



## THE EUROPEAN ARREST WARRANT IN THE EUROPEAN CRIMINAL POLICY. IT'S IMPLEMENTATION IN THE HELLENIC LEGAL ORDER

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### ABSTRACT

*The programme of measures to implement the principle of mutual recognition of criminal decisions envisaged in point 37 of the Tampere European Council Conclusions and adopted by the Council on 30 November 2000 (OJ C 12 E, 15.1.2001, p. 10), addresses the matter of mutual enforcement of arrest warrants. All or some Member States (MS) are parties to a number of conventions in the field of extradition, including the European Convention on extradition of 13 December 1957 and the European Convention on the suppression of terrorism of 27 January 1977. Also it is must be mentioned that Nordic States have extradition laws with identical wording. In addition, the following three Conventions dealing in whole or in part with extradition have been agreed upon among MS and form part of the Union acquires: the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at their common borders (OJ L 239, 22.9.2000, p. 19) (regarding relations between the MS which are parties to that Convention), the Convention of 10 March 1995 on simplified extradition procedure between the MS of the European Union (OJ C 78, 30.3.1995, p. 2) and the Convention of 27 September 1996 relating to extradition between the MS of the European Union (OJ C 313, 13.10.1996, p. 12). The European arrest warrant is the first concrete measure in the field of criminal law, implementing the principle of mutual recognition which the European Council referred to as the "cornerstone" of judicial cooperation.*

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**Keywords:** European Union (EU), criminal policy, European Arrest Warrant (EAW), Hellas, extradition, Law 3251/2004, Framework Decision 13/6/2002.

### 1. INTRODUCTION

The attainment of the target which was set by the article 2 of EU treaty for the preservation and development of EU as an «area of freedom, security and justice» was and is a major priority for both, EU institutions and Member States (MS). In this context, the MS pledged to implement jointly concrete measures for judicial cooperation, as those specified in articles 30 and next of EU treaty.

In particular after the Council meeting in Cardiff in June 1998, the Council and the Commission drew up an action plan «regarding the best possible implementation of Amsterdam treaty provisions on an area of freedom, security and justice». Subsequently, the Council during its meeting in Tampere, decided that the recognition of judicial decisions should become the "cornerstone" of judicial cooperation not only in urban but also in criminal cases.

Commission was invited by the Council to proceed on a drafting of a measures programme for the implementation of mutual recognition principle concerning criminal decisions. According to point 37 of Tampere European Council on 15 and 16 October 1999 (Presidency Conclusions): «The European Council asks the Council and the Commission to adopt, by December 2000, a programme of measures to implement the principle of mutual recognition. In this programme, work should also be launched on a European Enforcement Order and on those aspects of procedural law on which common minimum standards are considered necessary in order to facilitate the application of the principle of mutual recognition, respecting the fundamental legal principles of Member States».

In the conclusions which finally were adopted is included and the following (with No 8) measure: «Seek means of establishing, at least for the most serious offences in Article 29 of the Treaty on European Union, handing-over arrangements based on recognition and immediate enforcement of the arrest warrant issued by the requesting judicial authority. Those arrangements should, *inter alia*, spell out the conditions under which an arrest warrant would be a sufficient basis for the individual to be handed over by the competent requested authorities, with a view to creating a single judicial area for extradition» (OJ 12 E, 15.01.2001 p.10) .

Hence the Council adopted on 13 June 2002 the framework decision «on the European arrest warrant and the surrender procedures between Member States» (L 190/18-07-2002). In the preamble of the framework decision in question is determined the result that is aiming at «[...] (5)The objective set for the Union to become an area of freedom, security and justice leads to abolishing extradition between Member States and replacing it by a system of surrender between judicial authorities».

The introduction of a new simplified system of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal sentences makes it possible to remove the complexity and potential for delay inherent in the present extradition procedures. Traditional cooperation relations which have been prevailed up till now between MS should be replaced by a system of free movement of judicial decisions in criminal matters, covering both pre-sentence and final decisions, within an area of freedom, security and justice.

The Hellenic State incorporated into Hellenic law the above mentioned decision – framework with the law 3251/2004 (A´ 127), «European arrest warrant, modification of law 2882/2001 for criminal organizations and other provisions».

Purpose of this brief study is the critical examination of the framework decision provisions which were incorporated in the Hellenic legal order, the critical approach of Law 3251/2004 main provisions, which incorporated the Council framework decision in the Hellenic legal order, as well as the concerns arising regarding the European Arrest Warrant (EAW) within the framework of EU

law. It is noted that the reforms of the current legislative regime are essential as was modified in a large extent the institutional system of extradition between Hellas and the other MS.

## **2. COUNCIL FRAMEWORK DECISION OF 13 JUNE 2002 ON THE EUROPEAN ARREST WARRANT AND THE SURRENDER PROCEDURES BETWEEN MEMBER STATES (2002/584/JHA)**

### **2.1. General principles**

The framework decision defines «European arrest warrant» [Tsolka \(2002\)](#), as any judicial decision issued by a Member State with a view to the arrest or surrender by another Member State of a requested person, for the purposes of:

- A.-conducting a criminal prosecution,
- B.-executing a custodial sentence,
- C.-executing a detention order.

The warrant applies in the following cases:

- A. - where a final sentence of imprisonment or a detention order has been imposed for a period of at least four months and
- B. - for offences that are punishable by imprisonment or a detention order for a maximum period of at least one year.

If they are punishable in the issuing Member State by a custodial sentence of at least three years, the following offences, among others, may give rise to surrender without verification of the double criminality of the act: terrorism, trafficking in human beings, corruption, participation in a criminal organization, counterfeiting currency, murder, racism and xenophobia, rape, trafficking in stolen vehicles, and fraud, including that affecting the financial interests of the Communities.

For criminal acts other than those mentioned above, surrender may be subject to the condition that the act for which surrender is requested constitutes an offence under the law of the executing Member State (double criminality rule).

The EAW must contain information on the identity of the person concerned, the issuing judicial authority, the final judgment, the nature of the offence, the penalty, etc. (a specimen form is attached to the framework decision).

### **2.2. Procedures**

A general rule is that the issuing authority transmits the EAW directly to the executing judicial competent authority (Note 1). Also provision has been made for cooperation with the Schengen Information System (SIS) and with Interpol. If the competent authority of the executing Member State is not known, Member State that has issued the EAW will receive assistance from the European Judicial Network.

All MS may take necessary and proportionate coercive measures *vis-à-vis* requested persons. When a person is arrested, must be made aware of the EAW contents and is entitled to the services of a lawyer and of an interpreter.

In all cases, the executing authority may decide to keep the person under custody or to release the person under certain conditions.

Pending a decision, the executing competent authority and taken under consideration national law hears the person concerned. The executing judicial authority must take a final decision on execution of the EAW no later than 60 days after the arrest. Then immediately has obligation to inform the issuing authority of the decision that has been taken.

Any period of detention arising from execution of the EAW must be deducted from the total period of deprivation of liberty imposed.

Also the arrested person may consent to his or her surrender. It is crucial the consent must be given on a voluntarily basis and the person must have full knowledge of the consequences. In this specific case when the consent has been given the executing judicial competent authority must take a final decision regarding the EAW execution in a period of ten days after consent has been given.

### **2.3. Grounds for refusal to execute a warrant and refusal to surrender**

A Member State may refuse to execute an EAW in the following cases:

- A.-If the final judgment has already been passed by a Member State upon the requested person in respect of the same offence (*ne bis in idem* principle),
- B.-if the offence is covered by an amnesty in the executing Member State and
- C.-if the person concerned may not be held criminally responsible by the executing State owing to his/her age.

When exist other certain circumstances for instance when criminal prosecution or punishment is statute-barred according to the law of the executing Member State or when a final judgment has been passed by a third State in respect of the same act, the executing Member State may refuse to execute the EAW.

A Member State also may to refuse to execute the EAW if the person concerned has been appeared personally at the trial where the decision was rendered, unless the appropriate safeguards were taken. In all the cases reasons for the refusal must be provided.

In case that is presented certain information concerning the EAW like the nature of the offence, the identity of the person concerned, etc., each Member State must give its permission for the transit of a requested person who is being surrendered through its territory.

The EAW must be translated into the official language of the executing Member State and can be sent by any means capable of producing written records that allows to the executing Member State to establish its authenticity.

Since 1 January 2004, extradition requests received by MS are dealt with in accordance with the national measures adopted to implement the framework decision.

As far as concerns the structure of the Council framework decision briefly:

- in article 1 is provided the definition of the EAW and the obligation to execute it (Sievers, 2007),
- in article 2 is provided the scope of the EAW,
- in article 3 are defined the grounds for mandatory non – execution of the EAW,
- in article 4 are defined the grounds for optional non – execution of the EAW,
- in article 5 are provided the guarantees to be given by the issuing Member State in particulars cases
- in article 6 is provided the determination of the competent judicial authorities (Epp, 2003),
- in article 7 is defined the recourse to the central authority,

in article 8 is defined the content and the form of the EAW,  
in articles 9-25 are described in details the surrender procedure, time limits which must be kept,  
in articles 26-30 are described the effects of the surrender and the possible prosecution for other offences and  
in articles 31-35 are described items concerning transitional provisions and its implementation in the MS legal orders (Sinn und Wörner, 2007), (Impala, 2005).

## **2.4. Related Acts**

### **a.-Report from the Commission to the European Parliament and the Council of 11 April 2011 on the implementation since 2007 of the Council Framework Decision of 13 June 2002 on the EAW and the surrender procedures between MS [COM(2011) 175 final – Not published in the Official Journal].**

This report describes seven years of implementation of the EAW. The initiative in operational terms had success as 54.689 warrants have been issued and 11.630 were executed. Extradition procedure between EU MS now takes 14 to 17 days, if the person consents to their transfer, and 48 days if the person does not give consent.

This process in the past used to take took more than one year. Also it must be mentioned that the free movement of persons in the EU has been strengthened. That because is ensured that the opening of borders does not assist those seeking to avoid the application of the law by using this mechanism. However the Commission mentioned some shortcomings, particularly with regard to respect for fundamental rights. It requests that MS should bring their legislation into line with Framework Decision 2002/584/JHA where that is not already the case, and implement instruments already adopted in order to improve the functioning of the warrant. The report also notes that too many warrants are issued for minor offences and encourages requesting MS to apply the principle of proportionality.

### **b.-Report from the Commission of 24 January 2006 based on Article 34 of the Council Framework Decision of 13 June 2002 on the EAW and the surrender procedures between MS (revised version) [COM(2006) 8 final – not published in the Official Journal].**

In its revised version, the report focuses above all on the Italian legislation adopted since the first report. The Commission considers that, despite the initial delay, the EAW is operational in most of the cases provided for by the MS.

### **c.-Report from the Commission of 23 February 2005 based on Article 34 of the Council Framework Decision of 13 June 2002 on the EAW and the surrender procedures between MS [COM(2005) 63 final – not published in the Official Journal].**

According to the evaluation made by the Commission in its report, the impact of the EAW since its entry into force on 1 January 2004 has been positive both in terms of depoliticisation and effectiveness as well as in terms of the speed of the surrender procedure, while the fundamental rights of the persons concerned have been observed.

**d.-Statements provided for in Article 31(2) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the EAW and the surrender procedure between MS [Official Journal L 246 of 29.09.2003].**

Finland, Sweden and Denmark stated that their equable legislation in force allows the provisions of the framework decision to be extended and enlarged. They will continue to implement the equable legislation in force between them, namely:

- Denmark: Nordic Extradition Act (Act No 27 of 3 February 1960, as amended);
- Finland: Nordic Extradition Act (270/1960);
- Sweden: Act (1959:254) concerning extradition to Denmark, Finland, Iceland and Norway for criminal offences.

**3. LAW 3251/2004 (A' 127), «EUROPEAN ARREST WARRANT, MODIFICATION OF LAW 2928/2001 FOR CRIMINAL ORGANIZATIONS AND OTHER PROVISIONS».**

**3.1. General**

The EAW replaces the lengthy extradition procedures between EU MS with a simplified judicial procedure, with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order. An EAW issued by the judicial authorities of a Member State, is in force throughout the EU territory.

The mechanism of the EAW is based on a high level of confidence between MS. Also MS execute any EAW on the basis of the principle of mutual recognition of criminal decisions. Also presupposes the existence of direct contacts between judicial authorities.

It ensures a satisfactory balance between efficiency and strict guarantees for the respect of the arrested fundamental rights. MS and national courts must comply with the provisions of the European Convention on human rights. The arrested by EAW may have a lawyer and an interpreter if is necessary, in accordance with the legislation of the country where arrested.

**3.2. Briefly description of law 3251/2004 provisions**

Individual provisions of the first part of Law 3251/2004 ([Kaiafa-Gkmpanti, 2004](#)), ([Kioupis, 2004](#)) referred to the EAW are as follows:

In articles 1-3 are determined the General provisions of the law. More specifically is delineated the conceptual content of the EAW and is described the general rule of the obligation to be respected the fundamental rights and principles during the implementation of the law provisions while also are identified the necessary elements which must contain the EAW. The Ministry of Justice is determined as the central authority which will assist the competent judicial authorities of issuing and executing the EAW.

In articles 4-8 is determined the process of issuing and transmitting of the EAW from the local competent Appeal Prosecutor who can request the delivery and seizure of the objects related with criminal action while he/she may request the lift of privilege or immunity that the requested person enjoys.

In articles 9 to 29 is described the execution of the EAW when Hellas is the requested State. The Prosecutor of the Appeal Court is the competent judicial authority for the warrant receipt, the arrest and the detention of the requested person and the introduction of the case file in the competent judicial body. For the issuing of the EAW responsible is the President of the Appeal Board. In article 10 is established as a general rule the principle of double criminality. In articles 11 and 12 are determined the mandatory non – execution grounds of the EAW as also the optional non – execution grounds of the EAW, while article 13 predicts specific reasons that can be put in the case that the issuing State does not provide sufficiently specific guarantees.

In articles 14-18 is described the procedure of requested person arrest and detention, the Prosecutor's obligations regarding the requested person detention (article 16) and the remedies which can be conducted at this stage, while is determined and the right of hearing (article 23). The arrested person has the ability to consent to his/her presentation (article 17) or not to consent (article 18).

The deadlines for the decision issuing for the EAW execution are predicted in article 21, where is defined the ceiling of 90 days. The decision for EAW execution or not must be justified, while if the information provided by the Member State is not enough is provided the opportunity to be requested additional information from the requesting State (article 19). In article 20 is regulated the case of EAW influx of EAWs with extradition request from another third country.

In article 22 is defined the right of appeal from the requested person in the Supreme Court against the decision of warrant execution. The Supreme Court is ruling within eight days. After the decision issuing is realized the presentation according to the defined in articles 27 and 28, while in article 29 are defined the reasons for which can be postponed the presentation or to take place a new presentation under conditional.

The seizure and handing over of property is specified in article 29. The transfer process of the requested person is analyzed in articles 30-32 while articles 33 to 36 are referred to the requested person treatment after his/her presentation in Hellas when the latter has issued the EAW. The rule of specialty is reflected in article 34, while relevant to this provision is article 25 which refers to the multiple requests of international obligations.

Finally articles 37-39 regulate issues of law retroactivity and the way in which this law replaces the relatives' applicable provisions which were in force concerning the extradition in the relations between the EU MS.

### **3.3. Concerns**

On the law positive elements are counted the fact that four potential according to EU framework decision grounds for refusal to execute the EAW have been converted into mandatory. More specifically:

a.-The EAW execution is prohibited «If have been prescription from the crime or the penalty according to the Hellenic penal laws and the offence is subjected within the jurisdiction of the Hellenic judicial authorities in accordance with the Hellenic penal laws» (article 11, d), case where is imposed and by constitutional order terms.

B.-EAW execution cannot be implemented if the person against whom is issued for the purpose of conducting a criminal prosecution or executing a custodial sentence or detention order is domestic and Hellas undertakes the obligation to execute the custodial sentence or detention order in accordance with its penal laws (article 11, f).

C.-If the action:

I) is considered according to the Hellenic law that has been committed wholly or partly within the Hellenic territory or assimilated to this place or

II) has been committed outside of the territory of the issuing the warrant Member State and according to the Hellenic penal laws is prohibited the prosecution for the same crime committed outside of the Hellenic territory (article 11, g).

D.-If the warrant relates domestic who is prosecuted in Hellas for the same action. In this case the warrant is not executed even if the prosecution conducted in Hellas after his/her extradition (article 11, h).

It should be noted that during the process of warrant execution is provided and second degree of jurisdiction in the person whom against has been issued the warrant in front of the Supreme Court with result to be guaranteed even more his/her rights.

The EAW does not recommend extradition. There are abandoned completely the philosophy and the basic principles of extradition law, so that the relevant framework decision does not use the corresponding legal terminology. Therefore it does not respond to the new legal reality the use by the Hellenic law of terms «ekzitoumenos» (εκζητούμενος in Hellenic) to the EAW functioning. For instance the terminology that is used by the Council framework decision as «requested person» has not been translated with the right meaning word in the Hellenic law which corresponds to the meaning of «requested person» or «the person is the subject of the European arrest warrant» within the formulation of the framework decision.

In the EAW context does not exist administrative stage on the basis of the framework decision and the person who is the subject of the EAW has the general right to dispose his/her surrender by giving "consent" provision which in the extradition process is exceptional (Mylonopoulos, 2003), (Spinellis, 2003). The use of the term «ekzitoumenos» (εκζητούμενος in Hellenic) creates the coherence that the requested person has rights and protection as well as in the extradition while something like that does not happen.

Reservations cause the provision of paragraph 1 in article 1 according to the EAW is executed when in the issuing State has not yet filed criminal charges but the person was surrender «for the purposes of conducting a criminal prosecution».

Also are observed the following:

in article 11(h) of the law: the warrant is executed if the domestic is not prosecuted in Hellas for the same action. But in that case there are two possible variants: either the domestic has committed an act which is subject to the Hellenic penal laws (Hellenic criminal power) or not. Therefore:

a.-If the domestic is subjected, the Hellenic State must prosecute him/her, in accordance with the principle of the law state, because otherwise is abandoning domestic criminal power. In this case, it does not matter whether the alien is prosecuted or not, but if his/her act is subjected within the



jurisdiction of the Hellenic courts. The domestic criminal power leads whether the alien is prosecuted, or not.

B.-If does not, then this could mean: that the action is not punishable always according to the Hellenic penal laws (e.g., identity theft), or that is in abstracto criminal, but in this case are not implemented the Hellenic penal laws due to the absence of a connecting element.

In this last case the EAW execution is certainly possible. But in the first case when the action is neither in abstracto criminal according to the Hellenic penal laws must not be executed the warrant. Because it cannot indirectly to be allowed the punishment of actions that can be committed in Hellas impunity in violation of rule n.c.s.l.

C.-Although in the rapporteur accompanying the law is referred (p. 11) that all the relative reported actions which are excluded of the principle of double criminality are criminal under Hellenic law that is not sufficient to justify the violation of the principle for the following reasons:

I.-careful reading of the catalogue reveals that some of the actions are not criminal under Hellenic law.

II.-If all are criminal under Hellenic law which is the reason for principle violation?

III.- It is opened the possibility and the corresponding risk of principle abandonment in the most serious cases in the future.

The principle of double criminality however is not negotiable but expresses and specifies the basic principles of Hellenic legal culture. As has already been pointed out: «the principle of double criminality is not decorative but has a deeply essential character. It is interfering the extradition and the imposition of a penalty for an action which the State in which the request is addressed, has assessed as non-criminal and from this point of meaning ensures the sovereignty of the issuing State. Exception of this principle is allowed only in cases where the punishment of the action is imposed on grounds of self-defense either of the requesting State, or of global justice.

The effective abolition of the principle of double criminality from EAW allows the surrender of the person in order to be punished for an action which at the surrendered State can commit freely and impunity. But in that way the state legislator of the surrendered State that allows to be punished an action which is free in the territory of that State, not only disbelieve to its reviews but also violates the fundamental principle *nulla poena sine lege* (no punishment without law) that is established in article 7 of the Constitution» (Mylonopoulos, 1993; Mylonopoulos, 2004).

More specifically in Hellenic criminal laws were not during the period of law 3251/2004 drafting criminal the following actions of the catalogue of the draft:

A.- hormonal substances trafficking and growth factors as a specific crime,

B.-xenophobia (in contrast to racism),

C.- certain plant species marketing,

D.-certain crimes involving with computers, such as snatching digital identity (identity card),

E.-sabotage as a specific crime.

Further of the above mentioned the wording of the crimes is so broad ("criminal organization", "terrorism", "corruption") that allows the inclusion on these concepts and, therefore, the claim for arrest execution and for cases which are subjected in the alien provision but not in Hellenic.

Eg shall will be implemented the law if the laundering of criminal activity according to abroad provision or jurisprudence is enforced and when the prior action from which derived the revenue is not punishable under the law of the (third) place where was committed while in the Hellenic provision (performed correctly) is? Or what will happen in the case that the alien provision covers and the criminal neutral behavior e.g. notary activity that the Hellenic order does not cover?

If the person against who is the subject of the EAW is being prosecuted in Hellas for the same offence, the execution refusal is potential (article 12, a) while should be compulsory as otherwise is abolished national sovereign right but also an obligation for the realization of the law state on the part of the State.

In the law has been taken concern that the process of EAW execution to be accompanied by the possibility of exercising the rights by the person who is the subject of the EAW, in a degree that the process is similar to extradition. Also has taken concern to be enforced the specialty principle (article 34, 4).

In some cases rights are provided to the person who is the subject of the EAW but without specifying which would be the penalty in case of violation. More specifically:

I.-Article 17, par. 3: «the requested person has hearing right in front of the President of the Appeal Court». Which is going to be the penalty if he/she submits the request and will not be heard as if he/she claimed that was pressed in order to provide his/her consents. But also which will be the control or the appeal if the President of the Appeal Court did not take into consideration the legally prescribed above complaints?

II.-Article 18 par. 2: «the requested person has the right of personal appearance and hearing in front of the Appeals Court». And here is not predicted sanction in case that the requested person submitted specific request and will not be heard.

III.-Article 19 par. 3: «the decision of EAW execution or not must be specifically justified». Apparently the justification is controlled by the Supreme Court. However, in view of the fact that the Supreme Court acts as an Appeal Court is not obliged to take a position on the reasoning of the Appeal Court, but also can decide in favour of surrender with typical etiology, with result the etiology of the decision on the warrant execution to be essentially unaudited.

IV.-Also the deadline of 24 hours which was set for submitting appeal in front of the Supreme Court (article 22 par. 1) is short for legal issues that would arise and are associated with the case.

According the framework decision every State shall adopt the measures necessary to ensure that consent and, where appropriate , renunciation, as referred in paragraph 1 in article 13 (Consent to surrender) are established in such a way as to show that the person concerned has expressed them voluntarily and in full awareness of the consequences. To that end the requested person shall the right to legal counsel (article 13 par. 2 of the framework decision).

But in the law the only prediction that exists is referred in article 17 par. 1: «The Appeals Prosecutor informs the requested person clearly for the consequences of his/her consent presentation, for the resignation from the specialty rule referred in article 34 of this law as well as for his/her right to attend with counsel as also with an interpreter as well as for the irreversible of his/her statements».

This simple update does not constitute a guarantee as it is very likely that the requested person to whom the Appeals Prosecutor informs clearly concerning his/her right to attend with an interpreter (how much clarity can exist in someone who has not an interpreter?) not to realize the importance of what is happening and not to be able to conduct his/her rights or either from ignorance or from fear. For this reason the warrant must be real and substantial e.g. lawyer.

#### **4. THE EUROPEAN ARREST WARRANT AND TRADITIONAL EXTRADITION PROCEDURES**

The European Arrest Warrant introduces six innovative elements compared to traditional extradition procedures (Plachta, 2003), (Corinne, 2006), (Kalfelis, 2006).

a.- Strict time limits: The state in which the person is arrested has to return him/her to the state where the EAW was issued within a maximum period of 90 days of the arrest. If the person gives his/her consent to the surrender, the decision shall be taken within 10 days.

b.-Simpler procedures: For 32 categories of serious offences, the dual criminality principle - which means that the behavior for which surrender is requested is a criminal offence in both the requesting state and the country in which the wanted person is arrested - is abolished. Provided that the offence is serious enough and punished by at least three years' imprisonment in the Member State that has issued the warrant, a European Arrest Warrant issued in respect of the above offences has to be executed irrespective of whether or not the definition of the offence is the same in both states.

c.-No political involvement: The EAW procedure abolished the political stage of extradition. This means that the decision on whether or not to surrender a person on the basis of an EAW is exclusively a judicial process.

d.-Surrender of nationals: As a matter of principle, EU countries can no longer refuse to surrender their own nationals, unless they take over the prosecution case, or the execution of the prison sentence against the wanted person. The EAW is based on the principle that EU citizens shall be responsible for their acts before national courts across the EU.

f.-Guarantees: Surrender of a person may be subject to three types of guarantees to be given by the state that issued the warrant:

a. If an EAW is based on a judgment that was handed down in the absence of the wanted person, surrender may be granted under the condition that the person has a right to apply for retrial in the country requiring his or her surrender.

b. If the EAW for which a person is arrested was issued for a crime for which a life sentence may be applied, surrender may be granted under the condition that the accused person will after a certain period of time have the right to ask for review of that sentence.

c. If the request concerns prosecution of a national or a habitual resident of the state in which the person was arrested, surrender may be granted under the condition that the person will be returned for the execution when a custodial sentence is passed.

g.- Grounds for refusal: Surrender of the arrested person can be refused on three mandatory and seven optional grounds. The mandatory grounds relate to "Ne bis in idem" (no surrender if the person has already served a sentence for the same offence), minors (no surrender If a person has

not reached the age of criminal responsibility in the country of arrest) and amnesty (no surrender if the state in which the person was arrested could have prosecuted the person and the offence is covered by amnesty in that state). Optional grounds for refusal are in principle at the discretion of the judicial authorities; for example surrender can be refused if part of the criminal acts for which the EAW was issued were committed in the state where the person is arrested and that state will prosecute those acts.

### Statistical Data

The EAW is operational throughout all 27 Member States and evaluations show that the instrument is working well. The (rounded off) figures in the table below speak for themselves.

	2005	2006	2007	2008	2009	2010
Issued	6 900	6 750	11 000	14 200	15 800	13 900
Traced and/or arrested	1 770	2 040	4200	4 500	6 150	6 460
Surrendered	1 530	1 890	3 400	3 630	5 580	5 370

In a majority of Member States surrender with consent takes place within 14-16 days and without consent the process takes less than two months. Around 50% of surrenders take place with the consent of the wanted person.

It must be noted that before the EAW establishment, extradition demanded an average of one year, while now the time needed has been limited to 16 days when the suspect consents to his/her surrender and to 48 days when he/she does not agree. Therefore, EAW has become an essential tool for combating criminality and important aspect of EU internal security.

## 5. CONCLUSIONS

The EAW adopted in 2002 replaces the extradition system by requiring each national judicial authority (the executing judicial authority) to recognize, *ipso facto*, and with a minimum of formalities, requests for the surrender of a person made by the judicial authority of another Member State (the issuing judicial authority). The framework decision entered into force on 1 January 2004 and replaced the existing texts in this area.

However, MS remain at liberty to apply and conclude bilateral or multilateral agreements insofar as such agreements help to simplify or facilitate the surrender procedures further. The application of such agreements should in no case affect relations with MS that are not parties to them.

As far as concerns Hellas the regulations that brought in the current legislative regime the law 3251/2004 are essential as is amended to a considerable extent the institutional system of extradition between Hellas and the other MS. The main differences consist in the elimination of the administrative (policy) phase and in the partial lifting of double criminality verification as a precondition for the success of the request and the presentation of the requested person. The presentation of domestics although is provided in the framework decision was judged that should be provided only in exceptional cases. More specifically in article 11 is determined when is prohibited the EAW execution.

With the provisions of Law 3251/2004 which has incorporated the framework decision in the Hellenic legal order was introduced a legal regime that does not immediately lead to the EAW execution. With the provisions of this law are setting simplified control rules for the mutual recognition of judicial decisions with purpose the arrest and prosecution of persons in the EU area. While the arrest of a requested person lies directly, the decision for his/her presentation depends by the judgment of the competent judicial authority of the EAW executing State that is taken in a process context. The EAW must be noted that is not issued by a «European» judicial body but by the judicial authority of a Member State.

With a variety of regulations in articles 15, 16, 17, 18, 22 and 33 are provided priority to the protection of individual and procedural requested person rights as these are enshrined in the Constitution and in international conventions.

With the changes that have been made by the Council framework decision on the status of the extradition, contributes to the effectiveness of the prosecution brought by a Member State or the execution of the sentence imposed by the principle of this, when the requested person is located within the EU boundaries. With that way it is expressed and the reciprocity of interests among the MS in combating international organized crime and lies within the EU aim which is to be a space of security, justice and freedom for the EU citizens.

In this respect EU has carried out and the Joint investigation Teams (JIT) institution for combating the phenomenon of organized transnational crime in the EU but also in the establishment of the European Agency of Eurojust (Korontzis, 2012). From the evaluation of EU MS statistics concerning EAW reveals that MS have made use of this institution for combating crime and for the implementation of their national criminal law.

General reflection has caused and is causing the fact that the EU has no primary criminal power and the establishment of criminal offences under decisions framework resets to the fore the problem of the democratic deficit, since in these legislative processes the included in the respective legislating national penal laws primary rules do not constitute a decision of the representatives of popular sovereignty but organs of executive power (Mpenaki, 2003). Hence the so-called bureaucratic criminal law which is formed outside of Parliaments by technocrats, many of whom are not specialized scientists (versed in criminal law) but many times nor even legal scientists is always a constant problem.

The counter-argument is that the executive power comes from the people will, the MS through democratic processes have ruled that waive of its sovereignty conducting in some areas in which the Community acts (Dagtolou, 1985), (Venizelos, 1994). Consequently the EAW express the EU course with obstacles toward to the political integration. Additionally in any case, the elected governments of the MS negotiate the European legal texts, which as far as concerns this study undertake the obligation to incorporate them in their national legislation through their parliaments, the representatives of which also have elected.

In any case the requested is what kind of EU we want and in which integration processes of this project we want to be led. In my view the institution of EAW is a mean of dealing with criminality and the criminal law application of MS at EU level. If and when there are problems in implementing these can always be discussed in EU frame and to be resolved. Moreover is natural

all national legal criminal orders but also the forensic systems of the MS not to agree between them. But we must concrete our attention to the positive aspects of this institution, which has been accepted by the MS with positive results. In addition to the considerations which have been arisen by this it's an EU measure that contributes through the protection of the requested persons rights to the protection of EU societies.

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### **Notes**

Note 1. The first EAW was executed by Spain after relative request of Sweden. See BBC News, Spain EU arrest warrant shall mean an uses first, <http://news.bbc.co.uk/2/hi/europe/3383991.stm>. In this case the arrested person had declared his consent.