

European arrest warrant and surrender procedures between Member States. Framework decision

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In virtue of Article 34 of the Council Framework Decision of 13 June 2002, the Commission has presented a report on the European arrest warrant and the surrender procedures between Member States. The evaluation criteria adopted by the Commission for this report are, firstly, the general criteria normally used nowadays to evaluate the implementation of framework decisions (practical effectiveness, clarity and legal certainty, full application and compliance with the time limit for transposal), and, secondly, criteria specific to the arrest warrant, principally the fact that it is a judicial instrument, its effectiveness and its rapidity.

Despite an undeniable initial delay, the European arrest warrant is now operational in most of the cases provided for. Its impact is positive, since the available indicators as regards judicial control, effectiveness and speed are favourable, while fundamental rights are equally observed.

This overall success should not make one lose sight of the effort that is still required by Italy and certain other Member States (in particular CZ, DK, EE, IE, LU, MT, NL, SI, UK) to comply fully with the Framework Decision and for the Union to fill certain gaps in the system.

As of 1 November 2004, all the Member States had transposed the Framework Decision except Italy, which still has its draft legislation before Parliament. All Member States have adopted specific legislation and several had to revise their constitutions in order to do this. However, some (DK and EE) have dispensed with binding rules for certain provisions, which do not meet the requirement of legal certainty. In practice, from 1 January 2004, eight Member States applied the arrangements for the arrest warrant between them; by the date of enlargement the number had risen to 16, and since 14 January 2005, the date of first application in CZ, there have been 24.

In 2004 the arrest warrant thus gradually replaced extradition between Member States and appears even to have surpassed it in volume terms. Only a handful of Member States exercised the right to limit its temporal or substantive scope. As regards the former aspect, some did so in accordance with the Framework Decision, once this had been adopted, in particular by ruling out the warrant's application to acts that occurred before a given date (FR, IT, AT). Others, however, wanted to make such a limitation without complying with the Framework Decision, whether with regard to procedure (CZ, LU, SI), the substance of the limitation (CZ, LU) or even the effective date (CZ). The extradition requests which they continue to present therefore risk being rejected by the other Member States.

Obligations were also breached by those Member States which reduced the substantive scope as regards either the minimum thresholds for sentences (NL, AT, PL ; UK), or certain categories of offence, for which they have reintroduced (BE, PL, SI), or created the risk of reintroducing (EE,

EL, FR), a check on double criminality. However, there are no major difficulties at this stage with the transposal of the list of 32 categories of offence for which double criminality is abolished. It remains regrettable that a few Member States thought it did not cover attempted and complicit acts (EE, IE).