

Proposal for a Council Framework Decision on the European arrest warrant and the surrender procedures between the Member States

(2001/C 332 E/18)

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(Submitted by the Commission on 19 September 2001)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 29, Article 31(a) and (b) and Article 34 (2)(b) thereof,

Having regard to the proposal of the Commission,

Having regard to the Opinion of the European Parliament,

Whereas:

(1) The achievement of a Common Area of Freedom, Security and Justice is based on mutual trust in the criminal justice systems of the Member States. Those systems are founded on the principles of liberty, democracy and the rule of law and they respect fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and by the Charter of fundamental rights of the European Union.

(2) All or some Member States are parties to a number of conventions in this field. They include the European Convention on Extradition of 13 December 1957 and the European Convention on the Suppression of Terrorism of 27 January 1977. The Nordic States have extradition laws with identical wording.

(3) In addition, the following three Conventions dealing wholly or in part with extradition have been agreed upon among Member States, and form part of the Union *acquis*: the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at their common borders in relations between the Member States which are parties to that Convention ⁽¹⁾, the Convention of 10 March 1995 on simplified extradition procedure between the Member States of the European Union ⁽²⁾, and the Convention of 27 September 1996 relating to Extradition between the Member States of the European Union ⁽³⁾.

(4) In order to remove the complexity and potential for delay inherent in the present arrangements on extradition, it is necessary to introduce a new simplified scheme with respect to surrender of persons for the purpose of prosecution and execution of sentences. It would replace the traditional extradition schemes which are no longer adapted to the requirements of a Common Area of Freedom, Security and Justice where the importance of national borders is diminishing.

(5) The European arrest warrant provided for in this Framework Decision aims to replace the traditional extradition arrangements and must have the same scope of application as the multilateral system of extradition built upon the European Convention on Extradition of 13 December 1957.

(6) Since this objective cannot be sufficiently achieved unilaterally by the Member States and can therefore, by reason of reciprocity, be better achieved at the level of the Union, the Council of the Union may adopt measures, in accordance with the principle of subsidiarity as referred to in Article 2 of the EU Treaty and as set out in Article 5 of the EC Treaty. In accordance with the principle of proportionality, as set out in the latter Article, this Framework Decision does not go beyond what is necessary in order to achieve those objectives.

(7) The European arrest warrant is based on the principle of mutual recognition: if a judicial authority of a Member State requests a person for the purposes of prosecution for an offence which is punishable by deprivation of liberty for a period of at least twelve months or for the execution of a criminal judgement involving deprivation of liberty of at least four months, the authorities of other Member States should comply with that request.

(8) The decision on the execution of the European arrest warrant must be subject to sufficient controls, which means that a judicial authority of the Member State where the person has been arrested will take the decision on whether to execute the warrant.

(9) The role of central authorities in the execution of a European arrest warrant must be limited to practical and administrative assistance, and to situations where the central authority is better placed to take the decision than a judicial authority.

⁽¹⁾ OJ L 239, 22.9.2000, p. 19.

⁽²⁾ OJ C 78, 30.3.1995, p. 1.

⁽³⁾ OJ C 313, 23.10.1996, p. 11.

- (10) There is a need for a common format of the European arrest warrant in order to enable the executing judicial authority to decide whether to execute the warrant without need for any supplementary documents.
- (11) In order to ensure the effectiveness of the procedure, and on condition that the execution of the warrant does not lead to a violation of fundamental rights, the possibility to refuse the execution of the European arrest warrant should be limited to clearly identified circumstances.
- (12) Since the European arrest warrant is based on the idea of citizenship of the Union as provided in Articles 17 to 22 of the EC Treaty, the exception provided for a country's nationals, which existed under traditional extradition arrangements, should not apply within the Common Area of Freedom, Security and Justice. A citizen of the Union should face being prosecuted and sentenced wherever he or she has committed an offence within the territory of the European Union, irrespective of his or her nationality.
- (13) Due consideration should however be given to the possibility of reintegration of a person who serves a prison sentence. It should therefore be possible for a prison sentence to be served in the Member State in which the person has the best chances of reintegration.
- (14) A consequence of the application of the principle of mutual recognition is that the double criminality condition must be abolished as well as the rule of speciality. However, where the execution of a warrant for certain conduct would run counter to the fundamental principles of the legal system of a Member State, it must have a possibility to opt out for those offences. This can be done by giving each Member State the possibility of establishing a 'negative' list of offences for which the execution of the European arrest warrant would be excluded.
- (15) The execution of a European arrest warrant could be restricted in cases where a Member State exercises extra-territorial competence for activities which are not considered as offences in the executing Member State.
- (16) The mechanism of the European arrest warrant is based on a high level of confidence between Member States. Implementation of that mechanism may be suspended only in the event of a severe breach by one Member State of the principle of Article 6 of the Treaty on European Union which could lead to the application of Article 7 of that treaty.
- (17) The European arrest warrant should replace between Member States all the former instruments concerning extradition, including the provisions of the Convention

implementing the Schengen Agreement concerning extradition ⁽¹⁾.

- (18) All Member States have ratified the Council of Europe Convention of 28 January 1981 for the protection of individuals with regards to automatic processing of personal data. The personal data processed in the context of the implementation of this Framework Decision will be protected in accordance with the principles of the said Convention.
- (19) As regards the Republic of Iceland and the Kingdom of Norway, this Framework Decision represents a development of the Schengen acquis within the meaning of the Agreement concluded on 17 May 1999 by the Council of the European Union and those two States ⁽²⁾.
- (20) This Framework Decision must respect the fundamental rights and observe the principles recognised in particular by the Charter of Fundamental Rights of the European Union, and notably Chapter VI thereof,

HAS ADOPTED THIS FRAMEWORK DECISION:

CHAPTER I

GENERAL PRINCIPLES

Article 1

Subject-matter

The purpose of this Framework Decision is to establish the rules under which a Member State shall execute in its territory a European arrest warrant issued by a judicial authority in another Member State.

Article 2

Scope

A European arrest warrant may be issued for:

- (a) final judgements in criminal proceedings, and judgements in absentia, which involve deprivation of liberty or a detention order of at least four months in the issuing Member State;
- (b) other enforceable judicial decisions in criminal proceedings which involve deprivation of liberty and relate to an offence, which is punishable by deprivation of liberty or a detention order for a maximum period of at least twelve months in the issuing Member State.

⁽¹⁾ Articles 59-66, 94(4) and 95 of the Convention implementing the Schengen Agreement of 14 June 1985 (OJ L 239, 22.9.2000).

⁽²⁾ OJ L 176, 10.7.1999, p. 31.

Article 3

Definitions

For the purposes of this Framework Decision, the following definitions shall apply:

- (a) 'European arrest warrant' means a request, issued by a judicial authority of a Member State, and addressed to any other Member State, for assistance in searching, arresting, detaining and obtaining the surrender of a person, who has been subject to a judgement or a judicial decision, as provided for in Article 2;
- (b) 'issuing judicial authority' means the judge or the public prosecutor of a Member State, who has issued a European arrest warrant;
- (c) 'executing judicial authority' means the judge or the public prosecutor of a Member State in whose territory the requested person sojourns, who decides upon the execution of a European arrest warrant;
- (d) 'judgement *in absentia*' means any judgement rendered by a court after criminal proceedings at the hearing of which the sentenced person was not personally present. It shall not include a judgement given in proceedings in which it is clearly established that the person was effectively served with a summons, in time to enable him or her to appear and to prepare his or her defence, but he or she deliberately decided not to be present or represented, unless it is established that his or her absence and the fact that he or she could not inform the judge thereof were due to reasons beyond his or her control;
- (e) 'detention order' means any order involving deprivation of liberty which has been made in criminal proceedings in addition to or instead of a prison sentence;
- (f) 'requested person' means a person in respect of whom a European arrest warrant is issued.

Article 4

Competent judicial authorities

Each Member State shall designate according to its national law the judicial authorities that are competent to

- (a) issue a European arrest warrant
- (b) take decisions under Section 4 of Chapter II without prejudice to Article 5(4).

Article 5

Central authority

1. Each Member State shall designate a central authority, or when its constitutional system so requires, more than one central authority for the purposes of this Framework Decision.

2. The central authority shall assist the competent judicial authority. In particular, the central authority shall provide translation, administrative and practical facilities, and general information.

3. Each Member State may decide that its central authority shall be responsible for the practical transmission and reception of the European arrest warrant as well as for other official correspondence relating to it.

4. Each Member State may indicate that its central authority may decide on matters covered by Articles 31, 37 and 38.

The Member State shall ensure that the requested person is given the opportunity to express his or her views on the question which will be decided by the central authority.

The executing judicial authority shall decide on the execution of the European arrest warrant on the basis of the central authority's decision.

Article 6

Content of the European arrest warrant

The European arrest warrant shall contain information set out in accordance with the form in the Annex regarding:

- (a) the identity of the requested person,
- (b) the issuing judicial authority,
- (c) whether there is a final judgement or any other enforceable judicial decision, within the scope of Article 2,
- (d) whether the European arrest warrant results from a judgement *in absentia*, and if so, a statement as to the right to lodge an opposition and on the applicable procedure in conformity with the second subparagraph of Article 35(1),
- (e) the nature and legal classification of the offence,
- (f) a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person,
- (g) the penalty, if there is a final judgement, or else, the prescribed scale of penalty,
- (h) if possible, other consequences of the offence,

- (i) whether the requested person has already been arrested for the same offence, and let free, or released after some pre-trial detention under condition of return, or whether the person has escaped from prison.

CHAPTER II

PROCEDURE

Section 1

General

Article 7

Communication between authorities

1. If the whereabouts of the requested person are known, the issuing judicial authority shall communicate the European arrest warrant directly to the executing judicial authority.
2. Paragraph 1 shall not prejudice the possibility of the communication of the European arrest warrant or information concerning it and its execution
 - (a) from a central authority of a Member State to a central authority of another Member State;
 - (b) from a judicial authority of a Member State to a central authority of another Member State; or
 - (c) from a central authority of a Member State to a judicial authority of another Member State.

Section 2

Use of the Schengen Information System

Article 8

Alert

If the whereabouts of the requested person are not known, the issuing judicial authority may request that an alert is entered in the Schengen Information System (SIS) for the purpose of arrest of that person for surrender.

The alert and the information referred to in Article 6 shall be issued via the national authority that has central responsibility for it. Both the alert and that information shall be sent by the quickest secure means possible.

Article 9

Flag

1. Insofar as an executing Member State considers that the alert is covered by Article 27, 28, 30 or 31 or if provisional

release has been granted according to Article 14, it may subsequently add a flag in the SIS to the effect that the execution of the European arrest warrant will not take place in its territory. Prior consultations must be held in this connection with the other Member States.

2. If the arrest cannot take place because of the application of paragraph 1, the alert must be regarded as being an alert for the purpose of communicating the whereabouts of the requested person.

Section 3

Arrest and detention

Article 10

Coercive measures

An executing Member State may take necessary and proportionate coercive measures against a requested person according to the conditions laid down by its national law, including the provisions on judicial review that are applicable when a person is arrested with a view to extradition.

Article 11

Rights of a requested person

1. When a requested person is arrested on the territory of another Member State, the competent authority of the latter State shall, in accordance with its national law, inform that person of the warrant and of its content, and of the possibility of consenting to surrender to the issuing judicial authority.

2. From the moment a requested person is arrested for the purpose of the execution of a European arrest warrant, that person shall have a right to be assisted by a legal counsel, and, if necessary by an interpreter.

Article 12

Notification to the judicial authorities

The issuing judicial authority and the executing judicial authority shall immediately be notified of the arrest.

Article 13

Verification and suspension

1. Immediately after notification of an arrest, the issuing judicial authority shall inform the executing judicial authority whether it maintains the European arrest warrant.

2. If the issuing judicial authority does not maintain the European arrest warrant, the arrested person shall be released immediately.

3. The issuing judicial authority may decide to suspend the warrant, under the condition that the arrested person undertakes to present himself or herself, at a certain date and place, on a voluntary basis. That undertaking shall be received by the judicial authority of the executing Member State and notified to the issuing judicial authority. The issuing Member State may add a flag accordingly in the SIS. If the arrested person fails to respect the undertaking the issuing judicial authority may reactivate the European arrest warrant, and complement the information contained in the European arrest warrant, in particular as regards the information referred to in Article 6(i). The person shall be informed of all the consequences of a non-respect of the undertaking.

Article 14

Provisional release

1. When a person is arrested on the basis of a European arrest warrant, the executing judicial authority shall take a decision on whether the requested person shall remain in detention.

If the executing judicial authority has reason to believe that the arrested person will not escape, continue to commit offences or destroy evidence with respect to the offence(s) on which the European arrest warrant is based, and if the arrested person undertakes to remain available for the execution of the European arrest warrant, the executing judicial authority may decide to release that person until a later date fixed in the agreement between the issuing Member State and the executing Member State. If necessary, the release shall be submitted to the respect by the requested person of conditions laid down by the executing judicial authority in accordance with the law of the executing Member State.

The arrested person shall be informed of all the consequences of a non-respect of the undertaking to remain available for the execution of the European arrest warrant.

2. If the requested person does not respect the undertaking to remain available for the execution of the European arrest warrant, the executing judicial authority shall inform the issuing judicial authority. In that case, the latter may complement the information contained in the European arrest warrant in particular as regards the information referred to in Article 6(i).

Section 4

Judicial procedure for surrender

Article 15

Examination of the European arrest warrant

The European arrest warrant shall be examined by the executing judicial authority as quickly as possible and in any case no later than ten calendar days after the arrest.

Article 16

Consent to surrender

1. If the arrested person consents to his or her surrender, he or she shall be surrendered as provided for in Article 23.
2. The consent shall be given to the executing judicial authority in accordance with its national law.
3. The consent shall be established in such a way as to show that the person concerned has expressed it voluntarily and in full awareness of the consequences.
4. Consent shall be recorded in accordance with the national law of the executing Member State.
5. Consent may not be revoked.
6. Consent shall immediately be notified to the issuing judicial authority.

Article 17

Previous release

1. The executing judicial authority shall execute the European arrest warrant immediately without the necessity to hear or verify the consent of the requested person if he or she escaped from detention or failed to comply with the conditions of return after
 - (a) being allowed to remain free from the beginning,
 - (b) being released after some pre-trial detention,
 - (c) benefiting from the provisions of suspension of the European arrest warrant under Article 13(3) or from the provisional release under Article 14.
2. If the executing judicial authority has reason to believe that the requested person referred to in paragraph 1 is in one of the circumstances referred to in Articles 27 to 34, it shall submit the matter for a hearing by a court in accordance with Article 18.
3. Where execution takes place according to paragraph 1, the requested person may contest before a court the reasons justifying the recourse to that paragraph.

Article 18

Hearing

A court in the executing Member State shall decide on whether the European arrest warrant shall be executed after a hearing, held in accordance with the national rules of criminal procedure:

- (a) if the requested person does not consent to his or her surrender;
- (b) in cases referred to in Articles 17(2) and (3).

The issuing Member State may be represented or submit its observations before the court.

Article 19

Supplementary information

If the executing judicial authority finds the information communicated by the issuing Member State to be insufficient to allow it to decide on the execution of a European arrest warrant, it shall request the necessary supplementary information urgently and may fix a time-limit for the receipt thereof.

Article 20

Time limit for the decision whether to execute the European arrest warrant

The decision on whether to execute the European arrest warrant shall be taken as soon as possible and in any case no later than 90 calendar days after the arrest of the requested person.

Article 21

Refusal and expiring of the time limit

1. If the executing judicial authority refuses to surrender the requested person, or if no decision on the surrender of the requested person is taken within the period provided for in Article 20, the arrested person shall be released immediately unless it is necessary to maintain him or her in detention pursuant to Article 33, or on another ground for detention.

2. Reasons shall be given for any refusal to execute a European arrest warrant or on the reason of expiry of the time limit provided for in Article 20 without a decision.

Article 22

Notification of the decision on whether to execute the European arrest warrant

The executing judicial authority shall immediately notify the decision on whether to execute the European arrest warrant to the issuing judicial authority.

Article 23

Time limit for the surrender of the requested person

1. The requested person shall be surrendered as soon as possible on a date agreed between the authorities concerned.

2. Subject to paragraph 3 the requested person shall be surrendered no later than twenty calendar days after either:

(a) the consent of the arrested person,

(b) the decision of the executing judicial authority provided for in Article 17(1), or

(c) the decision of the court pursuant to Article 18, to execute the European arrest warrant.

After the expiry of that period, if the person is being held, he or she shall be released in the territory of the executing Member State.

3. Should the surrender of the requested person within the period laid down in paragraph 2 be prevented by circumstances beyond the control of the executing Member State, the executing judicial authority shall immediately inform the issuing judicial authority and agree on a new surrender date. In that event, the surrender shall take place within twenty calendar days of the new date thus agreed.

If the person in question is still being held after the expiry of that period, he or she shall be released unless the delay is linked to the personal situation of the requested person.

4. The time limits provided for in paragraphs 2 and 3 shall not apply where Article 39(1), (2) and (4) apply.

Article 24

Deduction of the period of deprivation of liberty from the sanction

1. The issuing Member State shall deduct from the total period of deprivation of liberty which is imposed any period of deprivation of liberty arising from the execution of a European arrest warrant.

2. To this end, all the information concerning the duration of the deprivation of liberty of the requested person on the basis of the European arrest warrant shall be transmitted to the issuing Member State.

Article 25

End of effect

The issuing judicial authority shall ensure that the European arrest warrant shall cease to have effect as from the date of the surrender and where necessary.

CHAPTER III

GROUNDINGS FOR NON-EXECUTION

Article 26

General provision

The executing judicial authority may refuse to execute a European arrest warrant under the circumstances described in Articles 27 to 34.

*Article 27***List of exceptions**

Without prejudice to the objectives of Article 29 of the EC Treaty, each Member State may establish an exhaustive list of conduct which might be considered as offences in some Member States, but in respect of which its judicial authorities shall refuse to execute a European arrest warrant on the grounds that it would be contrary to fundamental principles of the legal system in that State.

The list and any change to it shall be published in the *Official Journal of the European Communities* at least three months before a Member State may invoke the first paragraph in respect of the conduct concerned.

*Article 28***Principle of territoriality**

The executing judicial authority may refuse to execute a European arrest warrant issued in respect of an act which is not considered an offence under the law of the executing Member State and which did not occur, at least in part, on the territory of the issuing Member State.

*Article 29***Ne bis in idem**

1. The executing judicial authority shall refuse to execute a European arrest warrant, if a judicial authority in the executing Member State has passed final judgement upon the requested person in respect of the offence for which the European arrest warrant has been issued.

2. The execution of a European arrest warrant shall be refused if the judicial authorities of the executing Member State have decided either not to institute or to terminate proceedings in respect of the offence for which the European arrest warrant has been issued.

*Article 30***Amnesty**

The executing judicial authority may refuse to execute a European arrest warrant in respect of an offence covered by an amnesty in the executing Member State where that Member State was competent to prosecute the offence under its own criminal law.

*Article 31***Immunity**

The execution of a European arrest warrant shall be refused if the legal system of the executing Member State grants immunity to the requested person.

*Article 32***Lack of necessary information**

The executing judicial authority may refuse to execute a European arrest warrant, if:

- (a) the European arrest warrant does not contain the information referred to in Article 6, or
- (b) the identity of the requested person cannot be established.

CHAPTER IV

GROUND FOR REFUSAL TO SURRENDER*Article 33***Principle of integration**

1. The execution of a European arrest warrant in respect of a requested person may be refused if this person would have better possibilities of reintegration in the executing Member State, and if he or she consents to serve the sentence in this Member State.

In that case, the sentence pronounced in the issuing Member State shall be served in the executing Member State in accordance with the laws of the latter Member State. The sentence pronounced in the issuing Member State shall not be substituted by a sanction prescribed by the law of the executing Member State for the same offence.

2. The final judgement on the basis of which the European arrest warrant was issued, as well as all the necessary documents shall be transmitted to the competent judicial authority of the executing Member State in order to enable the execution of the sentence.

*Article 34***Videoconference**

1. The executing judicial authority may refrain from surrendering the requested person if:

- (a) it is possible by means of a videoconference system for the requested person to take part from a place in the executing Member State in criminal proceedings conducted in the issuing Member State;
- (b) the executing Member State and the issuing Member State accept such proceedings.

The proceedings shall be conducted in accordance with the national law of the Member States concerned and relevant international instruments, including the 1950 European Convention for the Protection of Human rights and fundamental freedoms.

2. The detailed arrangements for those proceedings shall be agreed between the executing judicial authority and the issuing judicial authority.

3. In case of application of paragraph 1, the executing judicial authority shall decide, in conformity with the provisions of its national law, on the detention of the requested person.

CHAPTER V

SPECIAL CASES

Article 35

Judgements *in absentia*

1. If the European arrest warrant has been issued on the basis of a judgement *in absentia*, a new hearing of the case shall take place in the issuing Member State after the surrender.

The executing judicial authority shall inform the arrested person of his or her right to lodge an opposition to the judgement and on the procedure for lodging it.

2. Each Member State shall enable its judicial authorities to receive the opposition lodged by a person subject to a judgement *in absentia* and to inform the issuing judicial authority of this opposition.

Article 36

Return to the executing Member State

The European arrest warrant may be executed subject to the condition that the arrested person is returned to the executing Member State to serve his or her sentence, if there are reasons to believe that he or she would have better possibilities of reintegration in that Member State.

Article 37

Life sentence or life time detention order

If the offence on the basis of which the European arrest warrant has been issued is punishable by life sentence or life time detention order, the execution of the European arrest warrant may be subject to the condition that the issuing Member State undertakes to encourage the application of any measures of clemency to which the person is entitled under its national law and practice.

Article 38

Deferment of execution on humanitarian grounds

1. The execution of a European Arrest Warrant may exceptionally be deferred, if there are substantial grounds for

believing that the execution would manifestly endanger the requested person's life or health because of his or her age or state of health or because of other peremptory humanitarian reasons.

2. The execution of the European arrest warrant shall take place as soon as these grounds have ceased to exist.

Article 39

Deferment of surrender

1. Where a European arrest warrant has been issued on the basis of a final judgement against a person, subject to a criminal proceeding in the executing Member State, the execution of the European arrest warrant may be deferred until the final judgement in that proceeding or the completion of the sentence imposed, if any, in the executing Member State.

2. Where a European arrest warrant has been issued on the basis of a final judgement against a person serving a sentence in the executing Member State, the execution of the European arrest warrant may be deferred until the completion of any sentence imposed in the executing Member State.

3. Where a European arrest warrant has been issued on the basis of another enforceable judicial decision or a judgement *in absentia* against a person serving a sentence in the executing Member State, the European arrest warrant may be executed under the condition that after the final decision in the issuing Member State, the person returns to the executing Member State to serve the remaining part of the sentence, unless Article 34 applies.

4. Where the European arrest warrant has been issued on the basis of another enforceable judicial decision or a judgement *in absentia* against a person subject to a criminal proceeding in the executing Member State, the temporary transfer of the requested person in order to enable the procedure to take place on the condition that the person returns, shall be subject to agreement between the issuing and the executing Member State, unless Article 34 applies.

5. In cases referred to in paragraphs (3) and (4), the issuing and the executing Member States shall determine by mutual agreement the duration and conditions of the transfer.

6. In cases referred to in paragraphs (3) and (4), the issuing Member State shall ensure that the requested person will remain available for the executing Member State, either by enforcing in its territory the final judgement of the executing Member State or, where appropriate, on the basis of a pre-trial decision issued by its judicial authority.

*Article 40***Multiple requests**

1. If two or more Member States have issued a European arrest warrant for the same person, the decision on which of the European arrest warrants shall be executed shall be taken by the executing judicial authority with due regard to all the circumstances and especially the relative seriousness and place of the offences, and the respective dates of the European arrest warrants.

All the judicial authorities involved shall co-operate closely in order to enable the prosecutions to take place in each of the Member States as soon as possible.

2. If multiple requests are made, they may be submitted to Eurojust, which shall deliver its opinion as soon as possible.

3. In the event of a conflict between a European arrest warrant and a request for extradition presented by a third country party to the European Convention on Extradition of 13 December 1957, the decision on whether the European arrest warrant or the extradition request takes precedence shall be taken by the executing judicial authority with due consideration of all circumstances, in particular those mentioned in Article 17 of the said convention.

In the event of a conflict between a European arrest warrant and a request for extradition presented by a third country which is not a party to that convention, the execution of the European arrest warrant shall take precedence.

4. In the event of conflict between a European arrest warrant and a request for surrender presented by an international criminal court, whether or not that court is recognised by all the Member States, consultations shall take place between the Member States concerned as to how to meet the requirements of the statute of the criminal court before any decision is taken.

*Article 41***Other offences**

A person who has been surrendered pursuant to a European arrest warrant may, in the issuing Member State, be prosecuted, sentenced or detained for an offence other than that for which the European arrest warrant was issued, except where that offence has been entered by the executing Member State in the list referred to in Article 27, or with respect to Articles 28 or 30.

*Article 42***Handing over of property**

1. The executing judicial authority shall, insofar as its law permits, at the request of the issuing judicial authority, or on its own initiative, seize and hand over property which:

(a) may be required as evidence, or

(b) has been acquired by the requested person as a result of the offence.

2. The property referred to in paragraph 1 shall be handed over even if the European arrest warrant cannot be carried out owing to the death or escape of the requested person.

3. If the property referred to in paragraph 1 is liable to seizure or confiscation in the territory of the executing Member State, the latter may, if the property is needed in connection with pending criminal proceedings, temporarily retain it or hand it over to the issuing Member State, on condition that it is returned.

4. Any rights which the executing Member State or third parties may have acquired in the property referred to in paragraph 1 shall be preserved. Where such rights exist, the issuing Member State shall return the property without charge to the executing Member State as soon as possible after the trial.

CHAPTER VI

RELATION TO OTHER LEGAL INSTRUMENTS*Article 43***Relation to other legal instruments**

1. The following legal instruments or provisions of instruments shall cease to apply between Member States from 1 July 2004:

(a) The European Convention on Extradition of 13 December 1957, its additional protocol of 15 October 1975, its second additional protocol of 17 March 1978, and the European Convention on the suppression of terrorism of 27 January 1977 as far as extradition is concerned;

(b) the Agreement between the Member States of the European Communities on the simplification and modernisation of methods of transmitting extradition requests of 26 May 1989;

(c) the Convention of 10 March 1995 on simplified extradition procedure between the Member States of the European Union; and

(d) the Convention of 27 September 1996 relating to extradition between the Member States of the European Union.

2. This Framework Decision shall not affect the application of simplified proceedings or conditions existing in bilateral or multilateral agreements or agreed on the basis of uniform or reciprocal laws between Member States.

Article 44

Provisions relating to the Schengen acquis

1. Without prejudice to Article 8 of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen acquis⁽¹⁾, this Framework Decision shall enter into force for Iceland and Norway [...].

2. Articles 59 to 66, 94(4) and 95, of the Convention implementing the Schengen Agreement, as far as extradition is concerned, shall cease to apply from 1 July 2004.

CHAPTER VII

TRANSIT, TRANSMISSION, LANGUAGE AND EXPENSES

Article 45

Transit

1. Each Member State shall permit the transit through its territory of a requested person who is being surrendered provided that it has been given:

- (a) information on the identity of the requested person;
- (b) a copy of the European arrest warrant and its translation in the official language or one of the official languages of the Member State of transit;
- (c) a copy of the decision of the executing judicial authority to execute the European arrest warrant and its translation in the official language or one of the official languages of the Member State of transit.

2. In the case of transport by air without a scheduled stopover, if an unscheduled landing occurs, the issuing Member State shall provide the Member State concerned with the information and documents provided for in paragraph 1.

Article 46

Transmission of documents

1. The issuing Member State may transmit the European arrest warrant by any secure means capable of producing

written records under conditions allowing the executing Member State to establish the authenticity of transmission.

2. All difficulties concerning the transmission or the authenticity of any document needed for the execution of the European arrest warrant shall be dealt with by direct contacts between the judicial authorities involved, or, where appropriate, with the involvement of the central authorities of the Member States.

Article 47

Language

1. The European arrest warrant may be sent in the official language or languages of the issuing or the executing Member State(s).

2. When appropriate, the central authority of the executing Member State shall arrange for a prompt translation of the European arrest warrant, and of all the necessary documents transmitted for the purpose of the procedure. The translation shall be sent without delay to the executing judicial authority.

Article 48

Expenses

1. Expenses incurred in the territory of the executing Member State for the execution of the European arrest warrant shall be borne by that Member State.

2. All other expenses, including travel expenses, and expenses incurred by transit on the territory of a third State, shall be borne by the issuing Member State.

CHAPTER VIII

SAFEGUARD

Article 49

Safeguard

1. Each Member State may, by a declaration to the Council and to the Commission, decide to suspend the application of this Framework Decision with regard to another Member State in the event of a serious and persistent breach of violation of fundamental human rights as provided in Article 6(1) of the EU Treaty in that Member State. This unilateral suspension will have a temporary application. If the procedure of Article 7 in that Treaty is not initiated within six months, the suspension shall cease to have effect.

2. If a Member State applies paragraph 1, it shall take all the necessary measures to establish its jurisdiction over the offence on the basis of which the European arrest warrant was issued, if appropriate.

⁽¹⁾ OJ L 176, 10.7.1999, p. 36.

CHAPTER IX

GENERAL AND FINAL PROVISIONS*Article 50***Publication**

1. Member States shall communicate to the General Secretariat of the Council and to the Commission before 31 December 2002 the information relating to the central authority provided for in Article 5. This information shall be published in the *Official Journal of the European Communities*.

2. Member States shall communicate the list provided for in Article 27 and any change to it to the General Secretariat of the Council and to the Commission.

The General Secretariat of the Council shall immediately inform the other Member States of any changes on this list made by one of the Member States.

*Article 51***Transitional provision**

The legal instruments and provisions of instruments referred to in Articles 43 and 44 shall continue to apply to extradition requests submitted before the measures necessary to comply with this Framework Decision have entered into force.

*Article 52***Implementation**

Member States shall take the necessary measures to comply with this Framework Decision by [31 December 2002].

They shall communicate to the General Secretariat of the Council and to the Commission the text of any provisions they adopt and information on any other measures they take to comply with this Framework Decision.

On that basis the Commission shall, by [31 December 2003], submit a report to the European Parliament and to the Council on the operation of this Framework Decision, accompanied, where necessary, by legislative proposals.

The Council shall assess the extent to which Member States have complied with this Framework Decision.

*Article 53***Entry into force**

This Framework Decision shall enter into force on the twentieth day following its publication in the *Official Journal of the European Communities*.

ANNEX

EUROPEAN ARREST WARRANT

I hereby **certify that this warrant corresponds to the authentic documents on which the warrant is based** and request that the person mentioned below shall be arrested and surrendered to the judicial authority mentioned below:

(a) **Information regarding the identity of the requested person:**

Surname:

Forename(s):

Sex:

Nationality:

Date of birth:

Place of birth:

Residence:

.....

Distinctive marks:

.....

Photo and fingerprints of the requested person (if available):

(b) **The judicial authority, which issued the request, and to which the person shall be surrendered:**

Name of the authority:

.....

Competent official (title/grade and name):

.....

Address:

.....

Tel. No: Fax No:

E-mail:

(c) **Enforceable criminal judgement or other judicial decision**, within the scope of Article 2 of the Framework Decision [date] on the European arrest warrant and the surrender procedures between the Member States of the European Union:

Type:

Date:

(d) **Has the judgement has been rendered *in absentia*** in accordance with Article 3(e) of the Framework Decision [date] on the European arrest warrant and the surrender procedures between the Member States of the European Union?

Yes No (Mark the appropriate answer with 'x')

If the answer is 'yes' a statement as to the legal means available to prepare his or her defence or to have the case retried in his or her presence should be provided here:

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.....

.....

.....

.....

Authority to be contacted:

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.....

(e) Nature and legal classification of the offence:

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(f) Description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the person reported:

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(g) The penalty, if there is an enforceable criminal judgement, or else, the prescribed scale of penalty, and, if possible, other consequences of the offence or the offences:

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(h) Other consequences of the offence, particularly as regards the situation of the victim:

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(i) **Has the person already been arrested for the same offence and let free, or released under condition of return? If yes how long has been the deprivation of liberty? Has the person escaped from jail?**

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.....

(j) **Other information:**

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.....
.....

Signature of the competent official:

Title/grade and name: