



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 10 October 2001 (12.10)
(OR. fr)**

12646/01

**Interinstitutional File:
2001/0215 (CNS)**

**COPEN 61
CATS 30**

NOTE

from : Presidency
to : COREPER/COUNCIL

No. prev. doc. : 12102/01 COPEN 51 + REV 1 (fr,en)
No. Cion prop. : COM(2001) 522 final/2

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

I. INTRODUCTION

On 19 September 2001 the Commission proposed to the Council (see 12102/01 COPEN 51 + REV 1 (fr,en) the adoption of a framework Decision on the European arrest warrant and the surrender procedures between the Member States. The purpose of the proposal is to replace the extradition system with a system based on the principle of mutual recognition.

At its meeting on 20 September 2001 the Council welcomed the Commission's initiative and instructed the Article 36 Committee to apply itself without delay to examining the proposal in depth so that, at its meeting on 6 and 7 December, the Council can secure significant political agreement on the Commission proposal.

At its extraordinary meeting on 21 September 2001 the European Council directed the Council to flesh out the agreement and to determine the relevant arrangements, as a matter of urgency and at the latest at its meeting on 6 and 7 December 2001.

II. QUESTIONS SUBMITTED TO COREPER AND THE COUNCIL

1. Article 2 (Scope)

The Commission is proposing a broad scope, abandoning the principle of double criminality and using a system based on a negative list of offences (Article 27 of the Commission proposal). Use of a negative list has not been supported by delegations.

The Article 36 Committee has identified the following four alternative solutions:

1. The first consists in adopting a **general scope** with a threshold system **without maintaining the principle of double criminality**.
2. The second consists in adopting a **general scope together with the principle of double criminality (*in abstracto*), but possibly restricted**. A State could invoke the absence of double criminality for refusing to execute a European arrest warrant if the events on the basis of which it was issued took place on its territory and are not criminalised there.

3. The third consists of a system involving a **positive list of offences** as it stands at present in the proposal for a framework Decision on freezing assets or evidence (11947/01 COPEN 49, Article 2) with reference to the European Union or international instruments that criminalise them. This system has the twofold advantage of avoiding the sensitive debate on double criminality and ensuring consistency among the mutual recognition instruments in the process of adoption. However, it presents the disadvantage of the coexistence of two distinct systems operating among the Member States, one based on the European arrest warrant and the other on extradition under the 1957 and 1996 Conventions.
4. The fourth consists of a **combination of the second and third options**. It would apply the European arrest warrant for all offences punishable by a sentence above a certain threshold. For harmonised offences, the principle of double criminality would be abandoned, and for the other offences it would be retained (perhaps accompanied by a mechanism for notifying Eurojust of refusals, as provided for in the draft Protocol on mutual assistance in criminal matters).

Coreper/the Council is asked to indicate the option on the basis of which the Article 36 Committee is to continue its proceedings.

2. Intervention of the judicial authority in the executing State

The question of forms of appeal available before the courts of the executing State is fundamental, first in terms of guaranteeing the rights of the individual but also for determining time limits for enforcement of the arrest warrant.

Although all delegations consider it necessary to provide for a form of intervention by the judicial authority in the executing State, opinions differ over the nature and scope of that intervention and over the time limits within which it should take place.

1. nature of intervention by the judicial authority:

- Some delegations consider that the very principle of mutual recognition and the concept of area enshrined in the Treaty on European Union argue in favour of restricting intervention by the judicial authority of the executing State to controlling the legality of detention as required by Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and recalled by Article 6 of the Charter of Fundamental Rights of the European Union.
- Other delegations consider that provision should be made in the executing State for further judicial control with a view to surrender, but that it is desirable to limit that control to a single instance and to provide for strict time limits for that appeal.

2. time limit:

The Commission has provided for a time limit of 90 days in its proposal. Most delegations consider that this time limit should be shortened if it is to correspond fully to the logic of mutual recognition.

The Council is asked to determine the nature and scope of intervention by the judicial authority in the executing State and the time limit within which this is to take place.

=====