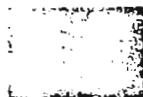


LATEST TEXT OF ARREST WARRANT DECISION



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**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 31 October 2001 (12.11)
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to :	Article 36 Committee
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Subject:	Proposal for a Council Framework Decision on the European arrest warrant and the surrender procedures between the Member States

Chapter I - General principles***Article 1 - Obligation to execute the European arrest warrant***

Member States shall undertake, on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision, to execute any European arrest warrant issued for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

Article 2 – Scope of the European arrest warrant¹

1. A European arrest warrant may be issued for offences punishable by the law of the issuing Member State by a custodial sentence or a detention order of a maximum of at least twelve months [or, when a sentence has been passed or a detention order imposed, for sanctions of at least four months].

2. The following offences², as defined by the law of the issuing Member State³, shall, under the terms of this Framework Decision and without verification of the double criminality of the action, give rise to a surrender pursuant to a European arrest warrant:

- membership of a criminal organisation
- terrorism
- trafficking in human beings
- sexual exploitation of children and child pornography
- illicit trafficking in narcotic drugs and psychotropic substances
- illicit trafficking in weapons, munitions and explosives
- corruption
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Council Act of 26 July 1995 drawing up the Convention on the protection of the European Communities' financial interests and the protocols thereto dated 29 November 1996, 27 September 1997 and 19 June 1997⁴

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- laundering of the proceeds of crime
- counterfeiting of the euro
- high tech crime, particularly computer crime¹
- environmental crime, including² illicit trafficking in endangered animal species and in endangered plant species and varieties³
- murder, grievous bodily injury
- illicit trade in human organs and tissue
- kidnapping, illegal restraint and hostage-taking
- racism and xenophobia
- organised robbery
- illicit trafficking in cultural goods, including antiques and works of art
- swindling
- racketeering and extortion
- counterfeiting and product piracy
- forgery of administrative documents and trafficking therein
- forgery of means of payment
- illicit trafficking in hormonal substances and other growth promoters⁴.

3. For offences other than those referred to in paragraph 2, the surrender may be subject to the condition that the acts justifying the issue of the European arrest warrant constitute an offence under the law of the executing State where the acts were committed fully or partly on the territory of the executing State.

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4. The surrender may be subject to the condition that the acts justifying the issue of the European arrest warrant constitute an offence under the law of the executing State where the acts relate to ¹ abortion, euthanasia, morality, sexuality, or freedom of expression and association².

Article 3 – Grounds for mandatory non-execution ³

The executing judicial authority shall refuse to execute the European arrest warrant in the following cases:

- 1) if the offence on which the European arrest warrant is based was committed on the territory of the executing State and is covered by an amnesty there;
- 2) if the executing judicial authority is informed that the person who is the subject of the European arrest warrant:
 - (a) has been finally judged by a Member State and, if he was sentenced, that the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing State;
 - (b) has, in the sentencing State, been subject to another final judgment which prevents further proceedings.
- 3) if the person who is the subject of the European arrest warrant may no longer, due to his age, be held criminally responsible for his acts under the law of the executing State.

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Article 4 – Grounds for optional non-execution

The executing judicial authority may refuse to execute the European arrest warrant:

- 1) if, in one of the cases referred to in Article 2(3), the act on which the European arrest warrant was based does not constitute an offence under the law of the executing State;
- 2) where the person who is the subject of the European arrest warrant is being prosecuted in the executing State for the same act on which the European arrest warrant is based;
- 3) where the judicial authorities of the executing State have decided either not to prosecute for the offence on which the European arrest warrant was based or to halt proceedings.

Article 5 – Guarantees to be given by the issuing State in particular cases

The execution of the European arrest warrant by the executing judicial authority may, by the law of the executing State, be subject to the following conditions:

- 1) where the European arrest warrant has been issued for the purposes of executing a custodial sentence or a detention order passed by an in absentia judgment, the surrender may be subject to the issuing judicial authority providing assurances deemed adequate to guarantee the person who is the subject of the European arrest warrant the right to a new judgment procedure which safeguards the rights of the defence¹;

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- 2) where the European arrest warrant has been issued for the purposes of prosecution for an act punishable by a life sentence or life-time detention order, the surrender may be subject to the law of the issuing State allowing periodic appeal by the sentenced person with a view to a review of execution of the sentence or order;
- 3) where the person who is the subject of the European arrest warrant for the purposes of ~~prosecution is a national or resident of the executing State,~~ the surrender may be subject to the condition that the person is returned to the executing State to serve the custodial sentence or detention order passed against him in the issuing State.

Article 6 – Determination of the competent authorities

1. The issuing judicial authority shall be the issuing State authority which is competent to issue an arrest warrant by virtue of the law of the issuing State.
2. ~~The executing judicial authority shall be the executing State authority which is competent by~~ virtue of the law of the executing State.
3. Each Member State shall inform the General Secretariat of the Council of the competent authority under its law.

Article 7 – Transmission of a European arrest warrant

1. The European arrest warrant shall be directly transmitted by the issuing judicial authority to the executing judicial authority.

2. All communications relating to the execution of the European arrest warrant shall be made directly between the issuing judicial authority and the executing judicial authority.

Article 8 – Recourse to the central authority¹

1. Each Member State may designate a central authority, or when its constitutional system so provides, more than one central authority to assist the competent judicial authority.

2. Without prejudice to Article 7, a Member State may, if necessary as a result of the organisation of its internal judicial system, make its central authority responsible for the transmission and administrative reception of European arrest warrants as well as for other official correspondence relating to them.

Member States wishing to make use of this possibility shall communicate to the General Secretariat of the Council information relating to the central authority. This information shall be published in the *Official Journal of the European Communities*.

Article 9 – Content and form of the European arrest warrant

1. 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) evidence of a final judgment or any other enforceable judicial decision, within the scope of Articles 1 and 2, accompanied by a copy of the judgment or decision,
- (d) the nature and legal classification of the offence,
- (e) 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, ...
- (f) the penalty imposed, if there is a final judgment, or the prescribed scale of penalty for the act under law,
- (g) if possible, other consequences of the offence,
- (h) 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.

2. The form shall be accompanied by a translation in an official language of the executing State or in one of the official languages of the Council of Europe.

Chapter II - Surrender procedure

Article 7 - Arrest of the person

1. When it issues a European arrest warrant and when the whereabouts of the person are unknown, the issuing judicial authority shall instigate an alert through Interpol or the SIS.
2. Once the alerted person is arrested, the authority carrying out the arrest shall immediately inform the executing and issuing judicial authorities.

Article 11 – Communication of a European arrest warrant

1. Within 24 hours of the person being arrested, the issuing judicial authority shall transmit the European arrest warrant to the executing judicial authority.
2. Transmission shall be by fax or electronic means, under conditions allowing the recipient Member State to verify the authenticity.
3. If the issuing judicial authority so wishes, transmission may be via the secure telecommunications system of the European judicial network.

Article 12 – Keeping the person under detention

The competent judicial authority of the executing State shall recognise all European arrest warrants, without any further formality being required, and shall immediately take all necessary measures to ensure that the person is detained or is kept in detention in the same way as for an arrest warrant issued by any competent authority of the executing State.

Article 13 – Rights of a requested person

1. When a requested person is arrested in accordance with Article 10, the competent authority of the executing 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, in accordance with the national law of the State on whose territory he was arrested.

Article 14 - Consent to surrender

1. If the arrested person indicates that he consents to his surrender, that consent shall be given to the executing judicial authority in accordance with its national law.
2. The consent shall be noted under conditions which show that the person concerned has ~~expressed it voluntarily and in full awareness of the resulting consequences.~~
3. Consent shall be recorded in accordance with the procedure laid down by the national law of the executing Member State. It shall be worded in such a way as to show that it was expressed voluntarily and in full awareness.
4. Consent may not be revoked.
5. ~~Consent shall immediately be notified to the issuing judicial authority.~~
6. The effect of the consent shall be to allow surrender of the person without further formality.

Article 15 -- Surrender decision

1. The executing judicial authority shall decide whether the European arrest warrant shall be executed.
2. 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 the European arrest warrant, it shall request the necessary supplementary information urgently and may fix a time limit for the receipt thereof, taking into account the need to observe the time limit set in Article 17.
3. All Member States may provide that the decision of the executing judicial authority may be subject to a single legal appeal ¹ under arrangements laid down by national law.

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in the event of multiple requests

1. If two or more Member States have issued European arrest warrants 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 consideration of 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 cooperate 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, 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 the applicable convention¹.~~

Article 17 – Time limits and arrangements for the surrender decision

1. The final decision on execution of the European arrest warrant shall be taken as soon as possible and, in all cases, no later than:

- five days after the arrest of the requested person in the case of consented surrender;
- thirty days after the arrest of the requested person in other cases².

2. Grounds must be given for any refusal to execute a European arrest warrant.

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

4. In the absence of a final decision within the time limit set in paragraph 1, the executing judicial authority shall order the surrender of the person to the issuing Member State. Any appeal still pending in the executing State shall not prevent surrender. However, in that event, the surrender shall be conditional and the person must be returned to the executing State if the final decision is to refuse surrender¹.

5. Paragraph 4 shall not be applied where the executing judicial authority was not able to take a decision within the time limit set in paragraph 1 due to failure by the issuing judicial authority to communicate the information requested in accordance with Article 15(2). In that event, the executing judicial authority shall release the person upon expiry of the time limit.

Article 18 – Time limit for surrender of the person

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

2. He shall be released no later than ten days after his consent to surrender or the decision to execute the European arrest warrant pursuant to Article 13.

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 ten days of the new date thus agreed.

4. The surrender may exceptionally be temporarily deferred if there are substantial grounds for believing that the execution would manifestly endanger the requested person's life or health because of his age or state of health or because of other peremptory humanitarian reasons. The executing judicial authority shall immediately notify the issuing judicial authority. The time limit for surrender shall be suspended as of that moment.

The executing judicial authority shall notify the issuing judicial authority once the reasons mentioned in the previous subparagraph have ceased to exist. Surrender shall take place within ten days of this notification¹.

5. Upon expiry of the time limits referred to in paragraphs 3 to 5, if the person is still being held he shall be released unless the delay is linked to his personal situation.

Article 19 – Adjourned or conditional surrender

1. The executing judicial authority may, after deciding to execute the European arrest warrant, adjourn the surrender of the requested person so that he may be prosecuted in the executing State or, if he has already been sentenced, so that he may serve, on its territory, a sentence passed for an act other than that referred to in the European arrest warrant.

2. Instead of adjourning the surrender, the executing judicial authority may temporarily hand over the requested person to the issuing State under conditions to be determined by mutual agreement between the authorities concerned.

Article 20 – 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 information on:

- the identity of the person under the European arrest warrant,
- the existence of a European arrest warrant,

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- the nature and legal classification of the offence,
 - the description of the circumstances of the offence, including the date and place.
2. The transit request and the information set out in paragraph 1 may be addressed to the Member State of transit by any means allowing a written trace to be kept. The Member State of transit shall notify its decision by the same procedure.
3. In the case of transport by air without a scheduled stopover, if an unscheduled landing occurs, the requesting Member State shall provide the Member State concerned with the information provided for in paragraph 1.

Chapter 3 – Effects of the surrender

Article 21 – Deduction of the period of detention served in the executing State

1. The issuing Member State may deduct all periods of detention arising from the execution of a European arrest warrant from the total period of detention to be served in the issuing State as a result of a custodial sentence or detention order being passed.
2. ~~To this end, all information concerning the duration of the detention of the requested person on the basis of the European arrest warrant shall be transmitted to the issuing Member State.~~

Article 22 – Possible prosecution for other offences

1. 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.
2. However, if the offence is one of those referred to in Article 2(3) and (4) with regard to the executing State, any such prosecution, sentence or detention shall be subject to the agreement of the competent authority of the executing State.

Article 23 – Surrender or subsequent extradition

1. The consent of the competent authority of the executing State shall be necessary to enable the issuing State to hand over the person to another Member State if the offence at the basis of the second European arrest warrant is one of the actions referred to in Article 2(3) and (4) with regard to the executing State of the first European arrest warrant.
2. The consent of the competent authority of the executing State shall be necessary to enable the issuing State to extradite the person to a third country if the offence on which the extradition request is based is one of the acts referred to in Article 2(3) and (4) with regard to the executing State or if the action is punishable by the death penalty in the requesting State.

Chapter 4 – General and final provisions*Article 24 – 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 Treaty on European Union in that Member State. This unilateral suspension shall 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.

Article 25 – Relation to other legal instruments

1. The provisions contained in this Framework Decision shall, on the date of its implementation, replace the provisions of conventions applicable in the field of extradition within the relations between the Member States.
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 26 – Transitional provision

Current instruments in the field of extradition shall continue to apply to extradition requests submitted before the measures necessary to comply with this Framework Decision have entered into force.

Article 27 – 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 to comply with this Framework Decision.

The Commission shall, by 31 December 2004, 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 28 – 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.

Done at Brussels, [...]

For the Council
The President

[...]

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