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

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The Commission is submitting this revised report evaluating the application of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States(the Framework Decision) pursuant to Article 34 of the Decision. The revision concerns only the Italian legislation, adopted since the presentation of the original report. A second report, planned for June 2006, will update the evaluation for all the Member States in the light of the conclusions of the JHA Council of 2 June 2005. The evaluation is important, since the arrest warrant is the first, and most symbolic, measure applying the principle of mutual recognition.

The following points are made:

- In 2004 the arrest warrant thus gradually replaced extradition between Member States and appears even to have surpassed it in volume terms. Despite some problems, 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, with the notable exception of one country's legislation, which appears not to recognise the principle (Article 2: IT). It is still regrettable that a few Member States thought it did not cover attempted and complicit acts (Article 2: EE, IE).

- The surrender of requested persons between Member States, pursuant to the Framework Decision (Article 1(1)), has become entirely judicial. This is attested to, for example, by the fact that the large majority of Member States authorises **direct contact between judicial authorities**, at the different stages of the procedure. However, certain Member States have designated an executive body as the competent judicial authority for all aspects or some.

- Guaranteeing greater effectiveness, the Framework Decision limits the grounds for refusing a surrender between Member States, ruling out any decision based on political expediency. In general, the framework it provides has been respected. The effectiveness of the arrest warrant can be gauged, provisionally, from the 2 603 warrants issued, the 653 persons arrested and the 104 persons surrendered up to September 2004. It should also be noted that refusals to execute a warrant so far account for a modest share of the total warrants issued. The full picture can only be an improvement on these provisional figures, based as they are on returns from only about twenty Member States. In the absence of statistics, it can be mentioned that IT has, since May 2005, effectively surrendered a number of persons to whom a European arrest warrant applied, including in an important case concerning terrorism.

- The number of grounds for refusal taken over from the Framework Decision ranges from 3 to 10, depending on the Member State. All Member States have transposed the three **mandatory grounds**, with a few exceptions. However, the optional grounds transposed vary considerably from one Member State to the next: some States have only adopted them in part or have left a greater margin of discretion to their judicial authorities, while others have made them all mandatory. Although possible in principle, this choice of transposal is open to criticism if it goes so far as to make executing judicial authorities themselves prosecute rather than accept an arrest warrant when proceedings are in progress in the issuing Member State .

- The **surrender of nationals** - a major innovation in the Framework Decision – has now become fact, except where exempted by the Decision itself. Most Member States, however, have chosen to apply the condition that, in the case of their nationals, the sentence should be executed on their territory. In the process, most Member States have opted for equal treatment for their nationals and their residents.

There are still some difficulties, however. Yhe practice of certain judicial authorities which, while invoking their powers, refuse to execute arrest warrants in the case of nationals, but do not themselves carry through the prosecutions, would appear to be regrettable.

- The introduction of grounds not provided for in the Framework Decision is disturbing. The additional ground of refusal based on ne bis in idemin relation to the International Criminal Court, which enables certain Member States to fill a gap in the Framework Decision, is not an issue here. The same applies to the explicit grounds of refusal for violation of fundamental rights or discrimination, which two thirds of the Member States have chosen to introduce expressly in various forms. However legitimate they may be, even if they do exceed the Framework Decision, these grounds should only be invoked in exceptional circumstances within the Union. It is even more important to emphasise the introduction of other reasons for refusal, which are contrary to the Framework Decision, such as political reasons, reasons of national security or ones involving examination of the merits of a case, e.g. of its special circumstances or the personal or family situation of the individual in question.

- The average time taken to execute a warrant has fallen from more than nine months to 43 days. This does not include those frequent cases where the person consents to his surrender, for which the average time taken is 13 days.

- The evaluation of the arrest warrant from the standpoint of guaranteeing fundamental rights leads one to compare the current situation with what went before. Several positive features deserve to be emphasised. The Framework Decision is more precise as regards **ne bis in idem**. It has strengthened the right to the assistance of a lawyer, to examine the appropriateness of keeping a person in detention, and to the deduction from the term of the sentence of the **period of detention served.** More generally, as a result of the speed with which it is executed, the arrest warrant contributes to better observance of the "reasonable time limit". Through its effectiveness, in particular in obtaining the surrender of nationals of other Member States, it makes it easier to decide to release individuals provisionally irrespective of where they reside in the EU.

The Commission concludes that 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 observed.

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

As this evaluation has been made at an early stage, it remains provisional; it will need to be reviewed, in particular as more systematic information comes in.