

THE EUROPEAN ARREST WARRANT - EUROPOL

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Abstract: *Given that organized crime and corruption have become the main threat against the national, regional and international security, and therefore the struggle against them is becoming more complex. Since its inception, Europol promote the efficient methods in countering international crime. One method is certainly the establishment of a European Arrest Warrant that represents a revolutionary instrument. He for the first time to bypass the extradition procedure, which was created decades ago, and that persistently defy the gradual disappearance of borders between the Member States of the European Union. Simple procedure enables almost instant order execution, in order to reduce costs, simpler and more efficient cooperation and the fulfillment of the ideals of bringing the culprits to justice, regardless of their nationality. In practice, however, this institution faces many problems, abuse and misunderstanding.*

Keywords: *European Union, the European arrest warrant, international cooperation in criminal matters, extradition.*

1. INTRODUCTION

Police and judicial cooperation has developed parallel with economical ties between countries in the European Union, since the abolition of borders as well as specific policies on immigration, visa and asylum policy has led to an increase in cross-border crime, so it was necessary to institutionalize the cooperation of member states in these areas. Cooperation between European Union member states and their law enforcement agencies in combating crime and the establishment of the European Police Office (EUROPOL), was envisaged in the Treaty on European Union, signed in Maastricht on 07 February 1992. Europol is a concrete reflection of the idea of cooperation between the Member States in the internal affairs, because within it strengthens the joint fight against terrorism, illicit drug trafficking and other serious forms of international crime.

With headquarters in The Hague (Netherlands), Europol started with limited operations on January in 1994. in the form of European police unit for combating drugs (EDU), whose main objective was to fight illegal drug trafficking and money laundering. EU Coun-

cil of Ministers is then expanded the jurisdiction of the unit, and finally on 26 July 1995 the agreement has been reached regarding the acceptance of the establishment of *Europol* (*European Police Office*). The initiative to form this body came from Germany.

Europol Agreement entered into force in all Member States on October 1998. Due to the need to adopt additional legal documents that would allow the work and efficient functioning of the body, there was a one-year delay in operation of Europol after which he starts his full activity.

Europol is the dominant form of cooperation between national police forces of member states of the European Union. Formed with the intention to improve the efficiency of the competent authorities of the Member States in preventing terrorism, illicit drug trafficking and other serious forms of international crime where there is reasonable doubt that it is a international organized crime, where two or more Member States affected by these forms of crime, and in such a way that it is required joint action of the Member States.¹ [1]

Given the frequency, significance and consequences of these offenses, Europol facilitates the exchange of information and perform operational analysis, relying on strategic reports. This service also provides expertise and technical assistance in the investigations carried out by the Member States. Europol has a specific form of cross-border police cooperation and the exchange of information, so he is not representing supranational service with executive powers.

2. OBJECTIVES OF EUROPOL

The main objective of Europol is to improve the operation and efficiency of national prosecution services in the fight against all forms of organized crime² [2] and terrorism. The aspiration of Europol to contribute to the activities of the European Union in promoting and developing the law against organized crime, is especially expressed through the work of finding and dismantling criminal organizations.³[3]

The main tasks of Europol are:

- allow easier exchange of information between Member States in accordance with the national law of the Member state;
- Providing operational analysis which represent support to operations carried out in the Member States;
- collection, compilation, and analysis of information on criminal offenses;
- maintenance and development of computer information system that allows input, use and analyze of data, and
- providing expertise and technical support for investigations of criminal police in the Member States.

1 Nikać Ž, Korajlić N, Bećirović M, "Evropski nalog za hapšenje i predaju kao supstitut ekstradiciji u EU", Fakultet za kriminalistiku, kriminologiju i sigurnosne studije, „Kriminalističke teme“ br.1-2, Sarajevo 2013, str.75-91.

2 It is primarily about the struggle against: drug trafficking, breaking immigration networks, vehicle smuggling, human trafficking, including child pornography, counterfeiting and other means of payment, money laundering, and resale of radioactive nuklearnih stvari, etc..

3 Europol is a very frequent operation center which has over 9000 cases per year, with high quality analysis and achieving some success. This flexible service center works 24/7.

3. MANAGEMENT AND CONTROL OF EUROPOL

The bodies of Europol are:

- Management Board
- Directorate
- Joint supervisory body
- European court of auditors
- Financial Controller
- The Finance Committee.

Europol Management Board is composed of one representative from each member state. Each Board member has one vote. In the absence of a chief representative, his deputy may represent him. The Management Board meets at least twice a year to discuss a wide range of Europol issues which relate to its current activities and its future developments. It takes its decisions by two-thirds majority, with each member having one vote.

Directorate of Europol is consisting of the director and his five deputies.

Directors are appointed by the Council of Ministers in the opinion of the Management Board, for a period of five years with the possibility of re-election for another four years.

The Director is responsible for:

- carrying out the tasks defined by Europol;
- preparation and implementation of Management Board decisions;
- human resources management;
- drafting the budget, drafting the five-year financial plan and implementation of Europol budget, and
- performing all other duties assigned to him by the Convention or by the Management Board.⁴

The Joint Supervisory Body monitors the permissibility of the transmission of data originating from Europol. This body is composed of two representatives of each of the national Supervisory Bodies who are appointed for a period of five years by each Member State. Each delegation is entitled to one vote for decision-making purposes. Any individual has the right to request the Joint Supervisory Body to ensure that the manner in which his personal data have been collected, stored, processed and utilised by Europol is lawful and accurate.

The European Court of Auditors (ECA) scrutinises and reports on Europol's financial accounts. The ECA provides the budgetary authority with a statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions. The ECA draws up an annual report after the close of each financial year. This report is the basis for the European Parliament to take the discharge decision on the budget implementation by Europol, based on a recommendation from the Council.

Financial Controller is unanimously appointed by the Management Board. He is responsible for the control of obligations and expenditures, as well as the creation and collection of revenue of Europol.

The Finance Committee, composed of one representative of the budget of each Member State is responsible for the collection and review of all budgetary and financial matters.⁵

4 Simić B, Nikač Ž, Blagojević M, *Analitičke radne datoteke Europolu u funkciji suzbijanja kriminaliteta*, NBP, vol. 16, br. 1, Beograd 2011, str. 87-101.

5 *Europol* was established with contributions of member states according to their gross national products. The budget for 2009 was 68.1 million, while the budget for 2010 was 80.06 million.

4. THE EUROPEAN ARREST WARRANT (EAW)

Since 2004, in the European Union circulates a new system of extradition - European arrest warrant (EAW), which was adopted with the Framework Decision of the European Commission on 13 June 2002.⁶ The decision came into force on 7 August 2002, EU member states had one year to harmonize its regulations with this new international criminal justice institute, which changes the classical notion of the sovereignty of the state (including surrender their own nationals). European arrest warrant, as a kind of symbiosis international warrant and extradition request, became operational in the entire European Union from 1 January 2004.⁷ The first EAW is issued by Spain, and he is now circulates widely in Europe as an instrument who simplifies and shortens existing extradition procedure.⁸

With the adoption of the EAW, EU member states have sent an important message that organized crime will have no peace in any country. The idea is that wherever is located a citizen of an EU country, he shall be responsible for his criminal activity on the territory of the Member State in which the offense is committed. The prisoner, according to European rules, may request that he serve his sentence in a prison in his country. A major step forward occurred in shortening the time from the request for extradition to the extradition. More precisely, the time is reduced from nine months to 60 days.

The main novelty of this instrument compared with the traditional extradition, lies in its automatism, which strengthens relationship between the courts, eliminating any government intervention and diplomatic influence. The automatic process does not prevent control by the judicial authorities in regard to the content of foreign decisions.

In the framework decision on the EAW in Article No. 8, states that „decisions on the execution of the European arrest warrant must be subject to sufficient controls, which means that a judicial authority of the Member State where the requested person has been arrested will have to take the decision on his or her surrender“.⁹

5. EUROPEAN ARREST WARRANT - ISSUANCE

6 Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (Decision 2002/584/JHA; Official Journal L 190 od 18.7.2002). Although the Framework Decision was made with the intention to replace all the existing instruments on Extradition Convention of 1996 can still be applied in some cases where the issue of the EAW is not possible. More on the adoption of the Framework Decision and its contents on the web: <http://europa.eu/scadplus/leg/en/lvb/l33167.htm> (01.03.2009). The text of the Framework Decision on the Internet at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002F0584:EN:HTML> (01.03.2009).

See also: Aleksandra Čavoški, *Evropski nalog za hapšenje*, Evropsko zakonodavstvo, broj 9–10/2004, str. 17–20.

7 By May 2005, 25 member states of the European Union implemented this Agreement.

8 The first recorded case of extradition on the basis of the European arrest warrant was recorded in January 2004th when a Swedish citizen arrested in Spain and returned to Sweden. Since then hundreds of the warrant is issued and their execution percentage is around 20%. At first glance this may seem like a low level of success, but many orders are issued without the knowledge of the exact location of the person, and without conducting the said test cost hiring foreign government agencies and services.

9 Framework Decision on the European arrest warrant and the surrender procedures between Member States: 2002/584/JHA of 13 June 2002.

European arrest warrant may be issued by any member of the EU and it is valid on the territory of all member states. The arrest warrant can be issued in several situations, including:

- For the purposes of an investigation of a crime. In this case, the person has not been convicted and can appear as a suspected perpetrator, accomplice, accessory, instigator or organizer.
- For the execution of the sentence. In this case, the procedure is completed with the conviction. A person who is on the run and is not available to the competent judicial authorities of the state in which he is convicted, is required for execution of the sanctions.
- For the execution of the decision on detention. During pre-trial proceedings it may be decided to keep a person in custody. If that person is not available to the competent authorities for execution of custody and they suspect that he is located in the territory of another Member State, European arrest warrant can be issued for his arrest.¹⁰

The EAW is a powerful institution that has enabled much more effective fight against transnational crime in the first place, and all other forms of criminal activity. But it is also an institution that requires great expense to the country that issued it, and for a country that treated the same. Arrest warrant can not be issued for offenses of minor importance, and there are conditions that must be met for the issuance of arrest warrant. These requirements must be completed cumulatively, as follows:

- when the offender is sentenced to imprisonment of 4 months or when detention order is issued for a period of 4 months
- as for the offense for which maximum sentence of one year is provided.
- that the offense exists in both countries.

The specificity of the European Arrest Warrant, compared to traditional extradition is that it provides for exceptions, or part of which may be exercised even though law of the State who execute it does not recognize such offenses. These exceptions are: terrorism, human trafficking, corruption, participation in a criminal organization, money counterfeiting, murder, racism and xenophobia, rape, arms trafficking, financial fraud, drug trafficking, etc.

¹¹

An additional condition is that the minimum possible sentence is three years in prison in the issuing Member State.¹²

¹⁰ Article 1. Framework Decision on the European arrest warrant and the surrender procedures between Member States: 2002/584/JHA of 13 June 2002..

¹¹ List of crimes - "exceptions" for implementation of the European arrest warrant: participation in an organized criminal group, terrorism, human trafficking, sexual exploitation of children and child pornography, illegal drug trafficking, illegal arms trade, corruption, financial pre - digest, money laundering, counterfeiting money, high technology crime, environmental crime, sabotage, murder, illegal trade in human organs, kidnapping, counterfeiting of means of payment, forgery of administrative documents and their trade, counterfeiting and product piracy, racketeering and extortion, fraud and deceit, racism and xenophobia, armed robbery, the illegal trade in cultural goods, illegal trade of hormonal substances, illicit trafficking of nuclear and radioactive materials, trade in stolen vehicles, rape, arson, crimes within the jurisdiction of the International criminal Court, unlawful seizure of aircraft and ships, unauthorized entry and residence in the country.

¹² Two most famous cases of application of the warrant are related to terrorism: on July of 2005 The suspect in the bombings in London have returned to Britain from Italy, in the same year the Italian

Although the main objective of the warrant is to establish an efficient and non-political system of extradition, there are cases where this mechanism does not work well. Conditions that qualifies a cases for issuing a warrant, are not always sufficient to prevent its abuse or misuse. On the other hand, there are cases where the politics influences the final decision about the (lack of) realization of the warrant. So the problems in the application of the European Arrest Warrant can be divided in the two groups:

- Irrational issuing warrants for acts of minor significance. Past practice has shown that the warrant are issued and for offenses that are far from serious. Analyzing flexible conditions that have been set, the warrant can truly be issued for almost every crime that has a severe form, and very often for the basic form of an offense that by its nature and social danger does not belong to those who need international assists.
- Politically motivated action in the execution of the warrant. The Framework Decision is a legal document, whose text must be interpreted in the application. Interpretation implies a good faith of authorities of both countries to end the case so that justice is done and that the accused or convicted person stand trial. However, some countries apparently do not act in good faith and are not guided by the ideal of justice. This occurs particularly when state authorities decide whether to extradite its own nationals.

Due to the foregoing, as supplement to these conditions for the execution of the order, it is necessary to test justifiability and costs of issuing arrest warrants, in each particular case. The arrest warrant will handle law enforcement authorities of the state where the wanted person is, and the cost of such treatment will be borne by that State, which may decide, because of the lack of seriousness of offense, not to act upon, solely for reasons of economy.

6. CONTENT OF EAW

The European Arrest Warrant have a simple structure, which is logical given that one of the purposes of its introduction was the reduction of bureaucracy procedure. Information that each warrant needs to contain are:

- the identity and nationality of the requested person;
- the name, address, telephone and fax numbers and e-mail, address of the issuing judicial authority;
- evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision;
- the nature and legal classification of the offence;
- a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person;
- the penalty imposed, if there is a final judgment, or the prescribed scale of penalties for the offence under the law of the issuing Member State;

7. PROCEDURE FOR ISSUING THE EAW

European arrest warrant is issued by competent authority of the member state, when seeking for a person for whom believes it is located in another member state. The Frame-prosecutor issued a warrant against 22 CIA agents, for kidnapping people suspected for terrorism in the territory of Italy.

work Decision explicitly states that the order must be issued by the competent authority of the judiciary. If the state where the arrest warrant is addressed to determines that the requested person is in their territory, they'll arrest the person. In doing so, it has the right to use all police and other powers enabled by the domestic law. Police authorities of the state where warrant is addressed to, act as if the arrest warrant is issued by a domestic court.

When a requested person is arrested, the executing competent judicial authority shall, in accordance with its national law, inform that person of the European arrest warrant and of its contents. If the competent authority considers that the application lacks the sufficient facts to make a decision, they will require supplement of the warrant.

After the preliminary follows the so-called main hearing of the arrested person. The main hearing is conducted before a judge and is determined within a reasonable time from the arrest. The purpose of the hearing is to check whether the warrant is supplemented (if required) and to determine whether there are obstacles to its execution. After that judge makes a decision which can be subject to appeal.

The difference in relation to extradition proceedings, is that evidence in the case is not subject of discussion, but only technical facts related for issuing a warrant, and whether the conditions for extradition are fulfilled. In this regard, the judge has the authority to verify fulfillment of forms. The competent authority shall decide in each case whether it will deliver arrested person a state that seeks him, within 60 days from arrest.

If after the arrest a person agrees to extradition based on an order, the procedure is much shorter, ie. decision must be made within 10 days of approval by the arrested person.

Once the decision has been taken, the competent authority shall notify the authority of the State that issued the warrant, for further technical and operational details of the transfer of the person.

However, certain principles of individual rights also apply in this case, so the state will not extradite a person:

- Who has been convicted for that offense (*ne bis in idem*). This is a classic reason for refusal, the person can not be punished twice for the same offense.
- Who is pardoned for the that offense in the country where it is located.
- Who is not considered criminally responsible under the laws of the state where it is located.¹³

The reasons cited are inherently logical and expected, inherent to traditional notions of the extradition proceedings and can not lead to some major abuse and misinterpretation.

8. CONCLUSION

Unlike extradition, the European arrest warrant creates a mechanism by which a judicial decision made in one Member State must be respected as the decision of local court in any other EU member state. Although relatively simple, this rule for the first time in the history of cooperation between states so explicitly deletes many of the traditional obstacles to face extradition to a foreign country. Several conclusions regarding the positive effects of the European Arrest Warrant may be:

- Faster and more cost-effective procedures were introduced. According to available statistics, the current practice of execution of the European arrest warrant is six

13 Articles 9-16. Framework Decision on the European arrest warrant and the surrender procedures between Member States: 2002/584/JHA of 13 June 2002

- times faster than the average duration of proceedings under the rules of extradition.
- The procedure is simplified and reduced to the technical elements. The procedure for the arrest warrant has no reviews of evidence by the judge who just examines whether the conditions for the extradition of the arrested person are fulfilled. Also, rule of incrimination of offense in the same or a similar way in both countries suffered substantial exceptions, so dual criminality can no longer be an excuse for the non-extradition of the person who has committed a serious criminal offense.
 - Political factor when bringing decision is not dominant. Although the intention was to completely overcome the political factor, that obviously is still not possible in the relations between states. However, the solution adopted sets the political dimension in a very peripheral level.
 - The extradition of domestic nationals to other state is allowed. This is one of the most remarkable achievements of the European Arrest Warrant. Citizenship in a number of cases raised as a major obstacle to extradition proceedings.
 - The rights of the accused/convicted are multiple protected. Rights of the person who is the subject of arrest warrants, are protected by the official duty on three levels. It is protected in the first instance and second instance of order execution in the state where person was arrested, and is also protected by all the procedural guarantees of the state requesting his arrest and extradition. Finally, both States have to comply with minimum procedural rights of persons who have a supra-national legislation and other instruments of international law which they obliged.

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- [1] Convention on extradition between Member States. 13 October 1996, O. J. C 313.
- [2] Convention on simplified extradition procedure between the Member States of the European Union. 30 March 2005, O. J. C 78
- [3] Council Framework Decision 2009/299/JHA amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial. 26 February 2009, O. J. L 81/24.
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