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OUTCOME OF PROCEEDINGS

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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 Member States

On 6 December 2001, the Presidency noted that fourteen delegations agreed on the draft Framework Decision on the European arrest warrant and the surrender procedures between Member States as it stands in the Annex. One delegation indicated that it could only agree on a narrower list of offences in Article 2 (2).

The Presidency also noted parliamentary scrutiny reservations from DK, NL, S and UK.

The Presidency noted that the draft framework Decision must be submitted to the European Parliament for reconsultation.

ANNEX

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission ¹,

Having regard to the Opinion of the European Parliament ²,

Whereas:

- (1) The conclusions of the Tampere European Council of 15 and 16 October 1999, and in particular conclusion 35, address the matter of expediting procedures for the extradition or remission of persons convicted or suspected of offences.
- (2) The programme of measures to implement the principle of mutual recognition of criminal decisions, adopted by the Council on 30 November 2000 ³ addresses the matter of mutual enforcement of arrest warrants.
- (3) All or some Member States are parties to a number of conventions in the field of extradition, including 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.
- (4) 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 ⁴, the Convention of 10 March 1995 on simplified extradition procedure between the Member States of the European Union ⁵ and the Convention of

¹ OJ &

² OJ &

³ OJ 12, 15.1.2001, pp. 10-22

⁴ OJ L 239, 22.9.2000, p. 19.

⁵ OJ C 78, 30.3.1995, p. 1.

27 September 1996 relating to Extradition between the Member States of the European Union ⁶.

⁶ OJ C 313, 13.10.1996, p. 11.

- (5) The objective set for the Union to become an area of freedom, security and justice has removed the need for extradition between Member States which is to be replaced by a system of surrender between judicial authorities. Moreover, the introduction of a new simplified scheme with respect to surrender of persons for the purpose of prosecution and execution of sentences makes it possible to remove the complexity and potential for delay inherent in the present procedures on extradition. Classical co-operation relations which prevailed so far between Member States should be substituted with a system of free movement of judicial decisions in criminal matters both at the pre-sentencing and final stages within an area of freedom, security and justice.
- (6) The European arrest warrant provided for in this Framework Decision is the first concrete measure in the field of criminal law implementing the principle of mutual recognition which the European Council termed a "cornerstone" of judicial corporation.
- (7) Since the aim of replacing the multilateral system of extradition built upon the European Convention on Extradition of 13 December 1957 cannot be sufficiently achieved unilaterally by the Member States and can therefore only be 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.
- (8) Decisions 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 requested person has been arrested will have to take the decision on his or her surrender.
- (9) The role of central authorities in the execution of a European arrest warrant must be limited to practical and administrative assistance.

- (10) 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 principles set out in Article 6(1) of the Treaty on European Union, established by the Council pursuant to Article 7(1) of that Treaty and in accordance with the procedure laid down in Article 7(2)
- (11) The European arrest warrant should replace between Member States all the former instruments concerning extradition, including the provisions of Title III of the Convention implementing the Schengen Agreement which concern extradition .
- (12) This Framework Decision respects the fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected by the Charter of Fundamental Rights of the European Union, notably Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to surrender a person for whom a European arrest warrant has been issued when objective elements exist for believing that the European arrest warrant is issued for the purpose of prosecuting or punishing a person on account of his or her sex, race, religion, ethnic origin, nationality, political opinion or sexual orientation, or that that person's position may be prejudiced for any of these reasons. This Framework Decision shall not prevent any Member State from applying its constitutional rules relating to due process, freedom of association, freedom of the press and freedom of expression in other media.
- (12 a) Persons should not be removed, expelled or extradited to a State where there is a serious risk that they would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.
- (13) All Member States have ratified the Council of Europe Convention of 28 January 1981 for the protection of individuals with regard 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.

HAS ADOPTED THIS FRAMEWORK DECISION: ³

Chapter 1 General principles

Article 1 Obligation to execute the European arrest warrant

1. The European arrest warrant shall be a court decision issued by a Member State with a view to the arrest and surrender of a requested person by another Member State, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.
2. Member States shall undertake to execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.
3. This Framework Decision shall not have the effect of amending the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.

Article 2 Scope of the European arrest warrant

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 for a maximum period of at least twelve months or, where a sentence has been passed or a detention order has been made, for punishments of at least four months.
2. The following offences, if they are punishable in the issuing Member State by a custodial sentence of a maximum of at least 3 years and as they are defined by the law of the issuing Member State, shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to surrender pursuant to a European arrest warrant :

³ It should be noted that the English and other language versions will have to be revised in the light of the French version, as French was the original language of the draft.

participation in 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 Convention of 26 July 1995 on the protection of the European Communities' financial interests,
laundering of the proceeds of crime,
counterfeiting of the euro,
computer-related crime,
environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
facilitation of unauthorised entry and residence,
murder, grievous bodily injury,
illicit trade in human organs and tissue,
kidnapping, illegal restraint and hostage-taking,
racism and xenophobia,
organised or armed 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 promoters,
illicit trafficking in nuclear or radioactive materials,
motor vehicle crime,
rape,
arson,

crimes within the jurisdiction of the International Criminal Tribunal,
unlawful seizure of aircraft/ships,
sabotage.

3. The Council may decide to add other categories of offence to the list contained in paragraph 2 at any time, acting unanimously after consultation of the European Parliament under the conditions laid down in Article 39(1) of the TEU. The Council shall consider, in the light of the report submitted by the Commission pursuant to Article 27, whether the list should be extended or amended.

4. For offences other than those covered by paragraph 2, surrender may be subject to the condition that the acts for which the European arrest warrant was issued constitute an offence under the law of the executing State, whatever the constituent elements or however it is described.

Article 3

Grounds for mandatory non-execution

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

1. if the offence on which the arrest warrant is based is covered by amnesty in the executing Member State, where that State had jurisdiction to prosecute the offence under its own criminal law ;
2. if the executing judicial authority is informed that the requested person has been finally judged by a Member State in respect of the same acts provided that, if he was sentenced, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State ;
3. if the person who is the subject of the European arrest warrant may no longer, owing to his age, be held criminally responsible for the acts on which the European arrest warrant is based under the law of the executing State.

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(4), the act on which the European arrest warrant is based does not constitute an offence under the law of the executing State; however, in relation to taxes or duties, customs and exchange execution of the European arrest warrant may not be refused on the ground that the law of the executing Member State does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the issuing Member 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 as that 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 is based or to halt proceedings, or where another final judgment has been passed upon the requested person in a Member State, in respect of the same acts, which prevents further proceedings;
4. where the prosecution or punishment of the requested person would be statute-barred according to the law of the executing Member State and the acts fall within the jurisdiction of that Member State under its own criminal law ;
5. if the executing judicial authority is informed that the requested person has been finally judged by a third State in respect of the same acts provided that, if he was sentenced, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing State;

6. if the European arrest warrant was issued for the purposes of execution of a sentence or detention order, where the requested person is staying in, or is a national or a resident of the executing Member State and the executing Member State undertakes to execute the sentence or detention order pursuant to the law of that Member State ;
7. Where the European arrest warrant envisages offences which:
 - (1) are regarded by the law of the executing Member State as having been committed in whole or in part in its territory or in a place treated as the territory of that Member State;
 - (2) have been committed outside the territory of the issuing Member State and the law of the executing Member State does not allow prosecution for the same offences when committed outside the territory of the executing Member State.

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 sentence or a detention order imposed by a decision rendered in absentia, and if the person concerned has not been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered in absentia, surrender may be subject to the condition that the issuing judicial authority gives an assurance deemed adequate to guarantee the person who is the subject of the European arrest warrant that he or she will have an opportunity to lodge an appeal or opposition in the issuing State and to be present at the judgment.

2. 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 has provisions in its legal system for a review of the penalty imposed on request or at least after 20 years or for the application of measures of clemency to which the person is entitled under its national law or practice, aiming at a non-execution of such penalty.

3. where a person who is the subject of a European arrest warrant for the purposes of prosecution is a national or resident of the executing State, surrender may be subject to the condition that the person, after being heard, is returned to the executing State to serve the 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 judicial authority of the issuing State 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 judicial authority of the executing State 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 warrant¹]

¹ The content of this Article has been moved to Article 10.

Article 8 Recourse to the central authority

1. Each Member State may designate a central authority or, when its legal system so provides, more than one central authority to assist the competent judicial authority.
2. 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. These indications shall be binding upon all the authorities of the issuing Member State.

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 and nationality of the requested person;
- (b) the name, address, telephone and fax numbers and e-mail address of the issuing judicial authority;
- (c) evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect, within the scope of Articles 1 and 2;
- (d) the nature and legal classification of the offence, particularly in respect of Article 2;
- (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.

2. The certificate ¹ must be translated into the official language or one of the official languages of the executing State. Any Member State may, when this Framework Decision is adopted or at a later date, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the Institutions of the European Communities.

¹ The certificate has not yet been examined.

Chapter 2 Surrender procedure

Article 10 Forwarding of a European arrest warrant

1. When the location of the person is known, the issuing judicial authority may communicate the European arrest warrant directly to the executing judicial authority.
2. The issuing judicial authority may, in any event, decide to issue an alert for the requested person in the Schengen Information System.
3. Such an alert shall be effected in accordance with the provisions of Article 95 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of controls at common borders. An alert in the Schengen Information System shall be equivalent to a European arrest warrant accompanied by the information described in Article 9(1).

For a transitional period, until the SIS is capable of transmitting all the information described in Article 9, the alert shall be equivalent to a European arrest warrant pending the receipt of the original in due and proper form by the executing judicial authority.

Article 10a Detailed procedures for forwarding a European arrest warrant

1. If the issuing judicial authority does not know the competent executing judicial authority, it shall make the requisite enquiries, including through the contact points of the European Judicial Network, in order to obtain that information from the executing Member State.
2. If the issuing judicial authority so wishes, transmission may be via the secure telecommunications system of the European Judicial Network.
3. If it is not possible to call on the services of the Schengen Information System, the issuing judicial authority may call on Interpol to communicate a European arrest warrant.

4. The issuing judicial authority may forward the European arrest warrant by any secure means capable of producing written records under conditions allowing the executing Member State to establish its authenticity.

5. 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.

6. If the authority which receives a European arrest warrant is not competent to act upon it, it shall automatically forward the European arrest warrant to the competent authority in its Member State and shall inform the issuing judicial authority accordingly.

[Article 11 &]

Article 12 Rights of a requested person

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

2. A requested person who is arrested for the purpose of the execution of a European arrest warrant shall have a right to be assisted by a legal counsel and by an interpreter in accordance with the national law of the executing Member State.

Article 13 Keeping the person under detention

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 should remain in detention, in accordance with the law of the executing Member State. The person may be released provisionally at any time in conformity with national law, provided that the competent authority of the executing State takes all the measures it deems necessary to prevent the person absconding .

Article 14 Consent to surrender

1. If the arrested person indicates that he consents to his surrender, that consent and, if appropriate, express renunciation of entitlement to the speciality rule, defined in Article 22(2), shall be given before the executing judicial authority, in accordance with the national law of the executing State.
2. Each Member State shall adopt the measures necessary to ensure that consent and, where appropriate, renunciation, as referred to in paragraph 1, are established in such a way as to show that the person concerned has expressed them voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel.
3. Consent and, where appropriate, renunciation, as referred to in paragraph 1, shall be recorded; the recording procedure shall be in accordance with the national law of the executing State.
4. In principle, consent may not be revoked. Each Member State may provide that consent and, if appropriate, renunciation may be revoked, in accordance with the rules applicable under its national law. In this case, the period between the date of consent and that of its revocation shall not be taken into consideration in establishing the time limit laid down in Article 17. A Member State which wishes to have recourse to this possibility shall inform the General Secretariat of the Council of the European Union accordingly when this Framework Decision is adopted and shall specify the procedures whereby revocation of consent shall be possible and any amendment thereto.

Article 14a Hearing of the requested person

Where the arrested person does not consent to his surrender as referred to in Article 14, he shall be entitled to be heard by the executing judicial authority, in accordance with the national law of that State.

Article 15 Surrender decision

1. The executing judicial authority shall decide, within the periods and under the conditions defined in this Framework Decision, whether the person is to be surrendered.
2. If the executing judicial authority finds the information communicated by the issuing Member State to be insufficient to allow it to decide on surrender, it shall request the necessary supplementary information in respect of Articles 3 to 5 and Article 9 in particular as a matter of urgency 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. The issuing judicial authority may at any time forward any additional useful information to the executing judicial authority.

Article 16 Decision 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, the respective dates of the European arrest warrants and whether the warrant has been issued for the purposes of prosecution or for execution of a custodial sentence or order .

2. The executing judicial authority may seek the advice of Eurojust with a view of a decision envisaged in paragraph 1.
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 competent authority of the executing Member State with due consideration of all circumstances, in particular those referred to in paragraph 1 and those mentioned in the applicable convention.
4. This provision shall be without prejudice to Member States' obligations under the Statute of the International Criminal Court.

Article 17 Time limits and procedures for the decision

1. A European arrest warrant shall be dealt with and executed as a matter of urgency.
2. In cases where the requested person consents to his surrender, the final decision on the execution of the European arrest warrant should be taken within a period of 10 days after consent has been given.
3. In other cases, the final decision on the execution of the European arrest warrant ¹ shall be taken within a period of 60 days after the arrest of the requested person.
4. Where in specific cases the arrest warrant cannot be executed within the time limits laid down in paragraphs 2 and 3, the executing judicial authority shall immediately inform the issuing judicial authority, giving the reasons for the delay. In such case, the time limits may be extended by a further 30 days.

¹ It will be necessary at a later stage to ensure consistency of the terms used (decision on surrender or execution of the European arrest warrant) throughout the Framework Decision.

5. As long as the judicial authority of the executing Member State has not taken a final decision on the arrest warrant, that State shall ensure that the material conditions necessary for effective surrender remain fulfilled.

6. Reasons must be given for any refusal to execute a European arrest warrant.

7. Where in exceptional circumstances a Member State cannot observe the time limits provided for in this Article, it shall inform Eurojust, giving the reasons for the delay. In addition, a Member State which has experienced repeated delays by another Member State in the execution of European arrest warrants shall inform the Council with a view to evaluating the implementation of this Framework Decision at Member State level.

Article 17a Situation pending the decision

1. Where the European arrest warrant has been issued on the basis of an enforceable judicial decision other than a final judgement, the executing judicial authority shall:

either agree that the requested person should be heard according to Article 17b;
or agree to temporary transfer of the requested person.

2. The conditions and the duration of the temporary transfer shall be determined by mutual agreement between the issuing and executing judicial authorities.

3. In the case of temporary transfer, the person must be able to return to the executing Member State to attend hearings concerning him as part of the surrender procedure.

Article 17b Hearing the person pending the decision

1. The person shall be heard by a judicial authority, assisted by any other person designated in accordance with the law of the Member State of the requesting court.

2. The requested person shall be heard in accordance with the law of the executing Member State and with the conditions determined by mutual agreement between the issuing and executing judicial authorities.

3. The competent executing authority may assign a court of its Member State to take part in the hearing of the requested person in order to ensure the proper application of this Article and of the conditions laid down.

Article 17c Privileges and immunities

1. Where the requested person enjoys a privilege or an immunity in the executing State, the period referred to in Article 17 shall not start running unless, and until the day when, the executing judicial authority is informed of the fact that that privilege or immunity has been waived. If the person does not enjoy an immunity from enforcement of proceedings¹, the executing State shall ensure that the material conditions necessary for effective surrender remain fulfilled.

2. Where power to waive the privilege or immunity lies with an authority of the executing State, the executing judicial authority shall request it to exercise that power forthwith. Where power to waive the privilege or immunity lies with an authority of another Member State or international organisation, it shall be for the issuing judicial authority to request it to exercise that power.

Article 17d Concurring international obligations

This Framework Decision shall not prejudice the obligations of the executing Member State where the requested person has been extradited to that Member State from a State outside the European Union, and that person is protected by the speciality provisions of the arrangement under which he was extradited. The executing Member State shall take all necessary measures for requesting forthwith the consent of the State from which the requested person was extradited so that he can be surrendered to the issuing State. The period referred to in Article 17 shall not start running until the day on which these speciality rules cease to exist. Pending the decision of the State from which the requested person was extradited, the executing State shall ensure that the material conditions necessary for effective surrender remain fulfilled.

¹ In the French version the text will refer to "immunité d'exécution ou de juridiction".

Article 17e Notification of the decision

The executing judicial authority shall notify the issuing judicial authority immediately of the decision on the action to be taken on the European arrest warrant.

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 surrendered no later than ten days after the decision to execute the European arrest warrant.
3. If the surrender of the requested person within the period laid down in paragraph 2 is prevented by circumstances beyond the control of any of the Member States, the executing and issuing judicial authorities shall immediately contact each other 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 postponed for serious humanitarian reasons, e.g. if there are substantial grounds for believing that the execution would manifestly endanger the requested person's life or health. The execution of the European arrest warrant shall take place as soon as these grounds have ceased to exist. 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.
5. Upon expiry of the time limits referred to in paragraphs 2 to 4, if the person is still being held in custody he shall be released.

Article 19 Postponed or conditional surrender

1. The executing judicial authority may, after deciding to execute the European arrest warrant, postpone 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, in its territory, a sentence passed for an act other than that referred to in the European arrest warrant.
2. Instead of postponing the surrender, the executing judicial authority may temporarily surrender the requested person to the issuing Member State under conditions to be determined by mutual agreement between the executing and the issuing judicial authorities. The agreement shall be made in writing and the conditions shall be binding on all the authorities in the issuing Member State.

Article 20 Transit

1. Each Member State shall, except when it avails itself of the possibility of refusal when the transit of a national or a resident is requested for the purpose of the execution of a sentence, permit the transit through its territory of a requested person who is being surrendered provided that it has been given information on :
 - the identity and nationality of the person under the European arrest warrant,
 - the existence of a European arrest warrant,
 - the nature and legal classification of the offence,
 - the description of the circumstances of the offence, including the date and place.

Where a person who is the subject of a European arrest warrant for the purposes of prosecution is a national or resident of the State of transit, transit may be subject to the condition that the person, after being heard, is returned to the transit State to serve the sentence or detention order passed against him in the issuing State.

2. Each Member State shall designate an authority responsible for receiving transit requests and the necessary documents, as well as any other official correspondence relating to transit requests. Member States shall communicate this designation to the General Secretariat of the Council.

3. The transit request and the information set out in paragraph 1 may be addressed to the authority designated pursuant to paragraph 2 by any means capable of producing a written record. The Member State of transit shall notify its decision by the same procedure.

4. This Framework Decision does not apply in the case of transport by air without a scheduled stopover. However, if an unscheduled landing occurs, the requesting Member State shall provide the authority designated pursuant to paragraph 2 with the information provided for in paragraph 1.

5. Where a transit concerns a person who is to be extradited from a third State to a Member State this Article will apply *mutatis mutandis*. In particular the expression "European arrest warrant" shall be deemed to be substituted by the "extradition request".

Chapter 3 Effects of the surrender

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

1. The issuing Member State shall 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 by the executing judicial authority or the central authority designated under Article 8 to the issuing judicial authority at the time of the surrender.

Article 22 Possible prosecution for other offences

1. Each Member State may notify the General Secretariat of the Council of the European Union that, in its relation with other Member States that have given the same notification, the consent for the prosecution, sentencing or detention with a view to the carrying out of a sentence or detention order for any offence committed prior to his surrender other than that for which he was surrendered is presumed to have been given, unless in a particular case the executing judicial authority states otherwise in his decision to surrender.
2. Except in the case foreseen in paragraphs 1 and 3, a person surrendered shall not be prosecuted, sentenced or otherwise deprived of his liberty for any offence committed prior to his surrender other than that for which he was surrendered.
3. Paragraph 2 does not apply in the following cases:
 - (a) When the requested person having had an opportunity to leave the territory of the Member State to which he has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it.

- (b) The offence is not punishable by deprivation of liberty.
- (c) The criminal proceedings do not give rise to the application of a measure restricting his personal liberty.
- (d) When the requested person will be subjected to a penalty or a measure not involving the deprivation of liberty, including a financial penalty, or a measure in lieu thereof, even if it may restrict his personal liberty.
- (e) When the requested person has consented to be surrendered; if appropriate together with the renunciation of the rule of speciality, in accordance with Article 14.
- (f) When the requested person, after his surrender, has expressly renounced entitlement to the rule of speciality with regard to specific offences preceding his surrender. Renunciation shall be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's national law. The renunciation shall be established in such a way as to show that the person has given it voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel.
- (g) Where the executing judicial authority that surrendered the person gives its consent in accordance with paragraph 4.

4. A request for consent shall be submitted to the executing judicial authority , including the information mentioned in Article 9(1), and accompanied by a translation. Consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Framework Decision. Consent shall be refused on the grounds referred to in Article 3 and otherwise may be refused only on the grounds referred to in Article 4. For the situations mentioned in Article 5, the same guarantees have to be given by the issuing State. The decision shall be taken no later than 30 days after the receiving of the request .

Article 23 Surrender or subsequent extradition

1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States that have given the same notification, the consent for the surrender to another Member State than the executing State pursuant to a European arrest warrant issued for any offence committed prior to his surrender is presumed to have been given, unless in a particular case the executing judicial authority states otherwise in his decision to surrender.

2. In any case, a person who has been surrendered to the issuing Member State pursuant to a European arrest warrant may, without the consent of the executing Member State, be surrendered to a Member State other than the executing State pursuant to a European arrest warrant issued for any offence committed prior to his surrender in the following cases:
 - (a) the requested person, having had an opportunity to leave the territory of the State to which he has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it;

 - (b) where the requested person consents to be surrendered to a Member State other than the executing State pursuant to a European arrest warrant. Consent shall be given before the competent judicial authorities of the issuing State and shall be recorded in accordance with that State's national law. The consent shall be established in such a way as to show that the person has given it voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel;

 - (c) where the requested person is not subject to the speciality rule, in accordance with Article 22(3) (a), (e), (f) and (g).

3. The executing judicial authority consents to the surrender to another Member State according to the following rules. A request for consent shall be submitted according to Article 10, accompanied by the information mentioned in Article 9(1), and accompanied by a translation as stated in Article 9(2). Consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Framework Decision. The decision shall be taken no later than 30 days after the request was received . Consent shall be refused on the grounds referred to in Article 3 and otherwise may be refused only on the grounds referred to in Article 4. For the situations referred to in Article 5, the same guarantees have to be given by the issuing State.

4. Notwithstanding paragraph 1, a person who has been surrendered pursuant to a European arrest warrant shall not be extradited to a third State without the consent of the competent authority of the Member State from which the requested person has been surrendered. The consent shall be given in accordance with the Conventions by which the Member State from which the requested person has been surrendered is bound, as well as its national legislation.

Article 23a Handing over of property

1. The executing judicial authority shall, in accordance with its national law, 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.

Article 23b Expenses

1. Expenses incurred in the territory of the executing Member State by reason of execution of a European arrest warrant shall be borne by that Member State.
2. All other expenses shall be borne by the issuing Member State.

Chapter 4 General and final provisions

Article 24 Safeguard

[...]

Article 25 Relation to other legal instruments

1. Without prejudice to their application in relations between Member States and third States, the provisions contained in this Framework Decision shall, on 1 January 2004, replace the corresponding provisions of conventions applicable in the field of extradition within the relations between the Member States,

- (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.
- (e) Title III, Chapter 4 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders.

2. Member States may continue to apply bilateral or multilateral agreements or arrangements in force when this Framework Decision is adopted insofar as such agreements or arrangements allow the objectives of the Framework Decision to be exceeded and help to simplify or facilitate further the procedures for surrender of persons who are the subjects of European arrest warrants.

Member States may conclude bilateral or multilateral agreements or arrangements after the Framework Decision has come into force insofar as such agreements or arrangements allow the prescriptions of the Framework Decision to be exceeded and help to simplify or facilitate further the procedures for surrender of persons who are the subjects of European arrest warrants, in particular by fixing time limits shorter than those fixed in Article 17, by extending the list of offences stipulated in Article 2(2), by further limiting the grounds for refusal set out in Articles 3 and 4, or by lowering the threshold stipulated in Article 2(1) or (2).

The agreements referred to in the preceding paragraph may in no case affect relations with Member States which are not parties to them.

Member States shall, within three months after the entry into force of this Framework Decision, notify the Council and the Commission of the existing agreements referred to in the first subparagraph which they want to continue applying.

Member States shall also notify the Council and the Commission of any new agreement as contemplated in the second subparagraph, within three months of signing it.

3. Where the conventions referred to in paragraph 1 apply to the territories of Member States or to territories for whose external relations a Member State is responsible to which this Framework Decision does not apply, these conventions shall continue to govern the relations existing between those territories and the other Members States.

Article 26 Transitional provision

1. Extradition requests received before 1 January 2004 will continue to be governed by existing instruments relating to extradition. Requests received after 1 January 2004 will be governed by the rules adopted by Member States pursuant to this Framework Decision. However, any Member State may, at the time of the adoption of this Framework Decision by the Council, make a statement indicating that as executing State it will continue to deal with requests relating to acts committed before a date which it specifies in accordance with the extradition system applicable before 1 January 2004. The date in question may not be later than the date of entry into force of this Framework Decision pursuant to Article 28. Any such statement will be published in the OJEC. It may be withdrawn at any time.

2. As long as Austria has not modified Article 12(1) of the "Auslieferungs- und Rechtshilfegesetz" and, at the latest, until 31 December 2008, Austria may allow its executing judicial authorities to refuse the enforcement of a European arrest warrant if the requested person is an Austrian citizen and if the act for which the European arrest warrant has been issued is not punishable under Austrian law.

Article 27 Implementation

Member States shall take the necessary measures to comply with this Framework Decision by 31 December 2003.

They shall communicate to the Council and to the Commission the text of any provisions they adopt to comply with this Framework Decision. When doing so, each Member State may indicate that it will apply immediately this Framework Decision in its relations with those Member States which have given the same notification .

The General Secretariat of the Council shall communicate to the Member States and to the Commission the information received pursuant to Article 8(2), Article 9(2), Article 14(4) and Article 20(2). It shall also have the information published in the Official Journal of the European

Communities.

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 in the second half of 2003 review the implementation of this Framework Decision in the Member States as well as the functioning of the Schengen Information System.

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

[&]

ANNEX

Draft Council statement:

(a) re Article 2

"The Council agrees to continue, in accordance with Article 31(e) TEU, the work on approximation of the offences contained in Article 2(2) of the Framework Decision, with a view to arriving at a mutual legal understanding among the Member States".

(a) re Article 2(2)

"The Council states that in particular for the following offences, listed in Article 2(2), there is no completely harmonised definition at Union level. For the purposes of applying the European arrest warrant, the act as defined by the law governing issue prevails. Without prejudice to the decisions which might be taken by the Council in the context of implementing Article 31(e) TEU, Member States are requested to be guided by the following definitions of acts in order to make the arrest warrant operational throughout the Union for offences involving racism and xenophobia, sabotage and racketeering and extortion:

Racism and xenophobia as defined in the Joint Action of 15 July 1996 (96/443/JAI)

Sabotage:

"Any person who unlawfully and intentionally causes large-scale damage to a government installation, another public installation, a public transport system or other infrastructure which entails or is likely to entail considerable economic loss."

Racketeering and extortion

"Demanding by threats, use of force or by any other form of intimidation goods, promises, receipts or the signing of any document containing or resulting in an obligation, alienation or discharge."

(c) Statement by Ireland re Articles 22(4) and 23(3)

Ireland will explain in a declaration what is covered in Ireland as regards the words "executing judicial authorities".
