HARMONIZING JUSTICE: UNRAVELING THE COMPLEXITIES OF THE EUROPEAN ARREST WARRANT IN THE PURSUIT OF CROSS-BORDER SECURITY AND HUMAN RIGHTS PROTECTION

FILIP NOVAKOVIĆ*

Abstract: The European Arrest Warrant (EAW) stands as a pivotal instrument within the framework of the European Union (EU), aiming to streamline and expedite cross-border judicial cooperation in criminal matters. This article delves into the intricate web of legal, procedural, and human rights challenges associated with the implementation of the EAW, shedding light on its impact on both the pursuit of cross-border security and the protection of fundamental human rights. At its core, the EAW represents a paradigm shift in transnational law enforcement, fostering a seamless extradition process among EU member states. However, this efficiency has not come without its complexities. The article navigates through the diverse legal systems of member states, exploring the challenges posed by differing legal traditions, procedural safeguards, and evidentiary standards. It examines the delicate balance required to ensure a harmonized approach to justice while respecting the autonomy and diversity of national legal systems. One of the critical aspects addressed is the potential tension between the expeditious nature of the EAW process and the imperative to safeguard individual rights. The article scrutinizes issues such as proportionality, the presumption of innocence, and the right to a fair trial, probing how these fundamental rights are preserved or potentially compromised within the EAW framework. Emphasizing the need for a delicate equilibrium, the article proposes strategies to enhance procedural safeguards and uphold human rights standards, promoting a system that is both efficient and just. The article contributes to the ongoing discourse surrounding the delicate interplay between cross-border security imperatives and the protection of individual rights within the European Union.

Keywords: *European Arrest Warrant, Transnational Law Enforcement, Cross-Border Judicial Cooperation, Human Rights Protection, Procedural Safeguards, EU Criminal Law, Extradition Mechanism.*

* Filip Novaković, LL.B. (Hons.) in General Law, LL.M. in Criminal Law, student of doctoral studies in law at the Faculty of Law of the University of Zenica (field: Criminal Law). Corresponding Member of the Bosnian-Herzegovinian-American Academy of Arts and Sciences. Full Member of the Association of Lawyers of the Republika Srpska, the Paleontological Society, the Victimology Society of Serbia, and the Croatian Association for European Criminal Law. E-mail: filipnovakovic.iur@gmail.com; ORDIC ID: https://orcid.org/0000-0001-9979-5824.

INTRODUCTION

In the contemporary landscape of transnational crime and evolving security challenges, the European Union has embarked on a mission to forge a seamless and effective system of cooperation in criminal matters among its member states. At the heart of this endeavor lies the European Arrest Warrant (EAW), a mechanism designed to streamline extradition procedures across borders, promoting both the swift administration of justice and the safeguarding of fundamental human rights.[1] This scientific article aims to dissect the intricate web of legal, procedural, and human rights dimensions inherent in the implementation of the EAW, shedding light on its complexities and implications for the pursuit of cross-border security and human rights protection within the European Union (the "EU" or "Union").

The EAW, established through the Framework Decision 2002/584/JHA, represents a paradigm shift in the realm of extradition within the EU. The objective was clear – to create a mechanism that transcends the traditional hurdles associated with cross-border criminal proceedings, fostering a harmonized approach to justice. This ambitious endeavor reflects the Union's commitment to overcoming jurisdictional barriers, thereby promoting the efficient prosecution of criminal offenders while respecting the core values enshrined in the Charter of Fundamental Rights. The cornerstone of the EAW lies in its principle of mutual recognition, reflecting the confidence placed by member states in each other's legal systems. However, this confidence is not absolute, and the delicate balance between mutual trust and the protection of individual rights forms the crux of the challenges surrounding the EAW. As we navigate through the intricacies of this legal instrument, it becomes imperative to scrutinize the balance struck between the expeditious surrender of individuals for criminal prosecution and the preservation of their fundamental rights, especially given the potential disparities in legal systems and human rights protections across the Union.

One of the key focal points of this article is the examination of the legal standards embedded within the EAW order. The evolution of case law by the Court of Justice of the European Union (CJEU) in interpreting and refining the contours of the EAW has been instrumental in shaping its implementation. An in-depth analysis of landmark CJEU decisions will serve to illuminate the nuances surrounding issues such as dual criminality, proportionality, and the potential infringement of fundamental rights, providing a comprehensive understanding of the legal landscape within which the EAW operates. Furthermore, this article will delve into the practical challenges faced by member states in executing EAWs, ranging from the potential abuse of the system for political purposes to concerns about the condition of detention in

1. Elies van Sliedregt, *The European Arrest Warrant: Between Trust, Democracy and the Rule of Law: Introduction. The European Arrest Warrant: Extradition in Transition*, 3 EUROPEAN CONSTITUTIONAL L. REV. 244, 244-52 (2007).

requesting states. By critically assessing the real-world application of the EAW, we aim to identify areas that require refinement and propose solutions that ensure the continued pursuit of justice without compromising human rights standards.

In conclusion, the EAW stands as a pivotal instrument in the pursuit of cross-border security and human rights protection within the European Union. This article seeks to unravel the multifaceted nature of the EAW, exploring its legal intricacies, the challenges faced in its implementation, and the delicate balance required to harmonize justice across diverse legal landscapes. Through a rigorous examination of legal principles, case law, and practical considerations, this scientific endeavor aspires to contribute to the ongoing discourse surrounding the evolution and efficacy of the European Arrest Warrant in the complex tapestry of European criminal law and human rights protection.

I. ON EXTRADITION IN THE COUNTRIES OF THE EUROPEAN UNION (BEFORE EAW)

Extradition, as one of the most ancient instruments of international legal cooperation in criminal matters, represents the transfer of an alleged perpetrator from one state to another, facilitating the individual's trial or execution of a prison sentence in the latter jurisdiction. Historically, it has been viewed as a crucial component of national sovereignty, often established through bilateral agreements between states.[2] Warbrick and McGoldrick posit the identification of foundational principles that underpin numerous international extradition treaties, constituting established global standards. These principles encompass the doctrine of double criminality, rooted in the *nulla poena sine lege* principle (no penalty without law), the principle of specialty, and the principle of *ne bis in idem* (preventing double jeopardy), the prohibition of extradition for political crimes, and the principle against the extradition of one's own citizens.[3]

The *doctrine of double punishment* or *double incrimination* mandates that the criminal act for which an individual's extradition is sought must be recognized as a criminal offense under both the legal framework of the requesting country and that of the state from which extradition is sought. This foundational principle ensures that the alleged conduct is punishable in both jurisdictions, providing a basis for the extradition request. Similarly, the *principle of specialty* entails a specific obligation on the part of the requesting state. It requires that the requesting state, having obtained approval for the extradition of the accused or convicted individual, limits the criminal

2. Boriša Lučić, *Evropski nalog za hapšenje – Nastanak, razvoj i funkcija*, 70 VOJNO DELO 52, 55 (2018); *see generally* Saša Knežević, *Zabrana dvostruke ugroženosti u evropskom pravu*, 11 EVROPSKO ZAKONODAVSTVO 79, 79 (2005).

3. *See* Colin Warbrick et al., *Extradition and the European Union*, 46 INT'L. & COMP. L.Q. 948, 948 (1997).

prosecution or punishment exclusively to the offense for which the extradition was granted by the requested state. This principle guards against potential abuse of the extradition process, ensuring that the individual is held accountable only for the specified crime. The principle of *ne bis in idem*, translated as "not again in the same," embodies the concept of prohibiting double jeopardy. This principle prevents the retrial of an individual for the same criminal offense, grounded in the principles of fairness, legal certainty, and the protection of the defendant's interests. The establishment of this principle reflects a commitment to safeguarding individuals from enduring repeated legal proceedings for the same alleged misconduct, fostering a legal system that upholds justice and respects the rights of the accused.

The prohibition of double jeopardy, as encapsulated by the *ne bis in idem* principle, finds its roots in considerations of fundamental fairness and legal certainty. By preventing multiple trials for the same offense, this principle ensures that individuals are shielded from undue harassment by the legal system and promotes confidence in the integrity of legal proceedings. It operates in the best interest of the defendant, contributing to a legal framework that values the protection of individual rights. In essence, these extradition principles – double punishment, specialty, and *ne bis in idem* – form the bedrock of international cooperation in criminal matters. Their implementation ensures a fair and just extradition process, safeguarding the rights of the accused while promoting legal certainty and cooperation between sovereign states. These principles are essential components of extradition treaties, contributing to the establishment of a harmonized and principled framework for handling cross-border criminal cases. More on these principles will be discussed later in the text of the article.

Historically, the extradition process involved two phases: a judicial phase, wherein the criminal court evaluated the extradition request, and a political phase, where political authorities rendered a decision on extradition. European integration has significantly influenced extradition matters, notably with the adoption of the European Convention on Extradition in 1957 under the Council of Europe.[4] Despite initial skepticism among certain countries, this convention is recognized as a foundational step in establishing a multilateral basis for extradition, marking it as the "first regional treaty on extradition."[5] The Convention included provisions aligning with contemporary extradition treaties, acknowledging challenges related to double criminality and the non-extradition of one's citizens. Political crimes, as defined by the requested party, were exempted from extradition, with reservations permitted by contracting parties.[6]

The European Convention on the Suppression of Terrorism in 1977 and the

4. European Convention on Extradition, E.T.S. No. 024, Dec. 13, 1957. Treaty open for signature by the member States and for accession by non-member States.

5. Gjermund Mathisen, *Nordic Cooperation and the European Arrest Warrant: Intra-Nordic Extradition, The Nordic Arrest Warrant and Beyond*, 79 NORDIC J. INT'L L. 1, 3 (2010).

6. *See generally* Saša Knežević, *Ekstradicija u evropskom pravu* [*Extradition in European Law*], 8 EVROPSKO ZAKONODAVSTVO 7, 7 (2004).

Schengen Convention in 1990 further impacted extradition within the EU, enhancing efficiency through the establishment of the Schengen Information System.[7] Subsequent conventions in 1995 and 1996 aimed to streamline extradition procedures, reducing obstacles and timeframes.[8] However, these efforts faced criticism for retaining elements of the traditional system. Recognizing the limitations of prior conventions, the Framework Decision on European Arrest Warrant and Surrender Procedures, adopted on June 13, 2002, replaced the traditional extradition system within the European Union. This decision marked a transformative shift, supplanting the earlier conventions and instituting the European Arrest Warrant as the new extradition mechanism.[9]

II. FRAMEWORK DECISION ON THE EUROPEAN ARREST WARRANT

Before delving into the specific circumstances and events that shaped the creation and development of the Framework Decision on the European Arrest Warrant, it is crucial to underscore a preliminary observation. The EAW Framework Decision is frequently regarded and scrutinized as an instrument designed primarily, at the time of its inception, to supplant the pre-existing extradition system. This former system was perceived as sluggish and ineffective, notably failing to account for the pressing terrorist threat prevalent in the international community during that period. To comprehend the origins and evolution of the EAW adequately, a meticulous examination of all influencing circumstances and events becomes imperative.[10] A seminal event pivotal to the adoption of the Framework Decision on EAW occurred during the European Council (the "Council") summit held on October 15 and October 16, 1999, in the Finnish city of Tampere. This summit laid the groundwork for the creation of the EAW, as reflected in the summit's conclusions. The official stance presented during the summit emphasized the need to replace the existing extradition procedures, especially for individuals evading justice subsequent to legal convictions. The Council, in its conclusions, proposed the abolition of the

7. European Convention on the Suppression of Terrorism, ETS No. 90, Jan. 27, 1977; Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders – Schengen Agreement (1985) & Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (1990).

8. Vojislav Đurđić, *Evropski nalog za hapšenje*, 46 ZBORNIK RADOVA PRAVNOG FAKULTETA U NOVOM SADU 21, 22 (2012); Vanda Božić et al., *Evropski nalog za hapšenje kao mehanizam ekstradicije u međunarodnoj krivičnopravnoj saradnji*, 57 ZBORNIK RADOVA PRAVNOG FAKULTETA U NIŠU 15, 17-18 (2018).

9. *See* Michael Plachta, *European Arrest Warrant: Revolution in Extradition?*, 11 EUR. J. OF CRIM. CRIM. L. & CRIM. JUST. 178, 178-79 (2003); *see also* ALEKSANDRA ČAVOŠKI & MARIO RELJANOVIĆ, IDEJA O STVARANJU KRIVIČNOG PRAVA EU 75 (Udruženje javnih tužilaca i zamenika javnih tužilaca Srbije 2011).

10. *See* Lučić, *supra* note 2, at 58.

formal extradition process for such individuals. Simultaneously, for other cases, the Council advocated an expedited procedure, prompting the European Commission to be tasked with proposing relevant measures. This directive aimed to streamline extradition procedures and enhance judicial cooperation.[11]

The Council in Tampere specifically endorsed "the principle of mutual recognition" of court decisions and designated it as a cornerstone for future collaboration in civil and criminal matters.[12] The principle of mutual recognition advocates treating foreign court decisions with as little scrutiny and as expeditiously as possible, akin to decisions made by domestic judicial authorities. This approach was intended to facilitate efficient cooperation and streamline the recognition and execution of foreign court decisions, aligning them with domestic judgments within a brief timeframe. In essence, the Tampere summit laid the conceptual foundation for the Framework Decision on EAW and emphasized the imperative to replace antiquated extradition mechanisms with a more responsive and cooperative approach grounded in mutual recognition. This marked a significant shift in the paradigm of judicial cooperation and set the stage for the comprehensive evolution of the EAW as a pivotal instrument within the EU's legal framework.[13]

The program outlining measures for the implementation of the principle of mutual recognition of decisions in criminal matters was formally adopted on November 30, 2000.[14] Initially, the program's objectives were somewhat unclear. Fichera noted that one of the measures mandated the adoption of an arrest warrant, with this measure being given "priority rating 2 "and restricted to the most significant criminal offenses specified in Article 29 of the Treaty on European Union.[15] However, at that juncture, not all necessary conditions for the subsequent adoption of the Framework Decision on the EAW had been established. Disagreements among member states persisted on critical issues, such as the abolition of the principle of double criminality and the role of executive authorities in the extradition procedure, which led to a lack of preparedness to implement the program.[16]

According to various authors, the pivotal event that significantly influenced the adoption of the Framework Decision on EAW was the terrorist attack on the United States on September 11, 2001. Plachta refers to this event as a "necessary

11. Božić et al., *supra* note 8, at 18.

12. Presidency Conclusions, Tampere European Council, 15-16 Oct. 1999, Eur. Council, SN 200/99.

13. Đurđić, *supra* note 8, at 24; *see generally* Dragana S. Čvorović & Hrvoje J. Filipović, *Implementation of the European Arrest Warrant*, 66 STRANI PRAVNI ŽIVOT 97, 97 (2022).

14. Programme of Measures to Implement the Principle of Mutual Recognition of Decisions in Criminal Matters, 2001 O.J. (C 12) 10 (Jan. 15).

15. Massimo Fichera, *The European Arrest Warrant and the Sovereign State: A Marriage of Convenience?*, 15 EUR. L.J. 70, 71 (2009).

16. Davor Krapac, *Okvirna odluka Vijeća [Europske Unije] od 13. VI. 2002. o Europskom uhidbenom nalogu (EUN) i postupcima predaje između država članica (2002/584/PUP)*, 64 ZBORNIK PRAVNOG FAKULTETA U ZAGREBU 955, 955-58 (2014).

political momentum,"[17] while Panainte asserts that the events in the USA accelerated the decision-making process.[18] Fichera observed that the political landscape shifted after the Twin Towers attack, making the adoption of the Framework Decision on EAW a priority.[19] Jimeno-Bulns underscores that the popularity of the Framework Decision surged after the distressing attacks on September 11, 2001, as it was perceived as an effective mechanism in the fight against terrorism.[20]

At the EU level, an unparalleled level of unity and responsiveness emerged after September 11, 2001, showcasing a collective readiness for joint opposition to terrorism. Within a few days, packages of anti-terrorist measures were swiftly adopted, underpinned by principles of coordination and a multidisciplinary approach.[21] Just one week after the terrorist attack, the European Commission presented the Framework Decision on EAW. During an extraordinary session of the Council in Brussels from September 20 to September 21, 2001, the proposal for the framework decision was integrated into the European Action Plan for combating terrorism. Formally submitted on September 25, 2001, to the Council, political negotiations on the pre-log extended over the following three months. The negotiations involved the Council, the European Parliament, and the European Commission, focusing on amendments and additions to the proposed Framework Decision on EAW.[22] Fennelly highlights that a concrete agreement was not reached until the session of the Council convened in 2001 in Laeken.[23] Marin, in her works, delineates the sequence of events leading up to the pivotal meeting in Laeken. According to the author, the initial attempt to reach an agreement on the Framework Decision on the EAW took place during a meeting held from December 6 to December 7.[24] However, the Italian Minister of Justice exercised a veto, objecting to the list of thirty-two criminal acts.[25] Subsequent political negotiations unfolded on December 11 in Rome, involving the Prime Minister of Belgium and the Prime Minister of Italy, Mr. Berlusconi. During these negotiations, an agreement was reached to lift the veto.[26] The final

17. Plachta, *supra* note 9, at 179.

18. Rodica Panainte, *Considerations on The European Arrest Warrant*, 2 J. OF PUB. ADMIN. FIN. & L. (SPECIAL ISSUE) 157, 159 (2015).

19. Fichera, *supra* note 15, at 72.

20. Mar Jimeno-Bulnes, *The Enforcement of the European Arrest Warrant: A Comparison Between Spain and the UK*, 15 EUR. J. OF CRIME, CRIM. L. AND CRIM. JUST. 263, 264 (2007).

21. Panainte, *supra* note 18, at 159.

22. Lučić, *supra* note 2, at 60.

23. Nial Fennelly, *The European Arrest Warrant: Recent Developments*, 8 ERA FORUM 519, 520 (2007).

24. Luisa Marin, *The European Arrest Warrant in the Italian Republic*, 4 EUR. CONST. L. REV. 251, 252 (2008).

25. *See* Outcome of the Council Meeting, Justice and Home Affairs, 6–7 Dec. 2001, at 3, 14639/01 (Presse 441), (Dec. 7, 2001) (Council of the EU). *See also* Valsamis Mitsilegas, *The Symbiotic Relationship Between Mutual Trust and Fundamental Rights in Europe's Area of Criminal Justice*, 6 NEW J. EUR. CRIM. L. 457, 457-80 (2015).

26. Marin, *supra* note 24, at 253.

consensus materialized at the Council meeting in Laeken, held from December 14 to 15, 2001.[27]

The Framework Decision on the EAW and surrender procedures, crucial for extradition processes among member states, was ultimately adopted on June 13, 2002, and came into force on January 13, 2003.[28] It was officially applied across the EU starting from January 1, 2004, representing a groundbreaking implementation of the principle of mutual recognition.[29] Plachta emphasizes that June 13, 2002, stands as a "significant moment in the modern history of extradition,"[30] as the adoption of the Framework Decision on EAW replaced the conventional extradition system, which was perceived as slow, political, interstate, and lacking efficacy within the realms of freedom, security, and justice. The traditional system was supplanted by a novel extradition paradigm, characterizing a transformative shift in the basic values, standards, procedures, and language of extradition within the EU.[31]

Following the adoption of the Framework Decision on EAW, the subsequent trajectory of the EAW unfolded through the implementation process at the national level. Member states enacted implementation laws and made amendments to their constitutions in line with the evolving extradition landscape. European reports concerning this process are closely tied to the evaluation conducted by the commission overseeing its implementation.[32] The final provisions of the Framework Decision on EAW mandated member states to implement the decision by December 31, 2003, and submit the text of the provisions transferring the obligation to their domestic legislation to the relevant EU body. However, only twelve states adhered to the deadline, with the remaining member states doing so by November 1, 2004, except for Italy, which completed the implementation process in 2005. The initial implementation of the EAW within the EU was not uniform, as member states adopted specific legislation and, in some cases, amended their constitutions to accommodate its execution.

III. THE CONCEPT AND FUNCTION OF THE EUROPEAN ARREST WARRANT

A. The Concept of the European Arrest Warrant

The EAW marks a groundbreaking legal instrument grounded in the foundational principle of mutual recognition of decisions in criminal matters among EU member states. This innovation brings about a transformative shift

27. *Id.*

28. Plachta, *supra* note 9, at 178.

29. Isabelle Pérignon & Constance Daucé, *The European Arrest Warrant: a growing success story*, 8 ERA FORUM 203, 203 (2007).

30. Plachta, *supra* note 9, at 183.

31. Mark Mackarel, *The European Arrest Warrant - the Early Years: Implementing and Using the Warrant*, 15 EUR. J. OF CRIME, CRIM. L. & CRIM. JUST. 37, 43 (2007).

32. Lučić, *supra* note 2, at 61.

in the established paradigm inherent in the traditional European extradition system, replacing it with a new framework based on the mutual recognition of court decisions and the partial abrogation of double punishment. The procedural overhaul encompasses the judicialization by column, the facilitation of the extradition process, and the expeditious nature of proceedings.[33]

In essence, the EAW permits the transfer of one's own citizens to another member state, streamlining and expediting the extradition procedure. Aligned with the principles and objectives of integration within common judicial realms, it introduces a novel form of cooperation founded on mutual trust among member states.[34] The EAW represents a judicial decree (judicial decision) originating in one member state with the objective of apprehending a sought-after individual within another member state and subsequently transferring them to the issuing state. The primary aims of this legal instrument encompass facilitating criminal prosecution and the execution of a prison or detention sentence. The distinctive attributes of this innovative legal mechanism, designed to enhance cooperation in criminal justice, are encapsulated within the confines of this precisely articulated term.

Operationally, the EAW represents a court decision originating from the competent judicial authority of the issuing member state. The term "judicial authority" extends beyond conventional definitions to encompass public prosecutions, excluding the police or any other administrative entity. This decision contrasts with the court decision made in the country of issuance, where two distinct judicial decisions are rendered: the initial court decision in a criminal proceeding forming the legal basis for the arrest and the subsequent decision by the competent judicial authority, as dictated by national law, to issue the EAW.[35]

The primary objective of the court decision authorizing an EAW is to prompt the judicial authorities of another member state (the executing state) to apprehend and surrender the requested person to the state that issued the warrant (the issuing state).[36] This amalgamation of arrest and surrender requests in a single instrument distinguishes the EAW from the traditional extradition system, wherein temporary arrest and extradition are discrete stages in the extradition process. Further differentiating the EAW is its ultimate aim, which centers on criminal prosecution or the enforcement of a sentence of imprisonment or detention. The competent court authority in the issuing state holds the discretion to issue an arrest warrant, albeit without any obligation to do so. This discretion, however, does not preclude the issuance of an arrest warrant, and the definition of detention aligns with provisions from the

33. Đurđić, *supra* note 8, at 25.

34. *See* Council Framework Decision 2002/584, 2002 O.J. (L 190) 1 (EU), on the EAW and the surrender procedures between member states. For statements made by certain member states on the adoption.

35. *See id.* at 5.

36. *See id.* art. 1, at 2

European Convention on Extradition of 1957. Moreover, the EAW can be issued not only for the purpose of criminal prosecution but also for the execution of a legally binding judgment in a pre-trial phase.[37] The initiation of the procedure in the issuing state necessitates the fulfillment of all legal prerequisites for restricting personal freedom and determining detention. In this context, the EAW fundamentally embodies four obligations for the member state to which it is directed: search, arrest, detention, and surrender of the requested person.[38]

B. The Function and Scope of Application of the European Arrest Warrant

Within the Framework Decision, the parameters delineating the applicability of the EAW are meticulously aligned with the principle of mutual recognition of court decisions among member states. The scope of this instrument in criminal justice collaboration is demarcated by the gravity of the offense, as normatively manifested in the prescribed or adjudicated sentence's level, establishing a threshold below which the EAW does not operate. In contrast to the traditional European extradition system, the field of the EAW's applicability has been expanded through the partial elimination of the principles of double criminality and specialty. This expansion has also played a role in lifting the prohibition on issuing warrants for nationals of the issuing state.

The determination of the lower limit for applying the EAW is contingent upon the severity of the criminal offense or the imposed sentence. This lower limit is established through the application of a general clause, specifying the lesser of either the legal maximum of the potential sentence or the minimum duration of the imposed prison sentence. An EAW may be issued for offenses wherein the law of the issuing country stipulates a maximum penalty of at least twelve months of imprisonment, or if a prison sentence of at least four months has been imposed, or if, subsequent to sentencing, detention has been ordered. It is crucial to note that the criteria of the minimum maximum threatened and minimum imposed prison sentences are not cumulative but rather alternative prerequisites for the obligation of an EAW.[39]

Within this specified framework, additional limitations for utilizing the EAW are intricately linked to double criminality – a principle deeply ingrained in the classical extradition system that prevails among European countries.[40] The principle of double jeopardy, a cornerstone of the traditional extradition paradigm, has been set aside for offenses specifically delineated in the Framework Decision.[41] These offenses are characterized by the prospect of

37. *See id.* art. 1, at 2.

38. *See* Đurđić, *supra* note 8, at 26-27; Božić et al., *supra* note 8, at 20.

39. *See* Council Framework Decision 2002/584*, supra* note 34, art. 2, sec. 1, at 2; *see* MIODRAG N. SIMOVIĆ, MILAN BLAGOJEVIĆ & VLADIMIR SIMOVIĆ, MEĐUNARODNO KRIVIČNO PRAVO [INTERNATIONAL CRIMINAL LAW] 543 (3rd ed. 2023).

40. MASSIMO FICHERA, THE IMPLEMENTATION OF THE EUROPEAN ARREST WARRANT IN THE EUROPEAN UNION: LAW, POLICY AND PRACTICE 93 (1st edition, 2011).

41. BAS VAN BOCKEL, NE BIS IN IDEM IN EU LAW 65-89 (Cambridge Univ. Press 2016).

imprisonment for a minimum duration of at least three years or the issuance of a detention order. In essence, the eradication of the principle of double criminality, as applied to offenses enumerated in the Framework Decision, hinges on two key elements: the severity of the penalty and the legal characterization of the crime.[42] For the mutual criminality to remain unconfirmed in the country executing the warrant, the international law of the country issuing the warrant – the member state initiating the EAW – serves as the criterion.[43] Under these explicitly defined conditions, the surrender of individuals based on EAWs, without the need for double criminality verification, becomes obligatory, according to Article 2, Section 2 of the Framework Decision, for the following crimes: (1) participation in a criminal organization; (2) terrorism; (3) trafficking in human beings; (4) sexual exploitation of children and child pornography; (5) illicit trafficking in narcotic drugs and psychotropic substances; (6) illicit trafficking in weapons, munitions and explosives; (7) corruption; (8) 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 Communities' financial interests; (9) laundering of the proceeds of crime; (10) counterfeiting currency, including of the euro; (11) computer-related crime; (12) environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties; (13) facilitation of unauthorized entry and residence; (14) murder, grievous bodily injury; (15) illicit trade in human organs and tissue; (16) kidnapping, illegal restraint and hostage-taking; (17) racism and xenophobia; (18) organized or armed robbery; (19) illicit trafficking in cultural goods, including antiques and works of art; (20) swindling; (21) racketeering and extortion; (22) counterfeiting and piracy of products; (23) forgery of administrative documents and trafficking therein; (24) forgery of means of payment; (25) illicit trafficking in hormonal substances and other growth promoters; (26) illicit trafficking in nuclear or radioactive materials; (27) trafficking in stolen vehicles; (28) rape; (29) arson; (30) crimes within the jurisdiction of the International Criminal Court (ICC); (31) unlawful seizure of aircraft/ships; and (32) sabotage.[44]

For any criminal offense falling within the specified nomenclature outlined in the Framework Decision, wherein the country issuing the arrest warrant prescribes a maximum penalty of at least three years of imprisonment, the executing state is obligated to surrender the requested individual. This obligation persists irrespective of whether the act does not qualify as a criminal

42. *See* Marta Ramat, *The Court of Justice and the Assessment of Double Criminality Under the European Arrest Warrant Framework Decision:* KL, 7 EUROPEAN PAPERS 993 (2022), https://www.europeanpapers.eu/europeanforum/court-of-justice-assessment-of-double-criminality [https://perma.cc/6SS9-E6M4].

43. *Id.*

44. *See* Council Framework Decision 2002/584*, supra* note 34, art. 2, sec. 2, at 3.

offense under the legislation of the executing state.[45] Furthermore, even if the act is punishable in the executing state, the surrender is mandatory, without consideration for the severity of the threatened penalties.[46] Article 2, Section 3 of the Framework Decision grants the Council of the European Union the power to expand the list of offenses through a unanimous decision, following consultation with the European Parliament. In practice, this discretionary power has evolved into a de facto obligation. Pursuant to Article 34, Section 3 of the Framework Decision, upon receipt of the Commission's report on the implementation of the European Arrest Warrant, the Council is required to evaluate whether there is a need to revise or expand the enumerated categories of criminal offenses.[47]

C. Content of the European Arrest Warrant

The EAW is designed to provide essential data and information in a standardized format, allowing judicial authorities in the place of arrest to execute the order without the need for additional documentation, except in exceptional cases. The standardized mandatory elements and form of the EAW aim to streamline and expedite the processing of orders in the country of execution, as evidenced by the practical application of the EAW in its initial five years.[48] For EU member states, the average time from arrest to the decision on surrender, in cases where the requested person does not agree to surrender, demonstrated the following trends: 2005 – 47.2 days, 2006 – 51 days, 2007 – 42.8 days, 2008 – 51.7 days, 2009 – 48.6 days, 2010-2013 – data not readily available, 2014 – 64.98 days, 2015 – 59.02 days, 2016 – 51.72 days, 2017 – 41.86 days, 2018 – 45.0 days, 2019 – 55.75 days, 2020 – 72.45 days, 2021 – 53.72 days, 2022 – 57.29 days, and 2023-2024 – data not yet published.[49]

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45. Case C-303/05, Advocaten voor de Wereld VZW v. Leden van de Ministerraad, 2007 E.C.R. I-03633. *See* Ramat, *supra* note 42.

46. It is crucial to note that the list of crimes exempted from the principle of double criminality is not exhaustive.

47. *See id.* art. 34, sec. 3, at 12. *See* Čvorović & Filipović, *supra* note 13, at 99-100.

48. Article 8(1) of the Council Framework Decision 2002/584 outlines the mandatory information that must be included in an EAW.

49. *Report from the Commission Based on Article 34 of the Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the Surrender Procedures Between Member States*, COM (2006) 8 final (Jan. 24, 2006); *Report from the Commission to the European Parliament and the Council on the Implementation Since 2005 of the Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the Surrender Procedures Between Member States*, COM (2007) 407 final (July 11, 2007); *Report from the Commission based on Article 34 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States*, COM (2011) 175 final (Apr. 11 2011); *Report from the Commission to the European Parliament and the Council on the Implementation of Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the Surrender Procedures Between Member States*, COM (2020) 270 final (July 2, 2020); *Report Commission Staff Working Document, Replies to Questionnaire on Quantitative Information on*

Year	Average Days (Non-Consent Cases)
2005	47.2
2006	51.0
2007	42.8
2008	51.7
2009	48.6
2010-2013	Data not readily available
2014	64.98
2015	59.02
2016	51.72
2017	41.86
2018	45.0
2019	55.75
2020	72.45
2021	53.72
2022	57.29
2023-2024	Data not yet published

Key Observations:

i. 2005–2009: The average duration fluctuated between approximately 43 and 52 days, reflecting early efforts to streamline the EAW process.

ii. 2018–2019: A noticeable increase occurred, with the average rising

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the Practical Operation of the European Arrest Warrant – Year 2014, SWD (2017) 320 final (Oct. 17, 2017); *Report Commission Staff Working Document, Replies to Questionnaire on Quantitative Information on the Practical Operation of the European Arrest Warrant – Year 2015*, SWD (2017) 319 final (Oct. 17, 2017); *Report Commission Staff Working Document, Replies to Questionnaire on Quantitative Information on the Practical Operation of the European Arrest Warrant – Year 2016*, SWD (2019) 320 final (May 22, 2019); *Report Commission Staff Working Document, Replies to Questionnaire on Quantitative Information on the Practical Operation of the European Arrest Warrant – Year 2017*, SWD (2019) 320 final (Aug. 28, 2019); *Report Commission Staff Working Document, Replies to Questionnaire on Quantitative Information on the Practical Operation of the European Arrest Warrant – Year 2018*, SWD (2020) 320 final (July 2, 2020); *Report Commission Staff Working Document, Replies to Questionnaire on Quantitative Information on the Practical Operation of the European Arrest Warrant – Year 2019*, SWD (2021) 320 final (Aug. 4, 2021); *Report Commission Staff Working Document, Replies to Questionnaire on Quantitative Information on the Practical Operation of the European Arrest Warrant – Year 2020*, SWD (2022) 320 final (Dec. 8, 2022); *Report Commission Staff Working Document, Replies to Questionnaire on Quantitative Information on the Practical Operation of the European Arrest Warrant – Year 2021*, SWD (2023) 320 final (July 20, 2023); *Report Commission Staff Working Document, Replies to Questionnaire on Quantitative Information on the Practical Operation of the European Arrest Warrant – Year 2022*, SWD (2024) 320 final (May 29, 2024).

from 45.0 days in 2018 to 55.75 days in 2019.

iii. 2020: The average peaked at 72.45 days, likely influenced by the COVID-19 pandemic's impact on judicial proceedings.

iv. 2021–2022: A downward trend resumed, with averages decreasing to 53.72 days in 2021 and slightly increasing to 57.29 days in 2022, indicating a gradual return to pre-pandemic efficiency levels.

When the wanted person agrees to surrender, the average time until the surrender decision is much shorter: 2005 – 14.7 days, 2006 – 14.2 days, 2007 – 17.1 days, 2008 – 16.5 days, 2009 – 16 days, 2010-2013 – data not readily available, 2014 – 21.81 days, 2015 – 20.13 days, 2016 – 16.81 days, 2017 – 15.45 days, 2018 – 16.4 days, 2019 – 16.7 days, 2020 – 21.25 days, 2021 – 20.14 days, 2022 – 20.48 days, and 2023-2024 – data not yet published.[50]

Year	Average Time (in days)
2005	14.7
2006	14.2
2007	17.1
2008	16.5
2009	16.0
2010-2013	Data not readily available
2014	21.81
2015	20.13
2016	16.81
2017	15.45
2018	16.4
2019	16.7
2020	21.25
2021	20.14
2022	20.48
2023-2024	Data not yet published

50. Đurđić, *supra* note 8, at 34-35. *See Commission Report Based on Article 34*, *supra* note 49; *Commission Report to the Parliament and the Council*, *supra* note 49; *Commission Report based on Article 34*, *supra* note 49; *Commission Report to the Parliament and the Council*, *supra* note 49; *Report Commission Staff Working Document – 2014*, *supra* note 49; *Report Commission Staff Working Document – 2015, supra* note 49; *Report Commission Staff Working Document – 2016*, *supra* note 49; *Report Commission Staff Working Document – 2017*, *supra* note 49; *Report Commission Staff Working Document – 2018*, *supra* note 49; *Report Commission Staff Working Document – 2019*, *supra* note 49; *Report Commission Staff Working Document – 2020*, *supra* note 49; *Report Commission Staff Working Document – Year 2021*, *supra* note 49; *Report Commission Staff Working Document – Year 2022*, *supra* note 49.

Key Observations:

i. 2005–2009: The average duration remained relatively stable, ranging between 14.2 and 17.1 days.
ii. 2018–2019: Slight increases were observed, with averages of 16.4 days in 2018 and 16.7 days in 2019.
iii. 2020: A noticeable increase to 21.25 days occurred, likely influenced by the COVID-19 pandemic's impact on judicial proceedings.
iv. 2021–2022: A downward trend resumed, with averages decreasing to 20.14 days in 2021 and slightly increasing to 20.48 days in 2022, indicating a gradual return to pre-pandemic efficiency levels.

The content of the EAW is specified in Article 8 of the Framework Decision, and its form and mandatory elements are defined in accordance with the Annex attached to this decision.[51] The EAW must include the following information:

i. identity and citizenship of the requested person;
ii. name, address, telephone and fax number, and email address of the judicial authority issuing the order;
iii. evidence of an enforceable judgment, warrant of arrest, or any other executive court decision falling under the scope of Articles 1 and 2 of the Framework Decision;
iv. the nature and legal qualification of the criminal act, particularly in relation to Article 2 of the Framework Decision;
v. description of the circumstances in which the criminal offense was committed, including time, place, and degree of participation of the requested person;
vi. the imposed sentence, if a final judgment exists, or the prescribed penalties according to the law of the country issuing the order; and
vii. if possible, other consequences of the criminal act.[52]

The EAW must be written or translated into the official language or one of the official languages of the country of execution or any other language accepted by that country.[53] Member states have the option to declare acceptance of a translation into one or more official languages of the EU.[54]

To achieve the standardization goals of the European Arrest Warrant, the procedure for handing over the requested person is detailed in Chapter 2 of the Framework Decision.[55] The procedure encompasses several stages, including sending the EAW to the executing state, arresting the requested person, communicating their rights, deciding on detention, obtaining the requested person's consent for surrender or conducting a hearing, deciding on the

51. *See* Council Framework Decision 2002/584, art. 8, 2002 O.J. (L 190) 1 (EU).
52. *Id.*
53. Council Framework Decision 2002/584, *supra* note 34, art. 8, sec. 2.
54. *Id.*
55. *Id.* at ch. 2.

surrender, and notifying the state that issued the EAW.[56] These stages collectively ensure the effectiveness of the European Arrest Warrant while safeguarding the basic rights of the requested person.

IV. Implementation Procedure of the European Arrest Warrant

The procedural framework governing the application and execution of the EAW encompasses several sequential stages, commencing with the issuance of the warrant, followed by its transmission to the relevant member state(s), as determined by the decision of the requested member state. Ultimately, the process culminates in the execution of the extradition procedure. The initiation of the act issuance process is of paramount significance, remarkably influencing the overall outcome of the entire procedure. This stage presupposes the satisfaction of both material and procedural prerequisites requisite for the commencement and application of the warrant.

The *substantive legal prerequisites* for the issuance of the EAW are predicated upon the authority entrusted with this responsibility.[57] Typically vested in the judiciary, the competent authority for EAW issuance is designated by each signatory state, with notification to the General Secretariat of the EU.[58] Variations may exist based on constitutional determinations, structural configurations, and organizational frameworks of each nation, potentially extending competence to other organs and entities.[59] Geographically, an EAW, once issued, holds validity across the territories of all EU member states.[60]

The instances prompting the issuance of an EAW encompass the following: (a) investigation into a committed criminal offense, (b) enforcement of an imposed sentence, and (c) implementation of a detention decision. In instances of an ongoing investigation, wherein the individual remains unconvinced, the pre-criminal proceedings ascertain the suspect's status (perpetrator, co-perpetrator, accomplice, instigator, or organizer). In cases of sentence execution, legal proceedings culminate with a conviction, and the sought individual is wanted due to their unavailability to state authorities, often being in fugitive status. Concerning the execution of a detention decision, a pre-criminal process results in a custody determination, yet the person remains elusive, typically evading authorities within the territory of another state. With regard to the gravity and legal classification of criminal offenses, EAWs are issued under specific circumstances: (a) for a prison sentence of four months or a detention decision of the same duration, (b) for an offense carrying a maximum one-year prison sentence, and (c) when the offense is inculpated in both the

56. *Id.*

57. *See* Council Framework Decision 2002/584, 2002 O.J. (L 190) 1 (EU).

58. *See id.* at art. 6, sec. 1.

59. *See id.* ("The issuing judicial authority shall be the judicial authority of the issuing Member State which is competent to issue a European arrest warrant by virtue of the law of that State.").

60. *See id.* at art. 1, sec. 2.

issuing and requested countries. Fulfillment of the conditions for EAW issuance is envisaged as a cumulative prerequisite, absent any legal impediments.[61]

Professional and logistical assistance to member states in the implementation of the EAW can be provided by the European Justice Network (EJN). The network enables members to use the capacities of the telecommunications systems of EJN, Interpol and the Schengen Information System in the implementation of the EAW and in the optimal time frame.[62]

Procedural prerequisites for the issuance of the EAW pertain to the comprehensive process involving the issuance, implementation, and oversight of acts. The procedural protocol for EAW issuance dictates that the warrant is issued by the competent judicial authority of the requesting state. Transmitted through official channels, the order is dispatched to the state where it is presumed that the sought individual, or other implicated parties, are situated, typically at the behest of the requesting state, as facilitated by international organizations such as the Schengen Information System or Interpol.[63]

Upon receipt, the requested state is obligated to expeditiously apprehend the individual if located within its jurisdiction and determine the so-called extradition detention. Within this context, the process involves verifying the identity of the detained person, adhering to legal safeguards encompassing the right to defense, notification of family and the competent authorities, provision of medical assistance, and the use of the mother tongue, in addition to the official languages of the involved states. The security authorities of the requested country operate under the authority of a court order from another jurisdiction, treating it akin to a domestic court decision or a decision of a competent body. Subsequently, a preliminary hearing ensues where the detainee is apprised of their rights and obligations in the procedure, and they declare the content of the EAW.

In cases where there is an insufficient basis for decision-making, a supplementary submission is made to the issuing country, addressing any formal deficiencies. The main hearing before the competent judge is conducted within a reasonable timeframe, with the objective of scrutinizing the EAW for execution, confirming the validity of requested supplements, and examining the existence of legal impediments to execution.[64]

The requested state reserves the right to refuse EAW execution in the presence of *absolute obstacles*, such as amnesty (the country where the person

61. *See* Božić et al., *supra* note 8, at 20-21; Đurđić, *supra* note 8, at 28-29; Simović et al., *supra* note 39, at 543-44. *See also* Council Framework Decision 2002/584, *supra* note 34, arts. 1, sec. 1, 2 secs. 1-4.

62. SAŠA ĐORĐEVIĆ, EVROPSKI NALOG ZA HAPŠENJE: DESET PITANJA, DESET ODGOVORA 6-8 (Beogradski centar za bezbednosnu politiku 2011).

63. SAŠA GAJIN, PRAVO I POLITIKA EVROPSKE UNIJE IZ PERSPEKTIVE DOMAĆIH AUTORA 30 (Centar za unapređivanje pravnih studija 2009).

64. *See* Božić et al., *supra* note 8, at 22-23. *See also* Council Framework Decision 2002/584, arts. 5, 10-15, 2002 O.J. (L 190) 1, 2-3 (EU); VALSAMIS MITSILEGAS, EU CRIMINAL LAW 121-58 (Hart Publ'g 2009).

was arrested could have prosecuted that person, but that crime is covered by amnesty in that country), the principle of *ne bis in idem*, and the age of a potential defendant (minors or the person has not reached the age of criminal responsibility in the country of arrest).[65] *Relative obstacles* serve as optional grounds for non-execution and include factors such as the absence of double criminality, ongoing criminal proceedings in the executing country for the same criminal offense, a final judgment (*ne bis in idem* modality), legal proscription of criminal prosecution or punishment, and a definitive conviction for a criminal offense.[66] Ultimately, the authorized judge renders a decision, against which an appeal is admissible.[67]

The examination of the *ne bis in idem* principle as an absolute obstacle represents a particularly intriguing, intricate, and contentious inquiry, demanding specialized elucidation. Rooted in Roman law, the *ne bis in idem* principle stands as one of the fundamental tenets contributing to legal certainty and fairness in criminal law matters. It posits that an individual cannot be subjected to multiple prosecutions or sentences for the same criminal offense. Article 3 of the Framework Decision on the EAW expressly incorporates *ne bis in idem* as a mandatory ground for rejecting the extradition request from other member states. Alternatively, according to Article 3, Section 2 of the Framework Decision, a national court is obliged to decline an extradition request if it is aware that the person in question has been finally sentenced in a member state for the same criminal offense, provided that, in case of sentencing, the sentence has been served or is currently being served, or can no longer be executed according to the law of the country whose court imposed the criminal sanction.[68] In addition to the stipulation in the aforementioned article of the Framework Decision, *ne bis in idem* serves as a basis for rejecting an extradition request and can also be identified in Article 4, Section 2, and Section 3 of the Framework Decision. However, in these instances, it assumes a non-binding, discretion-based role at the discretion of the acting national court. Article 4, Section 2 of the Framework Decision grants the court the discretion to refrain from acting on the extradition request if the person in question is already subject to criminal proceedings for the same offense.[69] This discretionary element underscores the nuanced application of the *ne bis in idem* principle, allowing for flexibility in its consideration by the national court.

The CJEU has articulated and refined the *ne bis in idem* principle, initially establishing it as a general right within the framework of Union rights and subsequently contextualizing it within specific regulations. The Court's historical jurisprudence demonstrates that the *ne bis in idem* principle, as

65. *See* COUNCIL FRAMEWORK DECISION 2002/584, art. 3, 2002 O.J. (L 190) (EU).

66. *See id.* at art. 4.

67. Božić et al., *supra* note 8, at 23.

68. ANDRÉ KLIP, EUROPEAN CRIMINAL LAW 457-68 (3d ed. 2016); FICHERA, IMPLEMENTATION OF THE EUROPEAN ARREST WARRANT, *supra* note 40, at 182-90. *See* Council Framework Decision 2002/584, art. 3, sec. 2, 2002 O.J. (L 190) 1, 1 (EU).

69. *See* Council Framework Decision 2002/584, *supra* note 34, at art. 3, sec. 2.

articulated in Article 50 of the Charter of the EU on Fundamental Rights, Article 54 of the Convention on the Implementation of the Schengen Agreement, and the Framework Decision of the Council dated June 13, 2002, concerning the EAW and surrender procedures between member states, is to be construed as an autonomous concept within the realm of European Union law.[70] Even though the Court has rendered decisions on the application of the *ne bis in idem* principle in various contexts, its judicial practice underscores that the interpretation of this principle is contingent upon the specific legal framework in which it is applied, including both the Schengen Agreement and the Framework Decision. The Court's jurisprudential approach to the ne bis in idem principle can be categorized into two main strands: first, that which pertains to the temporal application of the principle (*rationae temporis*); and second, that which relates to the substantive scope of the principle.[71]

The latter category can be further subdivided into considerations regarding the existence of a person's identity,[72] the presence of a final decision (*bis*),[73] the continuation of proceedings based on the same facts (*idem*),[74] the execution of a decision,[75] and the nature of the preceding procedure,[76] particularly whether it was of a criminal nature. The Court's nuanced examination of the *ne bis in idem* principle in these various dimensions reflects its commitment to providing comprehensive and context-specific interpretations within the framework of EU law.

As already said, the *ne bis in idem* rule, serving as a mandatory ground for non-execution of a EAW, is enshrined in Article 3, Section 2 of the Framework

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70. Igor Materljan & Gordana Materljan, *Europski uhidbeni nalog za napredne korisnike: Odluka o neizvršenju naloga zbog obustave istrage* in rem *(načelo* ne bis in idem*) i ispitivanje njezine zakonitosti*, 26 HRVATSKI LJETOPIS ZA KAZNENE ZNANOSTI I PRAKSU 59, 77 (2021); *See generally* John A. E. Vervaele, *Europsko kazneno pravo i opća načela prava Unije*, 12 HRVATSKI LJETOPIS ZA KAZNENO PRAVO I PRAKSU 855, 874-875 (2005).

71. *See* MILIJANA BUHA, NE BIS IN IDEM U KAZNENIM POSTUPCIMA 177-97 (Fac. of L., University of Banja Luka 2021).

72. *See* Case C-217/15 & C-350/15, Criminal Proceedings Against Orsi & Baldetti, ECLI:EU:C:2017:264 (Apr. 5, 2017).

73. *See* Joined Cases C-187/01 & C-385/01, Criminal Proceedings Against Gözütok & Brügge, ECLI:EU:C:2003:87 (Feb. 11, 2003); Case C-469/03, Criminal Proceedings Against Miraglia, ECLI:EU:C:2005:156 (Mar. 10, 2005); Case C-150/05, Van Straaten v. Staat der Nederlanden & Republiek Italië, ECLI:EU:C:2006:614 (Sept. 28, 2006); Case C-467/04, Criminal Proceedings Against Gasparini et al., ECLI:EU:C:2006:610 (Sept. 28, 2006); Case C-491/07, Criminal Proceedings Against Turanský, ECLI:EU:C:2008:768 (Dec. 22, 2008); Case C-486/14, Criminal Proceedings Against Kossowski, ECLI:EU:C:2016:483 (Jun. 29, 2016).

74. *See* Judgment, Case C-288/05, Criminal proceedings against Jürgen Kretzinger, ECLI:EU:C:2007:441 (Jul. 18, 2007); Judgment, Case C-367/05, Criminal proceedings against Norma Kraaijenbrink, ECLI:EU:C:2007:444 (Jul. 18, 2007).

75. *See* Case C-288/05, Criminal proceedings against Jürgen Kretzinger, ECLI:EU:C:2006:759 (Dec. 5, 2006); Judgement, Case C-288/05, Criminal proceedings against Jürgen Kretzinger, ECLI:EU:C:2007:441 (Jul. 18, 2007).

76. Case C-617/10, Åklagaren v. Hans Åkerberg Fransson, ECLI:EU:C:2013:105 (Feb. 26, 2013).

Decision.[77] In accordance with this provision, the judicial enforcement authority is obligated to refuse the execution of an EAW if it becomes aware that such a warrant has been issued concerning the requested person based on a final judgment in a Member State for the same facts.[78] This refusal is contingent on the condition that, in the case of a sentence, it has been served, is currently being served, or can no longer be enforced according to the laws of the member state where it was pronounced.[79] The initial prerequisite of the *ne bis in idem* principle necessitates the existence of *final verdicts* concerning the requested person. The term "judgment" should be interpreted broadly, encompassing not only convictions or acquittals following criminal proceedings, but also decisions made by entities involved in the implementation of criminal proceedings, even if such decisions do not take the form of a traditional judgment.[80] This can include out-of-court settlements between the accused and the state attorney or decisions to suspend proceedings due to a lack of evidence.[81]

The CJEU, in alignment with its jurisprudence, extends the application of this provision to acts by bodies participating in criminal proceedings, even if those bodies do not render judgments.[82] Examples include decisions acquitting the accused due to insufficient evidence or rejecting accusations because they have become obsolete. Conversely, the Court has rejected arguments regarding the existence of a "final judgment" in cases where the court decided to suspend proceedings without establishing the illegality of acts against the accused; when the police, after determining the performance for the old and evaluating the evidence, decided to postpone criminal prosecution; or when the state attorney decided to suspend the criminal prosecution without conducting a valid

77. Council Framework Decision 2002/584/JHA, art. 3, sec. 2, 2002 O.J. (L 190) 1. *See also* Case C-261/09, Gaetano Mantello, ECLI:EU:C:2010:683, 2010 E.C.R. I-11477.

78. Case C-665/20 PPU, X (Mandat d'arrêt européen – *Ne bis in idem*), ECLI:EU:C:2021:339 (Apr. 29, 2021).

79. Materljan & Materljan, *supra* note 70, at 78.

80. In the case *Gözütok and Brügge* (C-187/01 and C-385/01), the CJEU ruled that the *ne bis in idem* principle applies not only to judgments rendered by courts but also to decisions made by public prosecutors that definitively terminate criminal proceedings. Specifically, the Court held that a prosecutorial decision to discontinue proceedings, without judicial involvement, can constitute a "final judgment" for the purposes of the *ne bis in idem* principle. Further, in *Kossowski* (C-486/14), the CJEU emphasized that the term "judgment" should be understood in a broad sense to encompass any decision that definitively closes criminal proceedings, even if it is not adopted by a court in the form of a traditional judgment. This includes decisions that terminate proceedings without a detailed investigation, provided they result in a definitive conclusion of the case. This broad interpretation aligns with Article 3(2) of Framework Decision 2002/584/JHA, which mandates that the executing judicial authority must refuse to execute an EAW if the requested person has been finally judged by a Member State in respect of the same acts. The CJEU's case law ensures that the principle of *ne bis in idem* is upheld, even when decisions are made by entities other than traditional courts, thereby reinforcing the protection of individuals' rights within the EU legal framework.

81. *See Gözütok*, C-187/01; *Brügge*, C-385/01; *Gasparini*, C-467/04.

82. *See* C-508/18 & C-82/19 PPU, OG & PI, ECLI:EU:C:2019:456; *see also* Joined Cases C-203/15 & C-698/15, Tele2 Sverige AB v. Post- och telestyrelsen and Sec'y of State for the Home Dep't, ECLI:EU:C:2016:970.

investigation.[83] In such instances, the court has maintained a strict interpretation of the *ne bis in idem* principle, requiring a more formalized and conclusive resolution in order to constitute a "final judgment."[84]

Consequently, the application of Article 3, Section 2 of the Framework Decision presupposes the existence of a criminal procedure in a broader sense, encompassing investigations that precede the decision concluding such proceedings. From the jurisprudence of the CJEU, it is evident that the decisive factor is not the identity of the body making the decision but rather the quality of the procedure leading to that decision.

Another prerequisite is the identity of the person involved, meaning that the prior proceedings were conducted against the requested person.[85] A notable case in this context is the judgment in *Gasparini* case, rendered within the framework of implementing Article 54 of the Convention on the Implementation of the Schengen Agreement.[86] In this case, the defendant faced accusations of importing olive oil from Tunisia and Turkey to Portugal and selling it in Spain using forged documents to create the false impression that the goods originated from Switzerland.[87] Criminal proceedings in Portugal against the individual concluded due to the statute of limitations, and simultaneously, proceedings were initiated in Spain against the same person. The question arose as to whether, based on the principle of *ne bis in idem*, it is permissible to invite the person against whom an acquittal has not been passed. The CJEU, in the *Gasparini* judgment, clarified that this principle encompasses not only final judgments but also decisions determining the onset of the statute of limitations.[88] Although the issue of limitation is not harmonized at the Union level, the Court maintained that the application of Union law is not contingent on the harmonization of criminal law regulations.[89] It emphasized that the principle of mutual trust necessitates member states to recognize each other's criminal justice systems, irrespective of potential divergences in criminal proceedings that might yield different outcomes.[90] The critical factor, as emphasized by the Court, is the existence of the person's identity, permitting the invocation of the ne bis in idem principle only by the person against whom the criminal procedure in the member state has been legally concluded.[91]

The CJEU provided clarification on the issue of the identity of a person in

83. *See Miraglia*, C-469/03.

84. *See Turanský*, C-491/07; *Kossowski*, C-486/14; *Miraglia*, Case C-469/03. *See also* BUHA, *supra* note 71, at 180-81.

85. *See* Case C-436/04, Van Esbroeck, ECLI:EU:C:2006:165, ¶ 34 (May 9, 2006).

86. *See* Case C-467/04, Gasparini and Others, ECLI:EU:C:2006:610, ¶¶ 27–30, where the Court discusses how decisions rendered without a substantive examination of the case may not preclude further prosecution in another Member State.

87. *Id.*

88. *See* Case C-467/04, Gasparini and Others, ECLI:EU:C:2006:610, ¶¶ 23-24, 29-30, 35-37.

89. *Id.*

90. *Id.*

91. *Id.*

the judgment of *Orsi and Baldetti*. This case did not pertain to the execution of a European arrest warrant but rather focused on the application of the *ne bis in idem* principle in the context of double punishment. The defendants in this case were owners of companies implicated in criminal offenses related to value-added tax (VAT) evasion. The same tax amounts were subject to discussion in an administrative procedure before tax authorities, resulting in penalties imposed on these companies. The central issue revolved around the question of whether a national regulation allowing for a dual procedure concerning the same facts aligns with Article 50 of the Charter of the European Union on Fundamental Rights. The CJEU affirmed. Making reference to Article 50, which prohibits the retrial of the same person in criminal proceedings or the re-punishment in criminal proceedings of the same person for the same criminal offense, the Court found that, in the specific case, the requirement for the identity of the persons was not satisfied. This was because the procedure conducted before the tax authorities was directed against the trading companies rather than against the individuals themselves.[92]

In the adjudication marked as *AY*, the CJEU expounded upon the applicability of the *ne bis in idem* principle, specifying that it exclusively pertains to individuals for whom a conclusive determination has been rendered within a member state.[93] Consequently, inquiries *in rem*, directed at unidentified offenders, fall outside the purview of the aforementioned provision.[94] The CJEU expressly asserted that the *ne bis in idem* principle does not extend to decisions arising subsequent to investigations conducted against unknown perpetrators, wherein the subject individual lacked the status of a suspect or defendant, being solely interrogated in the capacity of a witness.[95] Hence, for the *ne bis in idem* principle to serve as grounds for rejecting the execution of an EAW, the ascertainability of a person's identity becomes imperative. The individual must occupy a distinct role in criminal proceedings, indicative of the fact that legal processes were initiated against them. In the specific case, it is evident that the investigative proceedings conducted in Hungary against an unknown perpetrator, wherein *AY* was merely questioned as a witness, preclude the satisfaction of the constitutive condition regarding the identity of the person for the application of the *ne bis in idem* principle.[96]

Another essential criterion for the *ne bis in idem* principle's application is the finality of the decision referenced by the requested person. In this context, it merits emphasis that the CJEU has established a standard whereby the criteria for finality must be ascertained in accordance with the national law of the member state in which the decision was rendered. The decision should possess

92. *See* Case C-217/15*,* Orsi and Baldetti, ECLI:EU:C2017:264, ¶¶ 17-18.

93. *See* Case C-268/17, CJEU Judgment AY, ECLI:EU:C:2018:602, ¶¶ 44-46.

94. *Id.*

95. *Id.*

96. *See* Boris Tučić, *Načelo* ne bis in idem *u kontekstu evropskog naloga za hapšenje: Pogled kroz jurisprudenciju Suda pravde EU*, 11 CIVITAS 149, 152-54 (2021).

a nature that precludes the further criminal prosecution of the requested person within the member state of origin. The CJEU deems a mere formal determination of the procedure's completion inadequate. Instead, when deciding on the non-execution of an EAW, it becomes imperative to assess the quality of the conducted criminal procedure. In the *AY* case, the CJEU reaffirmed its stance that a mere investigation is insufficient, emphasizing the necessity to scrutinize the specific circumstances of each case in which a decision to suspend criminal prosecution is rendered.[97] In light of its prior jurisprudence, the criteria employed by the court in evaluating the quality of the investigation and the overall procedural conduct in individual cases can be discerned.[98]

In the case of *Miraglia*, the court determined that a decision to suspend proceedings, triggered by the withdrawal of charges by the state attorney of a member state solely because criminal proceedings were initiated against the same defendant for identical facts in another member state, lacks validity.[99] This deficiency arises from the absence of specified circumstances of the case, as well as the omission of a detailed factual description levied against the defendant, thereby failing to constitute a legitimate decision concerning that individual within the framework of Article 54 of the Convention on the Implementation of the Schengen Agreement.[100] This interpretative stance derives from the court's prioritization of the overarching goal and purpose enshrined in the aforementioned provision, rather than being influenced by procedural or purely formal considerations, which may vary among individual member states. The ultimate objective is to ensure the comprehensive effectiveness of the provision. Notably, the jurisprudential underpinning asserts that Article 54 of the Convention on the Implementation of the Schengen Agreement aims to prevent individuals from facing prosecution for the same offenses across multiple member states merely for exercising their right to freedom of movement.[101]

However, applying this article to a member state's decision to suspend criminal proceedings, where the substantive examination of the case's circumstances related to the commission of a criminal offense has not occurred, poses challenges. Such an application could impede, or even render impossible, the actual prosecution of the defendant for a criminal offense in another member state. This potential consequence arises from the risk that the initiation of criminal proceedings in another member state, based on the same facts, might lead to the suspension of proceedings by the state attorney in the first member state. Such an outcome would run counter to the fundamental purpose outlined in Article 2 of Title VI of the Treaty on European Union,[102] emphasizing the

97. *See* Case C-268/17, CJEU Judgment AY, ECLI:EU:C:2018:602, ¶¶ 44-46.

98. *See* Materljan & Materljan, *supra* note 70, at 80-81.

99. *See Miraglia*, C-469/03, ¶¶ 30–34.

100. *Id.* ¶¶ 30-31.

101. *Id.* ¶¶ 32-34.

102. Treaty on European Union, opened for signature Feb. 7, 1992, 1992 O.J. (C 191) 1 (entered into force Nov. 1, 1993).

preservation and development of the Union as an area of freedom, security, and justice, ensuring the free movement of persons, alongside measures aimed at preventing and suppressing crime.[103]

In the *Turanský* case, the assessment of the finality of the decision revolved around the perspective of the police authority's determination to terminate the criminal proceedings.[104] It concluded that, as this decision does not definitively resolve the suspension of the criminal proceedings, it cannot be deemed a conclusive judgment rendered in relation to a specific person within the framework of Article 54 of the Convention on the Implementation of the Schengen Agreement. The court articulated that, while Article 54 of the Convention on the Implementation of the Schengen Agreement aims to secure the freedom of movement for individuals who have completed their sentence or have been acquitted by a final decision in a member state, it does not intend to shield a suspect from the possibility of subsequent investigations being conducted against them for the same facts in multiple states that are contracting parties to the convention.[105] Consequently, the individual sought in the proceedings can only invoke a decision that effectively precludes any further criminal prosecution against them in the member state wherein it was rendered.[106]

A notable illustration emphasizing the requisite quality of an investigation, particularly its thoroughness, is evident in the *Kossowski* case, serving as a prominent instance wherein the CJEU elucidated its stance.[107] In this pivotal judgment, the Court scrutinized the circumstances of the case and asserted that a decision to suspend criminal prosecution, characterized by the fact that the public prosecutor's office opted not to proceed due to the defendant's refusal to provide a statement and the alleged residence of the victim and witness in Germany, thereby impeding their participation in the investigative process, failed to meet the standard of a thorough evaluation.[108] The Court emphasized that the absence of a more exhaustive inquiry to collect and scrutinize evidence rendered such a decision inadequate, stating that it did not represent a determination preceded by a comprehensive assessment of the case's merits.[109]

At the heart of the Court's reasoning, as articulated in the *Kossowski* case, is the assertion that decisions issued by the public prosecutor's office – such as the one under scrutiny in the present matter, which leads to the suspension of criminal prosecution and the termination of the investigative procedure – cannot be regarded as determinations following a comprehensive evaluation of the substantive merits of the case. Consequently, such decisions do not qualify as final decisions within the meaning of Article 54 of the Convention on the

103. *See Miraglia*, C-469/03, ¶¶ 32-34; *see also* BUHA, *supra* note 71, at 182-83.
104. *See Turanský*, C-491/07, ¶¶ 40-45.
105. *Id.*
106. *Id.*
107. *See Kossowski*, C-486/14, ¶¶ 48-53.
108. *Id.*
109. *Id.*

Implementation of the Schengen Agreement. This is especially pertinent when the explanation accompanying the decision reveals that a comprehensive investigation was not undertaken, thereby raising concerns about the mutual trust among member states. The failure to hear both the victim and potential witnesses, as highlighted in the main proceedings, serves as a tangible indicator that a thorough investigation was lacking in the case at hand.

The grounds for potential non-execution of the EAW are delineated in Article 4, Section 3 of the Framework Decision. This provision explicitly states that the executing judicial authority may refuse the execution of the EAW if "the judicial authorities of the executing Member State have discontinued criminal prosecution for the offense for which the EAW was issued, have decided to suspend the proceedings, or if the requested person has been definitively sentenced in a Member State for the same criminal offense, thereby precluding further punishment or proceedings."[110] This provision outlines three distinct grounds upon which the execution of the EAW may be refused.

The first rationale pertains to situations where the judicial authority of the member state of enforcement has relinquished prosecution for the criminal offense specified in the EAW. The second rationale is pertinent to scenarios wherein the judicial authority of the executing member state opts to suspend proceedings due to the criminal offense outlined in the EAW. In the case of the Framework Decision, this rationale is of particular importance. A detailed analysis of the provision requires careful consideration of the phrase criminal offense for which the EAW has been issued.[111]

Certain scholars advocate for a broader interpretation of the provision in question, positing that it extends beyond the scope of Article 3, Section 2. This perspective hinges on the language used in Article 4, Section 3, which specifically references the "criminal offense for which a European arrest warrant has been issued," as opposed to explicitly mentioning the "requested person." In the analysis of these scholars, the text of Article 4, Section 3 does not expressly mandate that criminal proceedings must be initiated against the requested person.[112] Nevertheless, they acknowledge that interpreting this provision to encompass situations where the same facts are involved but different individuals are implicated may be overly expansive.[113] According to this line of thought, for Article 4, Section 3 of the Framework Decision on Waiver of Prosecution or Criminal Proceedings to be applicable, there should be a suspension of criminal proceedings. This suspension should relate to the requested person, even though formal designation as a defendant or suspect may not be necessary. The crux lies in the examination of the possibility that the

110. Council Framework Decision 2002/584/JHA, art. 4, sec. 3, 2002 O.J. (L 190) 1, 2 (EC).

111. *See* EUROPEAN CRIMINAL BAR ASSOCIATION, E.2 OPTIONAL REFUSAL GROUNDS – HOW TO DEFEND A EUROPEAN ARREST WARRANT CASE, ECBA EAW HANDBOOK, available at https://handbook.ecba-eaw.org/e-2-optional-refusal-grounds/ [https://perma.cc/F8FF-W935].

112. *See* Council Framework Decision 2002/584/JHA, art. 3, 4 & 5, 2002 O.J. (L 190) 1, 2 (EC).

113. Materljan & Materljan, *supra* note 70, at 84.

requested person may have committed the specified criminal offense.[114]

However, the CJEU did not subscribe to this line of reasoning. In reference to its prior judicial precedents, the Court underscored that the refusal to execute the EAW constitutes an exception, necessitating a narrow interpretation of the grounds for non-execution.[115] Specifically, the Court emphasized that if the rejection of the EAW's execution were permissible merely because a prior decision was made regarding the same criminal act, irrespective of the individual against whom the proceedings were initiated, such an interpretation would be overly broad and pose a risk of evading the obligation to execute the EAW. Citing Article 1, Section 1 of the Framework Decision, the Court in *Piotrowski* reiterated that the primary objective is the apprehension and surrender of the sought-after person.[116] Consequently, the EAW must be issued not only in relation to the criminal offense but also with regard to the requested person.[117] Drawing on its previous case law, the Court clarified that the purpose of the provision in question is not to shield an individual from the prospect of prosecution for the same offense across multiple member states.[118] The Court contended that the free movement of persons is intricately tied to measures aimed at preventing and suppressing crime. Therefore, the second ground for non-execution outlined in Article 4, Section 3 of the Framework Decision should be construed in light of the imperative to advance the objectives of crime prevention and suppression. Given that the investigation was conducted against an unknown perpetrator and the decision to suspend the investigation was not made in relation to the requested person, i.e., the requested person was not actively involved in criminal proceedings in the broader sense as an accused, such a decision cannot form the basis for refusing to execute the EAW within the purview of Article 4, Section 3 of the Framework Decision.[119]

To substantiate its position, the CJEU invoked the historical context surrounding the creation of the Framework Decision and referred to the original proposal put forth by the European Commission.[120] This proposal, as per the Court's interpretation, indicates that the initial segment of Article 4, Section 3 of the Framework Decision mirrors the language of the European Convention on Extradition dated December 13, 1957, and specifically draws from its Article 9.[121] The explanatory report accompanying the aforementioned convention clarifies that this provision addresses situations where a decision has been made concerning an individual, preventing further criminal proceedings or leading to

114. *Id.*

115. *See* Case C-367/16, Criminal proceedings against Dawid Piotrowski, Judgment, ECLI:EU:C:2018:27, ¶ 48 (Jan. 23, 2018); *see AY*, C-269/17, ¶ 52.

116. *See* Council Framework Decision 2002/584/JHA, art. 1, § 1, 2002 O.J. (L 190) 1, 2 (EC). *See also Piotrowski*, Case C-367/16.

117. *See* Case C-269/17, Niemeyer v. Brussels Airlines, ECLI:EU:C:2018:48, ¶¶ 53-55.

118. *Id.*

119. *Id.* ¶¶ 56-58

120. *See* Case C-404/15, Aranyosi and Căldăraru, ECLI:EU:C:2016:198 (Apr. 5, 2016).

121. *See* European Convention on Extradition, art. 9, Dec. 13, 1957, 359 U.N.T.S. 273.

the suspension of ongoing proceedings.[122] Consequently, the Court contended that a decision to suspend an investigation, particularly when it was not made in relation to the requested person, cannot serve as grounds for rejecting the EAW within the ambit of Article 4, Section 3 of the Framework Decision.[123]

The third rationale for refusing to execute the EAW pertains to instances where the requested person is present in a member state, having received a final judgment for the same criminal offenses that precludes further criminal proceedings. The CJEU, in relation to this ground, merely asserted that the specific conditions for its application are not met in the given situation.[124] In conclusion, according to the CJEUs perspective, Article 4, Section 3 of the Framework Decision embodies the *ne bis in idem* principle.[125]

The *effective implementation* of the EAW involves crucial elements such as *implementation and execution control*. Because of that, the implementation and execution control within the EAW framework are pivotal components that ensure the smooth operation of cross-border criminal justice mechanisms. In this procedure, where the focus lies on the warrant itself, the evaluation centers around formal elements and technical facts relevant to the extradition process.[126] Unlike a trial, evidence concerning the guilt or innocence of the accused is not the primary consideration. Instead, the competent judicial body of the requested country scrutinizes whether the conditions for extradition, as outlined in the warrant, are met.[127] This process emphasizes expediency, with the court mandated to render a decision on the (non)extradition of the individual within a time frame of 60 days from the day of arrest.[128] A noteworthy feature of the EAW process is the expedited path in cases where the arrested person consents to extradition. In such instances, the decision must be reached within a shorter timeframe of ten days from the moment of obtaining the individual's consent.[129] This acceleration is designed to streamline the procedure when cooperation between the requested and requesting states is mutual.[130] Following a decision,

122. *See* Explanatory Report on the European Convention on Extradition, Dec. 13, 1957, 359 U.N.T.S. 273.

123. *See* Igor Materljan & Gordana Materljan, *Europski uhidbeni nalog za napredne korisnike: Odluka o neizvršenju naloga zbog obustave istrage in rem (načelo ne bis in idem) i ispitivanje njezine zakonitosti [European Arrest Warrant for advanced users: Decision not to execute a warrant due ot the discontinuation fo an investigation in rem (ne bis in idem principle) and review of its legality]*, 26 HRVATSKI LJETOPIS ZA KAZNENE ZNANOSTI I PRAKSU [CROATION Y.B. CRIM. SCI. PRACTI.] 59 (2019); Boris Tučić, *Načelo* ne bis in idem *u kontekstu evropskog naloga za hapšenje: Pogled kroz jurisprudenciju Suda pravde EU [The Principle of Ne Bis in Idem in the Context of the European Arrest Warrant: A Perspective Through the Jurisprudence fo the Court of Justice of the EU]*, 11 CIVITAS 149, 152-54 (2021); *AY*, C-269/17, ¶ 59.

124. *See AY*, C-269/17, ¶ 62.

125. *See generally* KLIMER LIBOR, EUROPEAN ARREST WARRANT 159 (2015).

126. Božić et al., *supra* note 8.

127. *Id.*

128. *Id.*

129. Council Framework Decision 2002/584/JHA, art. 17, § 2, 2002 O.J. (L 190) 1, 8 (EC).

130. *See* Case C-303/05, Advocaten voor de Wereld VZW v Leden van de Ministerraad, ECLI:EU:C:2007:261 (May 3, 2007).

the court in the requested country initiates communication with the competent authority of the EAW issuer. This communication is a crucial step where details regarding the handover of the individual to the claimant state are meticulously determined. It sets the stage for the subsequent phases of the extradition process, emphasizing coordination and cooperation between judicial authorities.

Turning attention to the financial aspect, the costs associated with executing an EAW are multifaceted. They include expenses related to the engagement of personnel and technical resources for the execution of orders. These expenditures encompass various facets, such as arrest operations, accommodation and guarding, security measures, nutrition, medical care, legal aid, enforcement, and transfer logistics.[131] In the EU practice, a general principle prevails: the requesting state bears the majority, if not all, of the incurred costs.[132] However, it is important to note that certain expenses are shouldered by the acting state until the person subject to the EAW is conclusively handed over to the requesting country.[133] This financial distribution is aimed at ensuring a fair and balanced approach to sharing the burdens associated with transnational law enforcement efforts.[134]

The meticulous oversight of the execution of EAWs is intricately outlined in Recital 8 of the Framework Decision. This regulatory provision delineates a comprehensive framework that relies on the inherent competence of judicial bodies.[135] It draws inspiration from the legal standards observed in developed EU countries, particularly with regard to the principles of judicial independence and the autonomy of courts in decision-making processes. Under this framework, decisions rendered by first-instance courts become subject to scrutiny and control by second-instance judicial bodies within the requested state. The emphasis on judicial oversight rooted in the principles of independence and freedom of the courts signifies a deliberate effort to insulate the judiciary from undue political influence. This approach is pivotal in ensuring that the execution of EAWs is unequivocally entrusted to judicial authorities.

As highlighted by Palmieri, this framework operates as a safeguard, liberating the judiciary from potential external pressures and confirming that the execution of EAW remains firmly within the purview of the judicial domain.[136] This commitment to judicial control not only upholds the integrity of the legal process but also reinforces the principles of the rule of law within the EU. The multi-tiered system, where decisions at the first-instance level undergo review by second-instance judicial instances, adds an additional layer of scrutiny to safeguard against potential errors or biases. It establishes a mechanism where

131. *See* Council Framework Decision 2002/584/JHA, art. 26, 2002 O.J. (L 190) 1, 9 (EC).

132. *Id.*

133. *See Report on the implementation of the European Arrest Warrant*, COM (2005) 63 final (Feb. 23, 2002).

134. *Id.*

135. Council Framework Decision 2002/584/JHA, rec. 8, 2002 O.J. (L 190) 1, 9 (EC).

136. Marco Palmieri, *The European Integration in Criminal Field: The European Arrest Warrant*, 8 TEMIDA, ČASOPIS O VIKTIMIZACIJI, LJUDSKIM PRAVIMA I RODU 37, 38 (2005).

legal standards and procedural fairness are upheld, contributing to the overall effectiveness and legitimacy of the EAW execution process. In essence, the regulatory provisions encapsulated in Recital 8 of the Framework Decision not only outline the legal framework for the execution of EAWs but also serve as a testament to the EU's commitment to upholding judicial independence, ensuring the unfettered operation of the legal system, and fostering a climate where the execution of EAWs is conducted with utmost adherence to legal principles.[137]

To thwart potential abuses in the implementation of the EAW and safeguard against discriminatory practices, Recital 12 of the Framework Decision incorporates a crucial clause explicitly prohibiting discrimination. This clause becomes particularly relevant when there are reasonable grounds to suspect that an EAW was issued with the intention of persecuting or punishing an individual based on certain protected characteristics. These protected characteristics encompass gender, race, religion, ethnic origin, nationality, language, political position, or sexual orientation. The inclusion of this prohibition serves as a vital mechanism to ensure that the issuance and execution of EAWs remain grounded in the principles of fairness, equality, and respect for human rights. Specifically, it aims to address instances where the very act of seeking extradition may be driven by discriminatory motives. In such cases, the clause acts as a protective shield for individuals who find themselves in a vulnerable position due to the potential violation of their rights based on the mentioned characteristics.[138]

It is crucial to underscore the heightened vulnerability and jeopardized rights of individuals within the application procedure when these prohibited grounds for discrimination come into play. The clause serves as a robust legal safeguard, alerting authorities to scrutinize EAWs closely when suspicions arise regarding their issuance for discriminatory purposes. This proactive approach aligns with the broader principles of justice, ensuring that the extradition process does not become a tool for the unfair targeting or persecution of individuals based on inherent characteristics. In essence, the inclusion of the prohibition of discrimination clause in the EAW Framework Decision reflects a commitment to upholding fundamental rights and preventing the misuse of extradition procedures for discriminatory ends. By explicitly addressing the potential abuse of the EAW on the basis of protected characteristics, the legal framework seeks to reinforce the values of equality and non-discrimination in the administration of justice within the European Union.

The refusal to execute an EAW is a prerogative granted to the requested state under specific circumstances. This discretion comes into play when there is a substantial and legitimate apprehension that the individual subject to extradition may face grave consequences, including the imposition of the death penalty or exposure to torture, inhumane treatment, humiliating punishment, or degrading conditions. This protective mechanism is rooted in the fundamental commitment to uphold human rights and prevent the complicity of any state in

137. Council Framework Decision 2002/584/JHA, rec. 8, 2002 O.J. (L 190) 1, 6 (EC).
138. *See* Council Framework Decision 2002/584/JHA, rec. 12, 2002 O.J. (L 190) 1, 6 (EC).

actions that contravene internationally accepted standards. The requested state, exercising this discretion, retains the authority to seek additional guarantees concerning the status and rights of the individual in question. This provision establishes a crucial avenue for the requested state to ensure that the extradition process aligns with its domestic legal framework and conforms to universal European standards. As highlighted by Đurđić, this approach reflects a commitment to safeguarding the rights and well-being of individuals, even in the context of extradition proceedings.[139] The refusal to execute an EAW under these circumstances serves as a safeguard against potential human rights abuses. By allowing the requested state to scrutinize the conditions awaiting the individual in the requesting state, the legal framework seeks to prevent extradition in situations where there is a credible risk of severe violations of fundamental rights. This not only underscores the significance of international human rights norms but also reinforces the collaborative commitment to justice, fairness, and the protection of individuals across European borders. The option for the requested state to seek additional guarantees further emphasizes the importance placed on ensuring that the extradition process is conducted in accordance with the principles of justice, respect for human rights, and adherence to both national and international legal standards.

V. Problems in the Procedure of Implementation of the European Arrest Warrant

The principles underlying the EAW have, from the outset, given rise to numerous challenges affecting both its effectiveness and application. The elimination of the requirement for double criminality, while ostensibly streamlining extradition procedures, has introduced a legal quandary concerning the safety of individuals residing within the territory of EU member states. This is particularly evident in situations where a person may be extradited for an act that is not deemed a criminal offense in the country of their current location.

The immediate consequence is a potential threat to the cherished principle of legality (*nullum crimen, nulla poena sine lege*), a cornerstone safeguarded, among other instruments, by the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).[140] The broad and imprecise definitions of criminal acts outlined in Article 2, Section 2 of the Framework Decision, further exacerbate this threat to the principle of legality. The mutual recognition of criminal judgments, which is foundational to the efficacy of the EAW, assumes the absence of double punishment.[141] Therefore, it necessitates agreed-upon definitions of criminal offenses for which extradition is carried out. However, the listed categories of criminal offenses for which double jeopardy

139. *See* Đurđić, *supra* note 8, at 24.

140. Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, ETS No. 5, with 16 additional protocols, art. 7.

141. Charter of Fundamental Rights of the European Union, art. 49, 2012 O.J. (C 326) 391.

has been abolished might be perceived as "empty boxes" devoid of legal value *per se*. This is due to terms like "corruption," "terrorism," "rape," or "sabotage" lacking precise legal definitions, leaving it to individual states to fill these "empty boxes" with appropriate definitions based on their legal systems.[142] The consequence of this situation is evident, especially for certain serious criminal acts such as murders, rapes, and racketeering. Harmonizing a common denominator in the definition of behaviors exempt from double criminality becomes a challenging task. The abolition of the principle of double punishment for specific categories of criminal acts potentially jeopardizes guaranteed human rights and the interests protected by criminal incriminations. Simultaneously, the possibility of introducing a double criminality clause for certain acts into national regulations outside the list stipulated in the Framework Decision raises concerns about the equality of citizens before the law and the prohibition of discrimination. This dynamic creates a delicate balance between the facilitation of cross-border law enforcement and the imperative to uphold fundamental legal principles and human rights within the EU legal framework.[143]

The CJEU undertook a comprehensive assessment of various critical issues pertaining to the Framework Decision on the EAW. This evaluation was part of a broader examination of the validity of the Framework Decision, initiated by the Belgian Constitutional Court in response to a request from the bar association *Advocaten voor de Wereld*, seeking a constitutional assessment of the Belgian regulations governing the implementation of the EAW.[144] Emphasizing the foundational principles of the EU, such as the rule of law and the respect for human rights in accordance with the ECHR, the CJEU clarified its approach to evaluating human rights violations.[145] The Court stated that it assesses these violations based on the standards established by the ECHR. In its decision, the Court rejected the contention put forth by Belgian lawyers that the general enumeration of broad and imprecise criminal offenses, without the requirement for double criminality, violates the principles of legality.[146] The Court held that the purpose of the Framework Decision is not to harmonize the features of criminal offenses and prescribed penalties across member states.[147] Instead, it affirmed that all member states are obligated to uphold the principle of legality in criminal law.[148] The Court distinguished between the regulation of

142. *See* Council Framework Decision 2002/584/JHA, art. 2, § 2, 2002 O.J. (L 190) 1, 3 (EC).

143. *See* Massimo Fichera, The Implementation of the European Arrest Warrant in the European Union: Law, Policy and Practice at 102-3 (2009) (Ph.D. dissertation, University of Edinburgh).

144. Case C-303/05, Advocaten voor de Wereld VZW v Leden van de Ministerraad, ECLI:EU:C:2007:261 (May 3, 2007).

145. *See* European Convention on Human Rights, art. 6, Nov. 4, 1950, 213 U.N.T.S. 221; *see also* Charter of Fundamental Rights of the European Union, arts. 47, 2012 O.J. (C 326) 391.

146. *See Advocaten voor de Wereld VZW*, Case C-303/05.

147. *Id.*

148. *Id.*

the executing state on the implementation of the EAW and the definition of the criminal offense and appropriate punishment, which are governed by the law of the issuing country.[149] Consequently, the Court asserted that the application of criminal law regulation, in accordance with the principle of legality, extends to the individual sought by the EAW.[150] This application is justified by the obligation of all member states, including the issuing state, to adhere to the principle of legality.[151]

Addressing concerns related to the principle of equality and non-discrimination, the Court took the position that differential treatment of individuals in similar situations is permissible if objectively justified. The Court contended that the list of criminal offenses in the Framework Decision, for which double punishment is not required, compared to those where double criminality may be a condition, is justifiable due to the weight of the criminal acts listed. Notably, these acts inherently carry a potential sentence of at least three years in prison.[152] Therefore, in the Court's view, the Framework Decision does not violate the principle of equality and prohibitions against discrimination. This legal stance underscores the Court's commitment to balancing the facilitation of cross-border law enforcement with the preservation of fundamental legal principles and human rights within the EU.[153]

Despite the unequivocal stance taken by the CJEU, affirming the absence of violations concerning the principles of legality in criminal law, as well as the principles of equality and the prohibition of discrimination, a doctrinal interpretation of the emerging legal frameworks for criminal law cooperation reveals challenges. These challenges, coupled with practical difficulties encountered in the application of the EAW by judicial authorities across member states, inevitably evoke the impression that the new system for the deprivation of liberty and the transfer of individuals to another EU member state may be premature. The assumption underlying this impression is that it presupposes a significantly higher degree of harmonization of criminal law regulations. The abandonment of the traditional model signals a departure from established practices, suggesting that while a fully-fledged new system might be premature, reverting to the old model is no longer a viable option.[154] The transitional phase appears to be marked by complexities stemming from both doctrinal interpretations of the novel legal mechanisms introduced by the Framework Decision and practical hurdles faced in the day-to-day application of the EAW.[155]

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149. *Id.*

150. *Id.*

151. *See* Zlata Đurđević, *Europski sud pravde i legitimitet europskog uhidbenog naloga [The European Court of Justice and the Legitimacy of the European Arrest Warrant]*, 14 HRVATSKI LJETOPIS ZA KAZNENO PRAVO I PRAKSU 1021, 1024–26 (2007).

152. *Id.*

153. *Id.*

154. Fichera, *supra* note 15, at 97.

155. Đurđić, *supra* note 8, at 31.

This perception gains further credence when examining the European Commission's report on the application of the EAW.[156] The report highlights areas where improvements in the transposition and application of the Framework Decision are warranted. Specifically, it emphasizes the need to elevate the protection of basic rights to a central position within the EAW system. Acknowledging these challenges and potential improvements is essential for fostering a system of cooperation that not only facilitates cross-border law enforcement but also ensures the protection of fundamental rights. While the CJEU has provided legal clarity on the compliance of the EAW system with fundamental principles, the pragmatic challenges observed in its application underscore the ongoing need for refinement and enhancement. The collective commitment to addressing these challenges will be instrumental in establishing a robust, effective, and rights-respecting EAW system that aligns with the evolving dynamics of criminal law cooperation within the EU.

Concerning the scope of the EAW, it's crucial to note that its jurisdiction has been expanded compared to the previous extradition system, notably through the removal of the clause prohibiting the extradition of one's own citizens.[157] Initially, the Framework Proposal indicated that the exclusion of one's own citizens would no longer be permissible, with nationality no longer being the primary criterion.[158] Instead, the residence of the requested person, especially in relation to the execution of the sentence, was highlighted as a key factor. However, it is important to recognize that in many continental European countries, the extradition of one's own citizens is constitutionally prohibited, with some exceptions. This prohibition is grounded in the safeguarding of citizens from trial under foreign law and in a foreign language.[159] It carries a certain "sentimental" or "patriotic" value in many continental legal systems.[160]

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156. *Id.*

157. In many continental European countries, constitutional prohibitions against the extradition of nationals have remained, despite the EAW framework. These prohibitions are rooted in the principle of national sovereignty and protection against forced removal to foreign jurisdictions. However, the EAW allows for certain exceptions or negotiated alternatives (e.g., serving the sentence in the requested state) to overcome these barriers.

158. *See Proposal for a Council Framework Decision on the European Arrest Warrant and the Surrender Procedures Between Member States*, COM (2001) 522 final (Nov. 11, 2001) (The Framework Proposal laid the groundwork for the EAW, introducing key reforms, including the elimination of the nationality clause).

159. *See* Bedanna Bapuly, *The European Arrest Warrant under Constitutional Attack*, 3 ICL J. 4, 14-15 (2017).

160. The phrase "sentimental or patriotic value" in the context of constitutional principles in continental legal systems often refers to the deep-rooted cultural and historical significance attached to national constitutions. In many European countries, these documents are not merely legal texts but symbols of national identity, collective memory, and shared values. For instance, in Germany, the concept of constitutional patriotism (*Verfassungspatriotismus*) emerged post-World War II as a means to foster democratic identity without relying on ethnic or cultural homogeneity. This idea emphasizes loyalty to democratic principles and the constitution itself, rather than to a particular national or ethnic identity. Jürgen Habermas and other theorists have

The non-extradition of one's own citizens is seen as an expression of state sovereignty and individual rights. On one hand, the state asserts its authority to judge its citizens for criminal acts they commit, while, on the other hand, individuals retain the right not to be removed from their natural jurisdiction (*ius de non evocando*). This also safeguards individuals from the excessive jurisdiction of another state. At the onset of its implementation, constitutional courts in several member states declared the regulations implementing the EAW into their national laws as unconstitutional.[161] This led to significant challenges in transposing the Framework Decision, creating almost insurmountable difficulties. Over time, constitutional changes, adjustments in norms, and regulations related to the implementation of the Framework Decision occurred, bringing the national laws of these countries in line with EU law. This harmonization aimed at enabling the effective application of the EAW.

Notably, dilemmas emerged during the implementation of the EAW, particularly in cases involving the extradition of a country's own citizens, as exemplified in Ireland.[162] Some countries took a more assertive stance, with their constitutional courts deeming certain solutions incorporated into national legislation, corresponding to the Framework Decision, as unconstitutional or illegal.[163] In the explanations provided by these highest judicial instances, arguments emphasizing fundamental constitutional principles, such as legality and the prohibition of extraditing domestic citizens to a foreign country, prevailed.[164] These instances underscored the delicate balance between the objectives of the EAW and the constitutional principles held sacrosanct by individual member states.[165]

A significant concern arises in the potential *politicization* of cases involving

discussed this concept extensively, highlighting its role in unifying diverse populations under a common commitment to democratic values. *See* Jan-Werner Müller, CONSTITUTIONAL PATRIOTISM (2008). Similarly, in the European Union, constitutional patriotism serves as a foundation for a shared European identity. Given the Union's lack of a single shared history or culture, this form of patriotism focuses on allegiance to the EU's constitutional values, such as democracy, human rights, and the rule of law. It allows citizens to maintain their unique national identities while fostering a sense of unity and commitment to common European principles.

161. *See* BVerfG [Federal Constitutional Court], 2 BvR 2236/04, July 18, 2005 (Ger.), https://www.bverfg.de/e/rs20050718_2bvr223604en.html [https://perma.cc/C3Z4-239S]; Trybunał Konstytucyjny [Constitutional Tribunal], K 18/04, Apr. 13, 2005 (Pol.); Supreme Court of Cyprus, Case 227/2015, Judgment of June 7, 2016, available at https://www.eumonitor.eu/9353000/1/j9vvik7m1c3gyxp/vhmfyo2jijxs [https://perma.cc/6LX2-823M]. *See also* Corte Costituzionale, July 6, 2023, n. 178, Gazzetta Ufficiale 2023, parte 1, n. 31, colonna 45726 (It).

162. Minister for Justice, Equality and Law Reform v. Stapleton, [2006] SC 30 (Ir.).

163. BVerfG, 2 BvR 2236/04, July 18, 2005.

164. Trybunał Konstytucyjny [Constitutional Tribunal] P 1/05, Apr. 27, 2005, OTK-A 2005/4/42 (Pol.), https://trybunal.gov.pl/en/hearings/judgments/art/8866-ustawa-o-trybunale-konstytucyjnym [https://perma.cc/8YFG-F6Y3].

165. *See* Daniel Sarmiento, *The European Arrest Warrant and the Quest for Constitutional Coherence*, 6 INT'L J. CONST. L. 171, 171-83 (2008).

the issuance of EAW.[166] This refers to the apprehension that EAWs might be politically motivated, targeting individuals deemed undesirable by the requesting state. However, the very purpose of the EAW is to serve as a depoliticized substitute for extradition, free from any extralegal influences or pressures on authorities in both the requesting and requested countries. One facet of this problem is the fear that EAWs may be issued with political motivations, wherein the legal process becomes a tool for pursuing political objectives. The aim of the EAW, as envisioned, is to be insulated from political considerations, ensuring that the extradition process is guided solely by legal criteria and safeguards. This principle seeks to prevent the misuse of the EAW as a means to exert political influence or settle political scores. Conversely, instances of politicization can also occur when the requested state, without a valid legal reason, fails to comply with a proper EAW. A notable example is Ireland's refusal to extradite one of its nationals to a claimant country, Hungary, following an incident where the individual was involved in a vehicular accident resulting in the tragic death of two children.[167] This refusal, without a clear legal basis, raises concerns about potential political influences impacting the execution of the EAW.[168]

Mitigating the politicization of EAW cases is critical for upholding the integrity of the legal process and ensuring that the extradition system remains in accordance with legal principles rather than becoming a tool for political agendas. Striking a balance between legal procedures, safeguarding individual rights, and preventing undue political interference is essential to maintaining the

166. *See exempli gratia* case of *Carles Puigdemont and Catalan Leaders* (following the 2017 Catalan independence referendum, Spanish authorities issued EAWs for former Catalan President Carles Puigdemont and other leaders. Critics argue that these warrants were politically motivated, aiming to suppress political dissent rather than address criminal conduct. Fifteen Members of the European Parliament (MEPs) from various countries denounced Spain's actions, labeling them as an "opportunistic" use of the EAW system. They highlighted concerns about the withdrawal and reissuance of warrants based on political calculations rather than legal grounds), *Marcin Romanowski Case* (in a recent development, Hungary granted political asylum to Marcin Romanowski, a former Polish deputy justice minister wanted in Poland on corruption charges. Poland's government criticized Hungary's decision, viewing it as a politically motivated act that undermines judicial cooperation. The European Commission reminded Hungary of its obligation to execute EAWs, emphasizing the importance of mutual trust among EU member states), and case of *Karenzi Karake Arrest* (in 2015, the UK arrested Rwanda's intelligence chief, Karenzi Karake, based on a Spanish EAW accusing him of war crimes. Rwanda's government condemned the arrest as politically motivated, arguing that it was an abuse of the EAW system. The incident strained diplomatic relations and highlighted the potential for EAWs to be perceived as tools for political agendas). Valsamis Mitsilegas, *Politicisation of the European Arrest Warrant Is Dangerous and Unnecessary*, QUEEN MARY U. LONDON (Oct. 7, 2017), https://www.qmul.ac.uk/media/news/items/hss/politicisation-of-the-european-arrest-warrant-is-dangerous-and-unnecessary.html [https://perma.cc/5DY3-PRJT]; *15 MEPs Denounce Spain's Misuse of European Arrest Warrant to EU*, CATALAN NEWS (Mar. 24, 2021), https://www.catalannews.com/politics/item/15-meps-denounce-spain-s-misuse-of-european-arrest-warrant-to-eu[https://perma.cc/4HRS-YNDT].

167. Minister for Justice, Equality and Law Reform v. Tobin, [2012] SC 37 (Ir.).

168. *See* GAJIN, *supra* note 63, at 82-85.

credibility and effectiveness of the EAW. This requires continuous scrutiny and adherence to established legal norms to prevent the erosion of trust in the cross-border cooperation facilitated by the EAW.

Divergent practices in the implementation of the EAW are evident among EU member states, reflecting variations in the temporal and substantive scope of application.[169] Notably, some countries, such as the United Kingdom and the Netherlands, have delimited the temporal and material reach of the EAW.[170] In contrast, others, like Poland and Belgium, have expanded the Catalog of Criminal Offenses to which the principle of mutual criminality is applied.[171] Italy, on the other hand, has retained the application of the principle of mutual criminality in its national legislation concerning the Catalog of 32 criminal acts outlined in Article 2 of the Framework Decision.[172] Denmark has taken a unique approach by designating a specific executive body as competent for issuing and executing EAWs, deviating from the explicit recognition of judicial authorities and procedures outlined in the Framework Decision.[173] Malta and other countries have cited various reasons for refusing to execute EAWs, including concerns related to national security, political considerations, and personal or family circumstances of the individuals sought.[174] Another layer of complexity arises in the increased number of mandatory reasons for refusing the enforcement of EAWs, thereby constraining the discretionary decisions of judicial authorities.[175] Furthermore, challenges persist in the transmission and receipt of orders issued through the EU channel (SIS), as certain EU countries remain outside the Schengen area and continue to rely on available Interpol

169. *See* Council Framework Decision 2002/584/JHA, pmbl. paras. 5-7, 2002 O.J. (L 190) 1 (EU) (emphasizing the need for uniform implementation across Member States).

170. *See Report from the Commission to the European Parliament and the Council on the implementation of Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States*, at 3.1.1, COM (2005) 63 final (Feb. 23, 2005) (noting variations in implementation among Member States).

171. *See id.* at 3.1.1 (discussing differences in the application of mutual recognition principles among Member States).

172. *See* Franco Impalà, *The European Arrest Warrant in the Italian Legal System: Between Mutual Recognition and Mutual Fear Within the European Area of Freedom, Security and Justice*, 1 UTRECHT L. REV. 56, 66-67 (2005) (analyzing Italy's implementation of the EAW and its retention of the double criminality principle).

173. *See* Corinne Gay, *The European Arrest Warrant and Its Application by the Member States*, ROBERT SCHUMAN FOUNDATION (Jan. 22, 2006), https://www.robert-schuman.eu/en/european-issues/16-the-european-arrest-warrant-and-its-application-by-the-member-states [https://perma.cc/Q72X-D4CT] (noting Denmark's designation of an executive organ as the competent authority for EAW matters).

174. *See European Arrest Warrant*, EUROPEAN E-JUSTICE PORTAL, https://webgate.ec.europa.eu/e-justice/90/EN/european_arrest_warrant [https://perma.cc/945S-CZMW] (listing optional grounds for refusal, including national security and personal circumstances).

175. *See id.* (outlining mandatory grounds for non-execution of EAWs, which limit judicial discretion).

channels.[176]

Addressing these challenges necessitates heightened monitoring and control measures in the application of the EAW across all EU member states. This scrutiny is particularly crucial for both the claimant state issuing the order and the requested states responsible for executing these orders. Harmonizing these diverse practices and ensuring consistent adherence to the principles outlined in the Framework Decision are essential for fostering trust and effectiveness in the cross-border cooperation facilitated by the EAW. It underscores the need for ongoing collaboration and coordination among EU member states to strengthen the efficiency and reliability of the EAW.

CONCLUSION

The EAW has brought about a profound transformation in the traditional extradition system, characterized by its formal, political, and interstate nature. Governed by conventions that permitted member states numerous reservations leading to extradition bans, the antiquated procedure was notoriously sluggish and ineffective. The cornerstone of the new extradition paradigm is mutual trust in the legal systems of member states, facilitating the substitution of subjects within the process. Unlike the previous system, where member states were central to the extradition procedure, the EAW has shifted the focus to the courts of member states, which now automatically recognize each other's decisions on arrest warrants, thus judicializing the process.

The depoliticization of the new extradition procedure is evident through the abolition of numerous reservations that member states could invoke, removing major obstacles to extradition. Key changes include the elimination of the principle of double jeopardy for serious crimes, a ban on the extradition of one's own citizens, and a prohibition on extradition for fiscal and political crimes. The efficiency of the procedure for surrendering individuals based on a EAW is noteworthy, with the average time from issuance to surrender reduced to seven weeks, and a mere fifteen days when the requested person consents. However, challenges have emerged in safeguarding the basic human rights of requested persons due to insufficiently harmonized criminal justice systems, particularly concerning the abolition of double punishment and imprecise definitions of repealed criminal acts, posing threats to legality and equality before the law. Some critics argue that the EAW is premature, suggesting a return to the old, classic extradition system.

The genesis of the EAW stemmed from the necessity to expedite and simplify the traditional extradition system within the EU. Although the classic

176. *See id.* (discussing the use of the Schengen Information System (SIS) and alternative channels like Interpol for EAW transmissions). *See also* Josip Šule & Danka Hržina, *Primjena europskog uhidbenog naloga u Republici Hrvatskoj – očekivanja i stvarnost [The Application of the European Arrest Warrant in the Republic of Croatia – Expectations and Reality]*, 20 HRVATSKI LJETOPIS ZA KAZNENO PRAVO I PRAKSU 715, 721-24 (2013).

mechanism was sophisticated when established, its political and interstate nature over time rendered it inefficient and slow. The conventions underpinning the classic system allowed member states to make reservations, highlighting the procedural limitations that hindered any meaningful improvement. As an instrument grounded in the principle of mutual recognition of court decisions, the EAW has significantly revamped the extradition process. Notably, procedural and bureaucratic obstacles in communication between member states have been minimized, with direct communication established among competent judicial authorities. Precise deadlines and standardized forms have expedited the procedure, and traditional grounds for rejecting surrender requests have been eliminated, allowing for the surrender of one's own citizens. The elimination of the principle of double incrimination for 32 specified criminal offenses stands out as a pivotal innovation. Furthermore, the adoption of the EAW has fostered solidarity among member states, replacing historical mistrust with cooperation and mutual trust among competent authorities. Implementation of the Framework Decision on the EAW has contributed to a modest yet significant degree of harmonization in criminal legislation at the EU level.

The EAW has evolved into a crucial factor in European security, playing an essential role in the internal security of the EU. Cooperation within the EU, leading to freedom, security, and justice, finds expression in the EAW as a vital element. The future trajectory of this mechanism and its adaptation to changes within the EU, such as the United Kingdom's withdrawal, remains a subject of observation in the years to come.