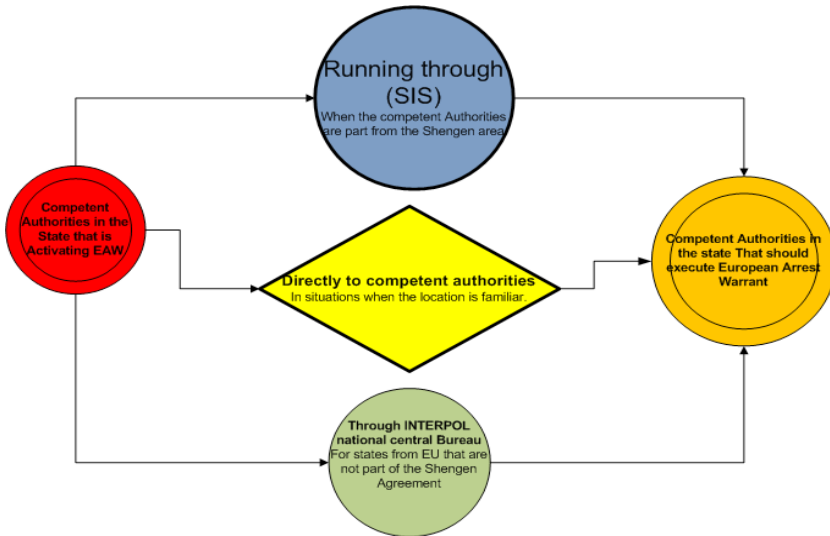
19 Report from the Commission to the European Parliament and the Council on the implementation since 2007 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, (European Commission, Brussels, 11.04.2011, COM (2011) 175 final), 5.

20 2002/584/JHA: Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States - Statements made by certain Member States on the adoption of the Framework Decision, Point 3 and 4 of the Framework Decision, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002F0584:EN:NOT> (accessed April 30, 2011).

21 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002F0584:EN:NOT> (accessed May 1, 2011).

Extradition as a legal instrument is characterized by the principle of “double incrimination”. EAW performs a qualitative jump in relation to this matter, making the principle of “double incrimination” only a ground for refusal of enforcement of a warrant depending on the state’s goodwill, according to national legislation.<sup>22</sup> Double incrimination is not necessary for the list of 32 categories of offenses listed in Article 2 (2) as long as they are punishable in the state that requires arrest to imprisonment or detention order for a period of up to 3 years. According to the Court of Justice decision, only the relevant judicial authorities seeking the implementation of EAW should decide on the execution of a warrant. However, a number of acts are included in the list were not qualified as offenses in every state during the implementation of the framework decision into national legislation. For example, in Belgium, euthanasia and abortion are not considered “murder” for the purpose of carrying out an arrest warrant. You could say that the double incrimination is voluntary, not mandatory basis for not executing of an arrest warrant. The Article 1 (2) of the framework decision, according to which EAW must be performed on the basis of mutual recognition, is explicitly mentioned in only 6 states - e.g. Dutch do not execute an arrest warrant for an offense which is not punishable under their national legislation.<sup>23</sup>

EAW has certain “revolutionary” achievements mostly in two dimensions: first, the dialogue is no longer between independent states but it is between independent judges, since cooperation is narrowed down to the point of judicial (judicial is preferred to executive authorities) authorities, and secondly, the framework decision has “neutralized” the question of citizenship (nationality) of the person, which is a remarkable achievement.<sup>24</sup>



The use of EAW implies applying certain criteria that were partly mentioned in the explanation of the instrument. The principle of proportionality is imposed as a criterion,

22 2002/584/JHA: Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States - Statements made by certain Member States on the adoption of the Framework Decision, Article 2 (4) and 4 (1) of the Framework Decision, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002F0584:EN:NOT> (accessed April 30, 2011).

23 Massimo Fichera, 2009, 79 – 80.

24 Massimo Fichera, 2009, 78 - 79.

especially taking into account the practice in the past 7 years of applying the EAW. Discussions in the Council regarding the findings on evaluations of the member states indicate that there is general agreement that the test of proportionality is a necessity in order to prevent the use of arrest warrants for offenses which, though perhaps come within the scope of Framework Decision, still are not sufficiently serious to justify the measures and cooperation required for executing of an arrest warrant.<sup>25</sup> The Commission indicates several aspects regarding the question of proportionality such as: length of the sentence, possible existence of an alternative approach that should be taken into account before triggering an arrest warrant, and ultimately to assess the cost versus benefits of performing specific arrest warrant. So, the question of proportionality generally refers to the appropriateness between limitation of freedom on one and offence that has been made and financial consequences on the other side. Some of the adequate actions regarding the proportionality are: using less coercive instruments of mutual legal assistance where possible, using video conferencing for suspects, using the Schengen Information System (SIS) to establish the place of residence of suspects, and using framework decision on the mutual recognition of financial penalties.<sup>26</sup>

## Procedure for executing European Arrest Warrant

When a person is deprived of liberty, the competent authorities must, within a certain time frame, receive an arrest warrant in the respective language of the state, in order to perform the procedure of surrendering or detaining the person requested. The deadlines and language are determined according to the national law of the state which is concerned. Differences in the procedure arise depending on whether the person who is required is located. When a person is located, an arrest warrant should be forwarded directly to the competent authorities in the country of the location. In order to ensure the person to remain at the same place, authorities usually forward the warrant to SIRENE National office responsible for submitting information to the EU member states that are part of the Schengen Information System (SIS). For the member states which are not members of the Schengen Information System, EAW is activated through the relevant National Office of Interpol in the particular country. Bulgaria, Cyprus, Ireland, Romania and the United Kingdom currently are not part of SIS.<sup>27</sup>

When the suspect is located notification is sent to the state immediately. Additional information about the case can be issued. Regarding the possibility of refusal, beside the mandatory, a warrant can not be executed in the following cases:

- Final decision has been made by a member state referring the offence for which warrant has been made. (*ne bis in idem* – not twice for the same);
- The offence is amnestied in the state that requires execution; and
- The person related to the specific warrant is under age according to national law of the state that should execute the warrant.<sup>28</sup>

At the begging of its implementation, there were some problems and benefits that had arisen from the link between enforceability of EAW and the irrevocability of the judgment. EAW allows conferment of the duty upon the executing judges to verify the

<sup>25</sup> Report from the Commission to the European Parliament and the Council on the implementation since 2007 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, (European Commission, Brussels, 11.04.2011, COM (2011) 175 final), 7 – 8.

<sup>26</sup> European Handbook, 15.

<sup>27</sup> Ibidem, page 19.

<sup>28</sup> [http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/judicial\\_cooperation\\_in\\_criminal\\_matters/l33167\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_criminal_matters/l33167_en.htm) (accessed April 30, 2011).

existence of serious indications of guilt. Use of the principle of mutual recognition for verifying guilt within implementation of EAW represents an exclusive competence of the issuing authority. Some countries had to define additionally the role of judge and prosecutor within implementation of EAW procedures at the national level. Regarding to the EAW, the problems anticipated arise where the Framework Decision provides for the rights of individuals and these rights are denied by national laws. The purpose of the Framework Decision that refers to the national Codes of Criminal procedure and it provides that the EAW is a decision of a court institution. That makes a legal basis on which every EU Member State is obliged to arrest and surrender the person contained in the decision that is a subject to initiating criminal prosecution. The outstanding bilateral issues could present an obstacle for implementation. The different concepts of *bringing to criminal account in rem* and *bringing to criminal account in personam* present a problem of approach. Even with the existing legal basis and agreement among most of the EU countries, there is a need for an institution that will coordinate the procedures, solve unclear situations and which will be established as an advisory body.

### The role of EUROJUST

Eurojust, created in 1999, as an EU's response to serious organized crime, acts in the spheres of freedom, security and justice within the EU. The inter-agency structure of Eurojust is composed of: national prosecutors, magistrates (judges who try summary offences), or police officers of equivalent competence (jurisdiction), appointed by each member state according to its legal system. Since 2008 Eurojust has developed their law enforcement for the exchange of information between interested parties, facilitated and strengthened the cooperation between national authorities in Eurojust, and strengthened establishment of relationships with partners and third countries.

Execution of an arrest warrant is primary responsibility of the competent authorities in each member state, with specific competence on the Minister Council. In the past extradition of persons has been treated as an intergovernmental issue, system that is significantly changed with the EAW. This system is set on this basis until entering into force on the Lisbon (Reform) Treaty. Namely, the jurisdiction which is now under the third pillar of the EU (according to the Maastricht Treaty) is being transferred to the jurisdiction of the EU bodies, since the pillar structure will cease to exist, transferring the jurisdiction to the EU bodies. In terms of execution, warrants are being executed without any problems when there is mutual compliance between states on the intergovernmental level.

The involvement of Eurojust (EJ) is not a rule for processing EAW. Including EJ depends on the significance and complexity of a particular case. The complexity depends on the number of states involved, the nature of interference of EJ, or whether the case requires cooperation and / or coordination. This cooperation is closely related to the number of bilateral and multilateral cases that has need for coordination / or cooperation.<sup>29</sup> According to the Lisbon Treaty, the EJ mission will provide support in order to strengthen cooperation and coordination between competent national authorities in charge of prosecuting serious crimes affecting two or more Member States or requiring prosecution of perpetrators on the basis of common interests, based on information provided by operations carried out by the competent authorities of Member States and by Europol.<sup>30</sup>

<sup>29</sup> EUROJUST, Annual report 2008, 20, Zagreb [http://www.eurojust.europa.eu/press\\_releases/annual\\_reports/2008/Annual\\_Report\\_2008\\_EN.pdf](http://www.eurojust.europa.eu/press_releases/annual_reports/2008/Annual_Report_2008_EN.pdf) (accessed October 17, 2010).

<sup>30</sup> Treaty of Lisbon, Amending the Treaty on European Union and the Treaty establishing the European Community, Article 69 D, (2007/c 306/1), Official Journal of the European Union, Available at: <http://bookshop.europa.eu/is-bin/>

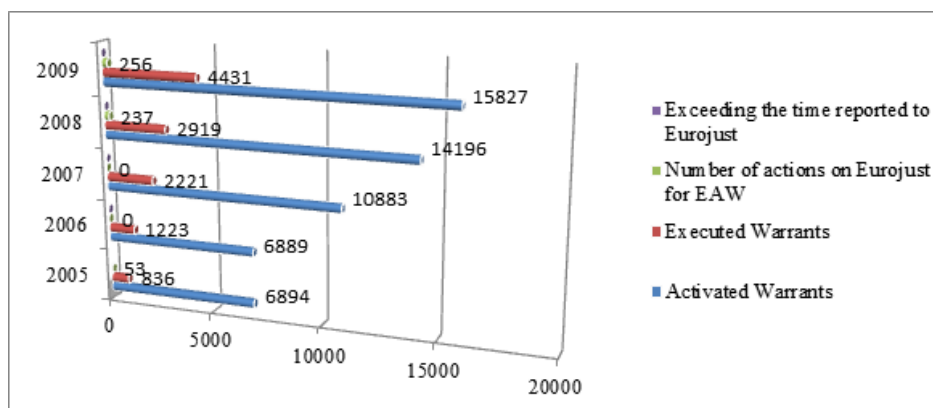


EJ regarding issues the Annual Report on its work, in which, among other things, it dedicates attention to the European Arrest Warrant. In this paper we will present data from the reports of EJ and European Commission. Unfortunately the data will have to be only partial, mostly because there is no standard methodology of gathering and presenting data and only some reports (referring to 2005 - 2009) have been published. This presents a problem because the lack of data of that type creates difficulties in making assessments, plans or strategy on the basis of certain trends. However, the statistical data given in the report of the Commission published on 11 April 2011 provide evaluation, bearing in mind that there are data on issued and executed warrants.

EJ has three main responsibilities in relation to the question of the EAW:

1. Mediation in the implementation of the EAW (Article 3 of the decision of the EJ).
2. Consultations regarding developments related to EAW (Article 16 of the framework decision of the Council of 13 June 2002 for the European Arrest Warrant, 2002/584/JHA)
3. Getting the reports of overstepping the limits of the time (Article 17 of the framework decision on ENA).<sup>31</sup>

Graph no.1: The total of activated and committed Warrants in 2005 – 2009 period <sup>32</sup>



From the beginning of its implementation EAW has shown continuity on one, but also a significant change in the intensity of the application which expresses certain continuity on the other hand. This can be seen as a positive trend in terms of efficacy of police and judicial institutions. Increased use of EAW warns about the issues related to the violence of human rights and freedoms and adequacy of the recruitment and activation of essential resources to apprehended persons for acts of minor importance. It confirms the disproportion of the number of activated and executed warrants.

INTERSHOP.enfinity/WFS/EU-Bookshop-Site/en\_GB/-/EUR/ViewPublication-Start?PublicationKey=FXAC07306 (accessed October 17, 2010).

31 EUROJUST, Annual report 2008, page 20, Available at: [http://www.eurojust.europa.eu/press\\_releases/annual\\_reports/2008/Annual\\_Report\\_2008\\_EN.pdf](http://www.eurojust.europa.eu/press_releases/annual_reports/2008/Annual_Report_2008_EN.pdf) (accessed October 17, 2010).

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## Summary

The EAW has been applied for the past seven years and it still causes certain public attention especially now when the practice offers empirical data, providing a basis for making judgments on certain weaknesses in terms of the instrument itself and the practical problems involved in its implementation. The principle of reciprocity is one of the issues that require attention, along with that of activities towards further unification of the level of freedom of assessment about the reasons for rejecting the request for enforcement of the warrant, as well the differences which emerge among the competent authorities of the EU member states (e.g. in Denmark and Germany these are the Departments of Justice, in Cyprus it is the Public Prosecutor).

Some of the questions that remain to be answered in order to overcome the complications and problems of application of EAW are: the need for full compliance of national legislation of the member states of the EU with the framework decision, the practice of requesting warrants for offenses of minor importance, the need for training courses for the police, judicial and other competent authorities involved in the implementation of EAW, and apparent need for gathering data in relation to EAW. Regarding data collection of extreme importance, it should be done according to a uniform methodology. Particular care should be taken when the warrant is applied on the grounds that affect some of the basic rights and freedoms of citizens, particularly in this context of the right to freedom which can be seriously suspended.

For more than 20 years the Balkans has represented a place where continuous threats arising from the existence of transnational organized groups have been present. Also, double citizenship is not uncommon among the people of the Balkan states. Double citizenship is often used as an instrument for avoiding criminal responsibility, especially in the contemporary situation when the Balkan states still use the mechanism of extradition. It is unacceptable that the citizenship should be used as a means for avoiding criminal responsibility. The reality in the Balkans shows that the right to citizenship (from which certain rights and obligations arise) is becoming “grounds for excluding from criminal liability”! In these circumstances it would not be a bad example if the instrument of the European Arrest Warrant should be applied in the states of the Western Balkans. The Republic of Macedonia has already amended its Constitution in order to make legal basis for its citizens to be extradited to another state when the person is subject to criminal prosecution. This act should be recognized by other states of the Balkan region, which should respond appropriately and in reciprocity.