

**Provisions on Cooperation with the Member States of the European Union in Application of Framework Decision no. 2002/584/JHA of the Council of the European Union Regarding the European Arrest Warrant and the Surrender Procedures Between Member States**

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**Abstract:** By Framework Decision no. 2002/584/JHA of the Council of the European Union of 13 June 2002 was concluded the decision taken at the Tampere European Council of 15 and 16 October 1999 to replace the formal extradition procedure for persons attempting to enter the European Union to evade justice after having been the subject of a final conviction with a simplified surrender procedure between the issuing judicial authority and the executing judicial authority, which may be assisted by the central authority designated for that purpose in the Member States in a relationship or, respectively, the contact points of the European Judicial Network.

**Keywords:** international judicial cooperation; European arrest warrant; judicial authority

**1. European arrest warrant. Definition, Purpose and Content**

The European arrest warrant is a document based on the principle of mutual recognition and mutual trust, in accordance with the provisions of Council Framework Decision no. 2002/584/JHA of 13 June 2002, published in the Official Journal of the European Communities no. L 190/1 of 18 July 2002, "It is a judicial decision by a competent judicial authority of a Member State of the European Union calls for the arrest and surrender by another Member State of a person for the *purpose of prosecution, trial or serving a sentence or a security measure involving deprivation of freedom*"<sup>2</sup>.

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<sup>2</sup> Article 84, paragraph (1), the Law on International Judicial Cooperation in Criminal Matters.

The European arrest warrant set out in the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States<sup>1</sup> is the first embodiment in the area of criminal law of the principle of mutual recognition which the European Council described as “the foundation” of judicial cooperation.

The European arrest warrant procedure has been in operation since 1 January 2004. It has replaced the lengthy extradition procedures formerly in place between EU countries. A warrant may be issued for reasons of criminal prosecution in relation to acts punishable under national law with a custodial sentence or detention order for a maximum period of at least 12 months (during the investigation, hearings and stages of the trial until the conviction becomes final) or may be issued for the execution of a conviction or a security measure of at least 4 months.

“The European arrest warrant has replaced the traditional extradition system with a simpler and faster mechanism of teaching wanted persons to conduct criminal prosecution or the execution of a custodial sentence or detention order.” (Council of the European Union: 2010, p. 8).

The arrest warrant issued by a country's judicial authority is valid throughout the EU.

The European arrest warrant does not overlap with the preventive arrest warrant in domestic law, since, on the one hand, the European arrest warrant is a judicial decision always based on a warrant of preventive arrest or execution of the sentence issued under the law and, on the other hand, the European arrest warrant is issued only when a warrant of preventive arrest or execution of punishment can not be carried out in the country, because the person concerned evades, the territory of another Member State of the European Union. (Radu, 2007, p. 150)

If it is transmitted to the competent authority of another Member State, it must be translated into the official language or languages of the executing State or in one or more other official languages of the institutions of the European Union which that State accepts, according to the declaration submitted to the General Secretariat of the Council of the European Union. In the case of Romania, it must be translated into Romanian or one of the English and French languages.

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<sup>1</sup> 2002/584/JAI.

The content<sup>1</sup> of a European arrest warrant must contain information on:

- ❖ Identity and citizenship of the requested person;
- ❖ the name, address, telephone and fax numbers and e-mail address of the issuing judicial authority;
- ❖ Indication of the existence of a final court decision, a preventive arrest warrant or any other executing judicial decision having the same effect;
- ❖ the nature and legal classification of the offense;
- ❖ a description of the circumstances in which the offense was committed, including the time, place, degree of involvement of the requested person;
- ❖ punishment, if the judgment remains final, or the punishment provided by the law of the issuing State for the offense committed;
- ❖ if it is possible, other consequences of the offense.

## **2. Issuing by the Romanian authorities of a European arrest warrant**

According to art. 88 on the procedure for issuing the European arrest warrant, par. (3) of the Law no. 302/2004 on International Judicial Cooperation in Criminal Matters, depending on the moment of the trial (the criminal investigation phase, the trial phase or the enforcement phase), the issuing of the European Arrest Warrant is carried out by different judicial bodies. So,

- ❖ if we are in the criminal prosecution phase, it is issued ex officio or at the notification of the prosecutor who carries out or supervises the prosecution of the requested person by the judge of rights and freedoms appointed by the president of the court to whom the jurisdiction to judge the case background.
- ❖ if we are in the trial phase, by the judge appointed by the president of the first instance, either by the court or by the prosecutor or the organ in which he is to be served, the preventive arrest warrant or the decree granting the deprivation of liberty; and
- ❖ if we are in the execution stage then the warrant will be issued by the judge appointed by the President of the enforcement court.

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<sup>1</sup> Article 86, paragraph (1), the Law on International Judicial Cooperation in Criminal Matters.

The competent authority issues a European arrest warrant only if conditions such as the place where the requested person is (if he is in the territory of another Member State of the European Union), the validity of the preventive arrest warrant or the enforcement warrant life imprisonment or imprisonment, the non-intervention, according to Romanian law, of the prescription of criminal liability or the execution of punishment or amnesty or pardon; or the reason<sup>1</sup> why arrest and surrender is requested.

The surrender is subject to the condition that the acts motivating the issuance of the European arrest warrant shall constitute an offense under Romanian law, regardless of its constituent elements or legal classification.

Where the European arrest warrant has been issued for the purpose of executing a custodial sentence or detention order imposed by a judgment rendered in absentia, if the person concerned has not been personally summoned or informed in any other way of the date and place of the hearing leading to the judgment rendered in absentia, the surrender of the requested person shall be given if the issuing judicial authority ensures that the person subject to the European arrest warrant is able to obtain a retrial in the issuing Member State, its presence.

Where the offense on the basis of which the European arrest warrant has been issued is punishable by a life imprisonment or by a lifetime deprivation measure, the legal provisions of the issuing Member State must provide for the possibility of reviewing the penalty or the security measure applied or conditional release, after the execution of 20 years of the sentence or the security measure applied, or the application of leniency measures.

It should be noted that the whole procedure for the issuance of a European arrest warrant is confidential until the person requested in the executing Member State is arrested and that a register of European arrest warrants is always in place and kept,<sup>2</sup> being a probatory evidence of court activity.

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<sup>1</sup> Article 88, paragraph (1), letter d), *idem*.

(i) in order to exercise the criminal prosecution or the judgment, the punishment provided by the Romanian law for the offense committed is life imprisonment or imprisonment for 2 years or more;

(ii) for the execution of the punishment, the punishment or remainder of the sentence to be executed is life imprisonment or imprisonment for one year or more;

(iii) in order to execute the deprivation measure, the duration of the measure is 6 months or more.

<sup>2</sup> The following entries are made in this register: current number; the first name, surname and nationality of the requested person; the number and date of the address of the prosecutor's office or of the court for which the criminal case lies; the case number of the enforcement court; the date of issue of the European arrest warrant; the date of transmission of the European arrest warrant; information

### **3. Execution by the Romanian Authorities of a European Arrest Warrant**

The reason for the European arrest warrant is the need to ensure that offenders can not escape justice throughout the European Union, being the instrument to bring the requested person to the justice of the issuing State for the prosecution of criminal proceedings. (Tudor & Constantinescu, 2009, p. 19)

According to art. 96, par. (2) of the law, the surrender is subject to the condition that the acts motivating the issuance of the European arrest warrant be an offense under Romanian law, regardless of its constituent elements or its legal classification.

Where the surrender of the requested person is subject to the consent of another Member State or of a third State, the taking of measures for the seizure of the requested person shall take place on receipt of the consent of that State.

Within the first 24 hours after the receipt of the mandate, the designated prosecutor concerned must carry out the preliminary procedures for verifying the contents of the European arrest warrant. This pre-validation procedure is not a public one. Following the checks he can: send the European arrest warrant to the competent prosecutor's office (if it is found that the requested person is in the territorial district of another prosecutor's office); to order the classification and inform the issuing judicial authority and the Ministry of Justice (if the requested person is not on Romanian territory); to forward to the case prosecutor or the competent court a copy of the European arrest warrant, the translation and, if necessary, the additional information communicated by the issuing judicial authority requesting it to assess and inform as a matter of urgency whether the prosecution or trial can be suspended until the case is handed down by the Romanian executing judicial authority (if the requested person is subject to ongoing criminal proceedings for the same facts for which the European Arrest Warrant was issued.) As well as the existing criminal proceedings against the requested person relates to acts other than those for which the European arrest warrant was issued).<sup>1</sup>

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on the execution of the European arrest warrant; the reasons for non-execution of the European arrest warrant; the date of surrender to the requested person; the date of the withdrawal of the European arrest warrant. The register is not intended for advertising.

<sup>1</sup> Article 99, paragraph (4) - paragraph (9), the law on international judicial cooperation in criminal matters.

The next step after the preliminary procedure is the measure of detention of the requested person, it can be taken by the prosecutor only after hearing it in the presence of the defender and ordered by reasoned ordinance and it can take up to 24 hours.

In the case of a positive result in respect of a person for whom another Member State has introduced an alert for arrest, the International Police Cooperation Center within the General Police Inspectorate asks the Signatory Member State to confirm, as a matter of urgency, the validity the decision under which that alert was introduced.

In this case<sup>1</sup>, the alert for arrest is forwarded to the Prosecutor's Office attached to the court of appeal in whose territorial jurisdiction the person was located and is equivalent to a European arrest warrant. The prosecutor in the Prosecutor's Office attached to the court of appeal in whose jurisdiction the requested person was caught informs the competent court of appeal in order to assess the taking of the measure of provisional arrest for surrender. The court seized may, in a reasoned decision, either accept the prosecutor's proposal and order the provisional arrest for surrender, for a maximum of 15 days; either to reject the prosecutor's proposal and, if necessary, order the release of the detained person.

The procedure for the execution of the European arrest warrant<sup>2</sup>:

- ❖ The judge first verifies the identity of the requested person and ensures that he has been told, in a copy and in the language he understands, the European arrest warrant and, where applicable, the conviction handed down in absentia;
- ❖ After receiving the European arrest warrant, the judge notifies the requested person of his or her rights, the effects of the specialty rule, and the opportunity to consent to surrender to the issuing judicial authority, taking into account the legal consequences of the consent to surrender, particularly its irrevocable character;
- ❖ If the requested person declares that he agrees with his surrender, his/her consent shall be drawn up by a report to be signed by the judge, the Registrar, the Defender and the person requested. The same minutes shall state whether the requested person has renounced or not the rights conferred by the specialty rule;

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<sup>1</sup> The arrest on the basis of alerts entered in the Schengen Information System.

<sup>2</sup> Article 103, *idem*.

- ❖ If the requested person does not consent to his surrender to the issuing judicial authority, the procedure for executing the European arrest warrant continues with the hearing of the requested person;
- ❖ If the requested person is released, the court has the measure of judicial control, judicial control on bail or arrest at home;
- ❖ In all cases, the measure of arrest for surrender may be taken only after hearing the requested person in the presence of the defense counsel. The initial duration of the arrest may not exceed 30 days and the total duration, up to actual delivery to the issuing Member State, may in no case exceed 180 days;
- ❖ The hearing is public, unless, at the request of the prosecutor, the requested person or ex officio, the judge considers that the trial should be adjudicated in a secret hearing. Attorney's participation is mandatory;

In all cases, the court shall rule on the execution of the European arrest warrant. For the purpose of taking a decision, the court shall take into account all the circumstances of the case and the need to execute the European arrest warrant.

Within not more than 24 hours after the decision on surrender has been finally settled, the court shall communicate the decision taken to the issuing judicial authority, the Ministry of Justice and the Center for International Police Cooperation within the General Inspectorate of the Romanian Police.

#### **4. Conclusions**

This research highlights the ongoing development of judicial cooperation in criminal matters at international, European and national levels, as well as an upward trend in the increased attention paid by human rights states.

As far as judicial cooperation in criminal matters at European level is concerned, I must mention that it is not only one of the fundamental pillars of the European Union, but it creates today, even outside the area of freedom, security and justice, the context of in-depth knowledge of the legal systems of the States concerned. It also stresses that the trust and openness that states have to accord to others is not always fully demonstrated, based on the principle of loyal cooperation and the obligations assumed at EU and international level. Thus, at European Union level, there has been a continuing development of judicial cooperation in criminal matters between EU Member States.

At national level, Law no. 302/2004 on international judicial cooperation in criminal matters is a topical challenge in the field of law, both because of the importance and the complexity it involves, with national and international consequences. This is also the main reason why this law has undergone permanent changes.

## **5. References**

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