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NOTE

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Subject :	Final version of the European handbook on how to issue a European Arrest Warrant

At its meeting on 17 July 2007, the Working Party on Cooperation in Criminal Matters (Experts on the European Arrest Warrant)¹ exchanged views on the practical problems relating to the process of issuing and executing a European Arrest Warrant. In order to address these issues, the delegations considered the Presidency's suggestion of drafting common guidelines on how to fill in the EAW form.

The Presidency concluded that there was a general consensus among the delegations regarding the need to draft a manual. Furthermore, it was suggested that the draft proposal be discussed again later during the Portuguese Presidency by the Working Party on Cooperation in Criminal Matters (Experts on the European Arrest Warrant).

The task was entrusted to the Presidency, assisted by the General Secretariat of the Council of the European Union. The existing Member States' manuals and experiences of practitioners in the EJN and Eurojust served as a basis for drafting the suggested text.

¹ See outcome of proceedings, 12053/07 JAI 407 COPEN 115 EJN 43 EUROJUST 23

The European Judicial Network discussed the initiative in its meeting on 28 February 2008. Furthermore, at its meeting on 30 April 2008, the experts on the European Arrest Warrant (Working Party on Cooperation in Criminal Matters) discussed the initiative in detail. At its meeting on 14 - 15 May 2008, the Article 36 Committee endorsed this Handbook, on the understanding that an evaluation of its use should be made after 18 months.

Delegations will find in the Annex the European handbook on how to issue a European Arrest Warrant.

ANNEX

EUROPEAN HANDBOOK
ON HOW TO ISSUE
A EUROPEAN ARREST WARRANT¹

¹ The comments contained here are not binding and do not affect domestic legislation implementing the Framework Decision. Comments are merely recommendations. Judicial authorities are, however, reminded of their obligation to interpret their national law in conformity with the Framework Decision (see the Pupino case in the European Court of Justice C-105/03).

INTRODUCTION

- The aim of this publication is to provide guidelines for the adoption of good practice in the light of experience acquired, while supplying the competent judges and prosecutors with specific information on how EAW forms should ideally be filled in. For that purpose, the text includes specific examples of how to draw up an EAW.
- The European Arrest Warrant is the first legal instrument based upon mutual recognition of decisions in criminal matters. It implies a radical change from the old extradition system, which has been replaced by a system of surrender within an Area of Freedom, Security and Justice, with an impact, in particular, on procedures, time limits and grounds for non-surrender of a person. The EAW is thus intimately linked with the Treaty objective laid down in Article 29 of the Treaty on European Union.
- The EAW should be used in an efficient, effective and proportionate manner as a tool for the prevention and repression of crime, while safeguarding the human rights of suspects and convicted persons. The instrument, which is based upon the deprivation of personal liberty, is in principle designed to further the prosecution of more serious or more damaging crime which may substantially justify its use, or for purposes of enforcement of convictions. It is only intended to be used if an arrest warrant or any other enforceable judicial decision having the same effect has been issued at national level.

- "The European arrest warrant is designed to have a uniform effect throughout the European Union. The effect at which it aims is that of swift, speedy surrender. It must be borne in mind too that, for obvious practical reasons, a large number of European arrest warrants are not directed at only one Member State: see the House of Lords European Union Committee Report, "European Arrest Warrant - Recent Developments" (HL Paper 156), para 21. The form in the annex to the Framework Decision has been designed on this assumption. The person who issues a European arrest warrant is not required to address it to any particular Member State. Once issued, it is available to be used wherever the requested person happens to be when it is executed"¹.
- The handbook was drawn up during the Portuguese and Slovenian Presidencies with the assistance of a number of practitioners working with the EAW across Europe, and also with the assistance of the European Judicial Network, Eurojust, the General Secretariat of the Council of the EU and the European Commission. It was approved by the Article 36 Committee at its meeting on 14 and 15 May 2008. That Committee was the one which discussed the provisions of the Framework Decision on the EAW during the Belgian Presidency in 2001.
- This handbook may be updated in future as necessary in the light of practical experience, amendments to the Framework Decision or developments in court decisions.
- Any suggestions on the text of this handbook should be sent to the Council of the EU, General Secretariat, Unit for Judicial Cooperation in Criminal Matters, Rue de la Loi 175, B-1040 Brussels (e-mail: eaw@consilium.europa.eu) or to the European Commission, DG JLS, Unit for Judicial Cooperation in Criminal Matters, European Commission, B-1049 Brussels.

¹ Lord Hope of Craighead's Opinion in the case of Dabas vs The High Court of Justice, Madrid [House of Lords, 2007 UK HL 6].

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1. Framework Decision on the European Arrest Warrant

On 13 June 2002 the Council adopted the Framework Decision on the European arrest warrant¹. In accordance with Article 34(1) thereof, Member States shall take the necessary measures to comply with the provisions of the Framework Decision by 31 December 2003. From 1 January 2004, this new system has, with a few exceptions, replaced extradition arrangements with the new surrender regime. As far as surrender between Member States is concerned, the corresponding provisions of the following conventions have been replaced:

- 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;
- the Agreement between the 12 Member States of the European Communities on the simplification and modernisation of methods of transmitting extradition requests of 26 May 1989;
- the Convention of 10 March 1995 on simplified extradition procedure between the Member States of the European Union;
- the Convention of 27 September 1996 relating to extradition between the Member States of the European Union;
- 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.

The European arrest warrant is a judicial decision enforceable in the European Union, issued by a Member State and executed in another Member State on the basis of the principle of mutual recognition.

¹ OJ L 190, 18.7.2002, p. 1.

1.1. Definition and main features of the EAW

The European arrest warrant has replaced the traditional system of extradition with a simpler and quicker mechanism of surrender of requested persons for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order. A warrant may be issued for purposes of criminal prosecution in relation to acts punishable under domestic law by a custodial sentence or detention order for a *maximum period of at least 12 months*¹ (during the investigation, examining and trial stages, until the conviction is final) or may be issued for execution of a sentence or detention order of *at least 4 months*. These criteria are not cumulative.

Central Authorities, which used to play a significant role in the extradition process, are now excluded from the EAW process as a rule, although they may still work as support, transmission and information units in general. To make requests simpler and easier to comply with, they are now issued in a uniform way by *filling in an EAW form*.

The Framework Decision reflects a philosophy of integration in a common judicial area and involves a new pattern of cooperation based upon mutual trust between Member States. The surrender of nationals is now a principle and a general rule, with few exceptions. These exceptions relate to time limits and to requirements connected with enforcement.² Practice has shown that about one fifth of all surrenders in the Union concern a country's own nationals, although conditions for return or for enforcement of the sentence are often stipulated, in accordance with the Framework Decision, when effecting the surrender.

¹ It should be noted that "*maximum period of at least 12 months*" as set out in Article 2(1) of the Framework Decision should be interpreted in conformity with the former extradition regime (i.e. European Convention on Extradition 1957, EU Extradition Convention 1995). Therefore, in the legislation implementing Article 2(1) of the Framework Decision, it should be indicated that an EAW may be issued in cases where the penalty which may be imposed for the offence is 12 months or more.

² See chapter 2.2. concerning the surrender of a country's own nationals.

The grounds for refusal of cooperation have been reduced. The Framework Decision has suppressed verification of double criminality as a ground for non-execution and non-surrender with regard to a list of 32 categories of offences, as defined by the issuing State, where these are punishable in the issuing State by a custodial sentence or a detention order for a maximum period of at least 3 years. If the offence in question is punishable by less than 3 years, or is not included on the list, double criminality would still apply.

As a consequence, where the investigated or adjudged offences correspond, in the specific case, to their typical description in the law of the issuing State, then the executing judicial authority may not control the double criminality of the offence.

1.2. The EAW form

The EAW is a judicial decision issued in the form prescribed by the Framework Decision. The EAW form is an annex to the EAW Framework Decision. The form must be used, although this may not always be clear from the legislation of some Member States. The intention of the Council was to implement a working tool that might easily be filled in by the issuing judicial authorities and recognised by the executing judicial authorities. One of the aims of the form is to avoid lengthy and expensive translations and to facilitate the accessibility of the information. Only this form should be used; it may not be altered. Since this form will in principle constitute the sole basis for the arrest and subsequent surrender of the requested person, it should be filled in with particular care in order to avoid unnecessary requests for supplementary information. The form can be filled in and printed on the European Judicial Network (EJN) website <http://www.ejn-crimjust.europa.eu/documents.aspx> .

2. Implementation of the European Arrest Warrant in the EU Member States

2.1. Statements made by Member States concerning the special regime regarding the date when acts were committed

In accordance with Article 32 (1) of the EAW Framework Decision, any Member State may, at the time of the adoption of the Framework Decision, make a statement indicating that, as executing Member State, it will apply the EAW Framework Decision only to acts committed after a certain date, to be specified, which may not be later than 7 August 2002. If acts were committed before the dates indicated below, a traditional extradition request is needed in order for the requested person to be surrendered.

Such a statement has been made by the following Member States:

- Austria: acts committed after 7 August 2002
- Czech Republic: acts committed by Czech nationals before 1 November 2004¹.
- France: acts committed after 1 November 1993
- Italy: acts committed after 7 August 2002. Under Italian legislation, Italy cannot execute EAWs issued before 14 May 2005.
- Luxembourg: acts committed after 7 August 2002 (a Bill will be brought before Parliament)

Only Austria, France and Italy have notified the Council in compliance with the Framework Decision. As regards Italy, the legislation differs from the Statement.

Hence, if acts were committed before the dates indicated above, the procedure for the requested person to be surrendered will be carried out by submitting a traditional extradition request, not an EAW form.

¹ 10750/06 COPEN 69 EJM 17 EUROJUST 31.

2.2. Surrender of nationals

The European arrest warrant abolishes the old extradition system's non-execution of surrender on grounds of the wanted person's nationality. This generalisation of the surrender of nationals is one of the Framework Decision's most significant achievements. However, it was at the expense of some constitutional difficulties in some Member States.

In *Germany*, the transposition law was annulled by a decision of the Federal Constitutional Court dated 18 July 2005; the decision prevented the surrender of German citizens, but not the extradition of foreign nationals, until the new law of 20 July 2006 entered into force on 2 August 2006.

In *Poland*, by a decision dated 27 April 2005, the Constitutional Tribunal deferred the effects of the partial annulment of the transposition law until 6 November 2006. The amendments were made in time and, since 7 November 2006, Poland has surrendered its nationals on condition that the offence for which surrender is requested was committed outside Poland and is an offence under Polish law.

In *Cyprus*, by a decision dated 7 November 2005, the Supreme Court of Cyprus declared the law transposing the EAW contrary to the Cypriot Constitution. A revision entered into force on 28 July 2006; however, the new Article 11 as thus amended places a time constraint on surrendering nationals inasmuch as this is possible only for acts committed after the date of accession of Cyprus to the Union, i.e. 1 May 2004.

In accordance with Article 33 of the Framework Decision, as long as Austria has not amended its national legislation and at the latest until 31 December 2008, Austria may refuse the execution of a warrant in the case of Austrian nationals, where the acts concerned are not punishable under Austrian law.

The *Czech Republic* will continue to deal with requests relating to acts committed by Czech nationals before 1 November 2004 in accordance with the extradition system applicable before the date of accession of the Czech Republic to the European Union, i.e. in accordance with the European Convention on Extradition of 12 December 1957, its two Amending Protocols of 15 October 1975 and 17 March 1978, the Schengen Implementing Convention and the applicable bilateral agreements. According to the provision of Sec. 403 Para 2 of the Criminal Procedure Code (Act No. 141/1961Coll., as amended) the Czech Republic may surrender its national to another EU Member States only on the condition of reciprocity.

3. Criteria to apply when issuing an EAW – principle of proportionality

It is clear that the Framework Decision on the EAW does not include any obligation for an issuing Member State to conduct a proportionality check. It will be the legislation and judicial practice of the Member States that will ultimately decide this question. See, however, the *Advocaten voor de Wereld* case in Annex VII and Article 49 of the EU Charter on Fundamental Rights.

Considering the severe consequences of the execution of an EAW as regards restrictions on physical freedom and the free movement of the requested person, the competent authorities should, before deciding to issue a warrant, bear in mind, where possible, considerations of proportionality by weighing the usefulness of the EAW in the specific case against the measure to be applied and its consequences. Therefore, the EAW should not be chosen where the coercive measure that seems proportionate, adequate and applicable to the case in hand is not preventive detention.

The warrant should not be issued, for instance, where, although preventive detention is admissible, another non-custodial coercive measure may be chosen – such as providing a statement of identity and place of residence – or one which would imply the immediate release of the person after the first judicial hearing.

This interpretation is consistent with the provisions of the Framework Decision on the EAW and with the general philosophy behind its implementation, with a view to making the EAW an effective tool for combating serious and organised crime in particular.

When it comes to issuing an EAW, in each case an evaluation should be made which takes into account all the various elements, including the seriousness of the offence, the measure, resources to be deployed in the executing State and, in particular, the fact that the measure involves depriving an individual of freedom.

4. Translation of an EAW

The EAW should be sent, together with a translation into the language of the executing State or into another official language of the institutions of the European Union accepted by that State, by means of a declaration deposited with the General Secretariat of the Council of the European Union (see Annex V).

Given the short deadlines for execution of a European arrest warrant, it is desirable, if the requested person's whereabouts are known, to translate the said arrest warrant, in advance, into the language of the country where he is likely to be. When an EAW is transmitted directly to an executing judicial authority or central authority, it must be accompanied by a translation.

In other cases, the warrant should be translated as a matter of urgency into one of the languages accepted by the executing Member State in which the person has been arrested, within the deadline set by the Member State when receiving an EAW.

Most Member States using the Schengen Information System have special practices. Since 1 September 2007, the SISone4all system has been operating in principle in most Member States, except Bulgaria, Cyprus, Romania, Ireland and the United Kingdom. This means that what are known as "SIRENE's forms A and M" will contain basically the same information as an EAW and that provisional translations will have been carried out into English. The system is operational since September 2007.

When the Schengen Information System, second generation (SIS II), becomes operational, which is expected to be in 2009, the original EAW will be scanned into the system and will be immediately available. This does not affect the obligations set out in Article 8 (2) of the Framework Decision.

4.1. Languages accepted by EU Member States when receiving an EAW

See Annex V.

5. Deadline for the execution authority to receive the EAW after the detention of a person

When a person is arrested, the executing authority must, within a specified time-limit, receive the European arrest warrant accompanied by a translation into one of the languages accepted by that state, in order to conduct the surrender proceedings and/or detain the apprehended person. Time limits and languages accepted by Member States vary according to national legislation. Non-compliance with the time limits or language regimes may have various consequences, such as the release of the arrested person, depending on legislation or Court practice.

For the applicable time limits see Annex VI.

6. How to fill in the EAW form

Detailed guidelines are given in Annex III.

When filling in an EAW, particular care should be taken with the description of the circumstances of the offence (box (e)), since the court executing the European arrest warrant is not allowed to verify double criminality in respect of offences on the list of thirty-two categories of offences, if the offence is punishable by a penalty of imprisonment of a maximum of at least three years.

This list, which is taken from Article 2(2) of the Framework Decision, is partly based on categories of offence harmonised by texts adopted, or in the process of being adopted, under EU law. Most of these categories correspond to offences which are easily identifiable in the domestic law of the EU Member States and so do not require any particular explanation. It should however be stressed that it is the issuing Member State's definition of the offence which applies. This list should not be interpreted as referring to precise offences, but to categories of offence of the type mentioned in the list.

In cases of abolition of double criminality, it is the definition of the offence in the issuing Member States' Criminal Code (general or specific) that applies. The original intention of the authors of the Framework Decision was that it should not be necessary to incorporate the text of the Code into the EAW (or to attach it, as is the practice of some judicial authorities), thus avoiding unnecessary translation of legal texts. The circumstances of the case must always be described fully and exhaustively, so that the application of the rule of specialty, *ne bis in idem* and prescription can be assessed. It is always necessary to state the time, place and degree of participation in the offence(s) by the requested person. If the offence is non-listed, the description of the offence should be such that the executing judicial authority must be able to assess double criminality.

Surrender of accessory offences means surrender for one or several offences punishable by a lower sanction than the threshold set out in Article 2 (1) of the Framework Decision. The Framework Decision itself does not explicitly provide for a way to deal with the issue of accessory surrender. Some Member States allow it, whereas others do not. Before an EAW is issued, it should be noted that this situation may render the EAW invalid, in particular in conviction cases where a cumulative prison sentence is the objective of the EAW and parts of the offences are not covered by the threshold.

The form may be printed and filled in but no changes or deletions may be made to any of its tables. If a particular matter is not applicable, always indicate "Not applicable" but do not delete the box. The EAW form may be printed and filled in after being downloaded from the following website:

<http://www.ejn-crimjust.europa.eu/forms.aspx> => Form

This form was changed recently (November 2007) so that the boxes can expand in case a large quantity of information needs to be inserted.

It is advisable to download the form and save it in a personal computer file or on CD, in case there is no access to the website when needed.

The EAW form does not require any additional documents if properly filled in. However, where applicable, the relevant identification data should be transmitted via Interpol or SIRENE, as noted in the form at the end of box (a).

It is important to indicate the existence of photographs and fingerprints of the requested person, where they are available. Furthermore, the contact details and the mobile phone number of the duty office and person responsible should always be given, so that they can be notified immediately when the requested person is found.

In Annexes III and IV, detailed guidelines are given on how to use certain boxes. These guidelines are not binding on Member States' judicial authorities but carry a certain weight because they were drawn up by experts and other people involved in the drafting of the EAW Framework Decision.

7. How to transmit an EAW

7.1. In cases where the person to arrest has been located

Where the person to arrest has been located, an EAW should be forwarded directly to the competent authority of the State where the person is located, for execution. All information concerning the issuing and executing authorities of the Member States can easily be found on the EAJ website: <http://www.ejn-crimjust.europa.eu> => search EAW Atlas => select the country.

At the same time, in order to ensure that the person in question stays in the same place, the issuing authority usually also sends the EAW directly to the SIRENE National Office concerned for distribution to the EU Member States that are part of the Schengen Information System. This will enable the police authorities in the Member States to identify the person to be arrested.

The EAW is sent by the relevant Interpol National Office for distribution to those EU Member States that are not part of the SIS for the time being: Bulgaria, Cyprus, Ireland, Romania and United Kingdom. However, it should be noted that in some Member States an Interpol alert does not constitute a ground for an arrest. In this case, it is important to specifically indicate the existence of the EAW, which may be necessary to allow the deprivation of liberty.

7.2. In cases where the location of the requested person is not known

In cases where the location of the requested person is not known, the EAW should be sent to the relevant SIRENE National Office for distribution to those EU Member States that are part of the SIS. The INTERPOL channels are used for distribution to those EU Member States which are not part of the SIS for the time being: Bulgaria, Cyprus, Ireland, Romania and the United Kingdom.

7.3. Schengen Information System - SIS

Article 9 (1) of the Framework Decision allows for direct transmission of the European Arrest warrant to the executing authority when the location of the requested person is known. Article 9(2) provides that the issuing judicial authority may, in any event, decide to issue an alert for the requested person in the Schengen Information System (SIS).

An alert in the Schengen Information System will be equivalent to an EAW accompanied by the information set out in Article 8(1). For a transitional period, until the SIS is capable of transmitting all the information described in Article 8, the alert will be equivalent to an EAW pending receipt of the original in due and proper form by the executing judicial authority.

7.4. European arrest warrant in SISone4all

At the JHA Council on 4 and 5 December 2006 the Council decided¹ to go ahead with the Portuguese proposal for the SISone4ALL project, aiming to find a temporary solution to the delays and other problems experienced in running the SIS II project. The objective was to connect the Member States that joined the EU in May 2004 to the present SIS1+. Access to SIS1+ would then lead to the abolition of internal border checks. All Member States concerned, with the exception of Cyprus, decided to join the project (9 countries in total).

¹ Council conclusions on the SIS II, the SIS 1+ and the enlargement of the Schengen area, 16391/1/06.

Technical preparations and data protection evaluations in the MS concerned have led to an exchange of A and M forms in view of requests by the different Member States for Schengen "flags" to be added to Article 95 alerts. This work started on 21 May 2007 and is progressing steadily.

On the legal side, the Council took two Decisions:

- 2007/471/EC: Council Decision of 12 June 2007 on the application of the provisions of the Schengen *acquis* relating to the Schengen Information System in the Czech Republic, the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic¹
- 2007/472/EC: Council Decision of 25 June 2007 amending the Decision of the Executive Committee set up by the 1990 Schengen Convention, amending the Financial Regulation on the costs of installing and operating the technical support function for the Schengen Information System (C.SIS)²

The first Decision

- allows real SIS data to be transferred to the Member States concerned from 7 July 2007.

This first provision means that Member States' national copies of SIS may be loaded without actual being used. Its main purpose is technical.

- allows the Member States concerned, from 1 September 2007, to enter data into the SIS and use SIS data, subject to certain conditions. The conditions are linked to the fact that as long as the border controls are not lifted the provisions on refusal of entry must not be implemented. This second provision gives the 9 Member States concerned permission actually to use the SIS on the same basis as the other countries which are already operational

¹ OJ L 179 of 07.07.2007 p. 46.

² OJ L 179 of 07.07.2007 p. 50.

7.5. Transmission via Interpol

Article 10 (3) of the Framework Decision creates a legal basis for asking Interpol to transmit a European arrest warrant in cases where it is not possible to transmit it via the Schengen Information System.

The use of the Interpol network is seen as one possible way to transmit European arrest warrants in relation to those Member States that do not currently participate in the SIS (Bulgaria, Cyprus, Ireland, Romania and the United Kingdom).

8. The role of Eurojust

In accordance with Article 3 of the Council Decision of February 2002 (2002/187/JHA)¹, one of the objectives of Eurojust is to improve cooperation between the competent authorities of the Member States, in particular by facilitating the execution of international mutual legal assistance and the implementation of extradition requests. Thus, Eurojust can act as facilitator and coordinator in EAW and extradition cases.

Pursuant to Article 16 of the EAW Framework Decision, if two or more Member States have issued an EAW for the same person, the decision as to which of the EAW is to be executed must 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 detention order. The executing authority may seek the advice of Eurojust when making the decision in the event of multiple requests.

Article 17 of the Framework Decision stipulates the time limits and procedures for the decision to execute the EAW. Where in exceptional circumstances a Member State cannot observe the time limits provided for in this Article, it should inform Eurojust of the reasons for the delay.

¹ OJ L 63, 6.3.2002, p.1.

9. European Judicial Network

The European Judicial Network (EJN) has set up an IT tool (the European Judicial Atlas) that permits identification of the executing judicial authority to which the EAW should be directly transmitted (<http://www.ejn-crimjust.europa.eu/forms.aspx>). The tool includes information on

- contact details of executing authorities;
- language in which the warrant should be issued;
- time limit for receiving the original warrant as of the date when the person to surrender has been arrested, where the arrest has followed an alert in the SIS;
- contact details of the issuing authorities;
- contact details of central authorities and their powers (i.e. for receipt and transmission of an EAW; assistance to competent authorities; requests for transit; urgent cases).

The European Arrest Warrant Atlas is available on the EJN website <http://www.ejn-crimjust.europa.eu>. The EAW Atlas provides the information requested when data is entered on the location to which the EAW is to be transmitted (country, district, region, sub-region, locality, zip code/postcode). EJN contact points can also be contacted.

10. "Fiches Françaises"- guidelines by each Member State

At the moment the background information about EAW, such as Declarations by the Member States on the scope of the Framework Decision, information on the legal procedure and other practical details known as “*Fiches Françaises*”, EAW forms in all EU official languages and national legislation can be found on the following websites:

EJN - Website - document database

- <http://www.ejn-crimjust.europa.eu/documents.aspx> (login: rje; password: dgsi)
(Click on "Document by category" and select "EAW notifications" and "EAW reports and documents.")

General Secretariat of the Council website

- http://www.consilium.europa.eu/cms3_Applications/applications/PolJu/details.asp?lang=EN&cmsid=545&id=66

General Information on the European Commission website

- http://ec.europa.eu/justice_home/fsj/criminal/extradition/fsj_criminal_extradition_en.htm

11. Agreement between Norway and Iceland and the European Union

On 28 June 2006, a surrender agreement between Norway and Iceland and the European Union was signed. The agreement extends, with some modifications, the mechanism for surrender to Norway and Iceland. This agreement is not yet in force.

12. Relevant decisions of the European Court of Justice

Two European Court of Justice rulings which may be of interest to the judicial authorities of Member States, i.e. Pupino case (C-105/03) and *Advocaten voor de Wereld* (C-303/05), are in Annex VII.

13. Decisions by some Supreme Courts (in summary)

Decisions by some Supreme Courts of the Member States are summarised in Annex VIII.

14. Links to more information on the EAW

More information concerning the application of the Framework Decision of the European Arrest Warrant as well as case law can be found on the web-sites below:

- <http://www.ejn-crimjust.europa.eu/>

Website of the European Judicial Network

- http://www.ejn-crimjust.europa.eu/eaw_atlas.aspx

EAW Atlas on the EJM website

- <http://www.ejn-crimjust.europa.eu/european-arrest-warrant.aspx>

Information on the EAW available on the EJM website

15. Example of how to fill in the EAW form

In Annex III, an example is given with a view to providing guidance on how to fill in the EAW form. The example is divided into two categories concerning cases where an EAW is issued for the purposes of conducting a criminal prosecution/investigation (pre-trial stage) and cases of execution of a sentence and where the sentence has been rendered *in absentia*.

ANNEX I

Framework Decision (2002/584/JHA) of 13 June 2002 on the EAW and the surrender procedures between Member States¹

THE COUNCIL OF THE EU,

Having regard to the TEU, and in particular Art. 31(a) and (b) and Art. 34(2)(b) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) According to the Conclusions of the Tampere European Council of 15 and 16 October 1999, and in particular point 35 thereof, the formal extradition procedure should be abolished among the Member States in respect of persons who are fleeing from justice after having been finally sentenced and extradition procedures should be speeded up in respect of persons suspected of having committed an offence.
- (2) The programme of measures to implement the principle of mutual recognition of criminal decisions envisaged in point 37 of the Tampere European Council Conclusions and adopted by the Council on 30 November 2000, 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.

¹ OJ L 190, 18.7.2002, page 1.

- (4) In addition, the following three Conventions dealing in whole 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 (regarding relations between the Member States which are parties to that Convention), the Convention of 10 March 1995 on simplified extradition procedure between the Member States of the EU and the Convention of 27 September 1996 relating to extradition between the Member States of the EU.
- (5) The objective set for the Union to become an area of freedom, security and justice leads to abolishing extradition between Member States and replacing it by a system of surrender between judicial authorities. Further, the introduction of a new simplified system of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal sentences makes it possible to remove the complexity and potential for delay inherent in the present extradition procedures. Traditional cooperation relations which have prevailed up till now between Member States should be replaced by a system of free movement of judicial decisions in criminal matters, covering both pre-sentence and final decisions, within an area of freedom, security and justice.
- (6) The EAW 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 referred to as the cornerstone of judicial cooperation.
- (7) Since the aim of replacing the system of multilateral extradition built upon the European Convention on Extradition of 13 December 1957 cannot be sufficiently achieved by the Member States acting unilaterally and can therefore, by reason of its scale and effects, be better achieved at Union level, the Council may adopt measures in accordance with the principle of subsidiarity as referred to in Art. 2 of the TEU and Art. 5 of the TEC. 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 that objective.
- (8) Decisions on the execution of the EAW 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 EAW must be limited to practical and administrative assistance.

- (10) The mechanism of the EAW is based on a high level of confidence between Member States. Its implementation may be suspended only in the event of a serious and persistent breach by one of the Member States of the principles set out in Art. 6(1) of the TEU, determined by the Council pursuant to Art. 7(1) of the said Treaty with the consequences set out in Art. 7(2) thereof.
- (11) In relations between Member States, the EAW should replace all the previous instruments concerning extradition, including the provisions of Title III of the Convention implementing the Schengen Agreement which concern extradition.
- (12) This Framework Decision respects fundamental rights and observes the principles recognised by Art. 6 of the TEU and reflected in the Charter of Fundamental Rights of the EU, in particular Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to surrender a person for whom a EAW has been issued when there are reasons to believe, on the basis of objective elements, that the said arrest warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons. This Framework Decision does not prevent a 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.
- (13) No person should be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.
- (14) Since all Member States have ratified the CoE 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 should be protected in accordance with the principles of the said Convention,

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1 Definition of the EAW and obligation to execute it

1. The EAW is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.
2. Member States shall execute any EAW 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 modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Art. 6 of the TEU.

Article 2 Scope of the EAW

1. A EAW may be issued for acts punishable by the law of the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months.
2. The following offences, if they are punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three 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 EAW:
 - 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 Eur.Communities within the meaning of the Convention of 26 July 1995 on the protection of the Eur.Communities' financial interests,
- laundering of the proceeds of crime,
- counterfeiting currency, including of the euro,
- computer-related crime,
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
- facilitation of un authorised 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 piracy of products,
- 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,
- trafficking in stolen vehicles,
- rape,
- arson,
- crimes within the jurisdiction of the International Criminal Court,
- unlawful seizure of aircraft/ships,
- sabotage.

3. The Council may decide at any time, acting unanimously after consultation of the European Parliament under the conditions laid down in Art. 39(1) of the TEU, to add other categories of offence to the list contained in § 2. The Council shall examine, in the light of the report submitted by the Commission pursuant to Art. 34(3), whether the list should be extended or amended.

4. For offences other than those covered by § 2, surrender may be subject to the condition that the acts for which the EAW has been issued constitute an offence under the law of the executing Member State, whatever the constituent elements or however it is described.

Article 3 Grounds for mandatory non-execution of the EAW

The judicial authority of the Member State of execution (hereinafter, executing judicial authority) shall refuse to execute the EAW 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, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing MS;
3. if the person who is the subject of the EAW may not, owing to his age, be held criminally responsible for the acts on which the arrest warrant is based under the law of the executing State.

Article 4 Grounds for optional non-execution of the EAW

The executing judicial authority may refuse to execute the EAW:

1. if, in one of the cases referred to in Art. 2(4), the act on which the EAW is based does not constitute an offence under the law of the executing MS; however, in relation to taxes or duties, customs and exchange, execution of the EAW shall 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 the same type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing MS;
2. where the person who is the subject of the EAW is being prosecuted in the executing Member State for the same act as that on which the EAW is based;

3. where the judicial authorities of the executing Member State have decided either not to prosecute for the offence on which the EAW is based or to halt proceedings, or where a 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 criminal prosecution or punishment of the requested person is 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, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing country;
6. if the EAW has been issued for the purposes of execution of a custodial sentence or detention order, where the requested person is staying in, or is a national or a resident of the executing Member State and that State undertakes to execute the sentence or detention order in accordance with its domestic law;
7. where the EAW relates to offences which:
 - (a) are regarded by the law of the executing Member State as having been committed in whole or in part in the territory of the executing Member State or in a place treated as such; or
 - (b) 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 its territory.

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

The execution of the EAW by the executing judicial authority may, by the law of the executing Member State, be subject to the following conditions:

1. where the EAW 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 EAW that he or she will have an opportunity to apply for a retrial of the case in the issuing Member State and to be present at the judgment;
2. if the offence on the basis of which the EAW has been issued is punishable by custodial life sentence or life-time detention order, the execution of the said 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 or measure imposed, on request or at the latest after 20 years, or for the application of measures of clemency to which the person is entitled to apply for under the law or practice of the issuing Member State, aiming at a non-execution of such penalty or measure;
3. where a person who is the subject of a EAW for the purposes of prosecution is a national or resident of the executing Member State, surrender may be subject to the condition that the person, after being heard, is returned to the executing Member State in order to serve there the custodial sentence or detention order passed against him in the issuing Member State.

Article 6 Determination of the competent judicial authorities

1. The issuing judicial authority shall be the judicial authority of the issuing Member State which is competent to issue a EAW by virtue of the law of that State.
2. The executing judicial authority shall be the judicial authority of the executing Member State which is competent to execute the EAW by virtue of the law of that State.
3. Each Member State shall inform the General Secretariat of the Council of the competent judicial authority under its law.

Article 7 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 authorities.
2. A Member State may, if it is necessary as a result of the organisation of its internal judicial system, make its central authority(ies) responsible for the administrative transmission and reception of EAWs as well as for all other official correspondence relating thereto.
Member State wishing to make use of the possibilities referred to in this article shall communicate to the General Secretariat of the Council information relating to the designated central authority or central authorities. These indications shall be binding upon all the authorities of the issuing Member State.

Article 8 Content and form of the EAW

1. The EAW shall contain the following information set out in accordance with the form contained in the Annex:
 - (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;
 - © evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect, coming within the scope of Art. 1 and 2;
 - (d) the nature and legal classification of the offence, particularly in respect of Art. 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 penalties for the offence under the law of the issuing Member State;
 - (g) if possible, other consequences of the offence.
2. The EAW must be translated into the official language or one of the official languages of the executing Member 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.

Article 9 Transmission of a EAW

1. When the location of the requested person is known, the issuing judicial authority may transmit the EAW 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 (SIS).
3. Such an alert shall be effected in accordance with the provisions of Art. 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 EAW accompanied by the information set out in Art. 8(1). For a transitional period, until the SIS is capable of transmitting all the information described in Art. 8, the alert shall be equivalent to a EAW pending the receipt of the original in due and proper form by the executing judicial authority.

Article 10 Detailed procedures for transmitting a EAW

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 EJN, in order to obtain that information from the executing Member State.
2. If the issuing judicial authority so wishes, transmission may be effected via the secure telecommunications system of the EJN.
3. If it is not possible to call on the services of the SIS, the issuing judicial authority may call on Interpol to transmit a EAW.
4. The issuing judicial authority may forward the EAW 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 EAW 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 EAW is not competent to act upon it, it shall automatically forward the EAW to the competent authority in its Member State and shall inform the issuing judicial authority accordingly.

Article 11 Rights of a requested person

1. When a requested person is arrested, the executing competent judicial authority shall, in accordance with its national law, inform that person of the EAW and of its contents, and also 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 EAW 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 12 Keeping the person in detention

When a person is arrested on the basis of a EAW, 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 the domestic law of the executing Member State, provided that the competent authority of the said Member State takes all the measures it deems necessary to prevent the person absconding.

Article 13 Consent to surrender

1. If the arrested person indicates that he or she consents to surrender, that consent and, if appropriate, express renunciation of entitlement to the, speciality rule, referred to in Art. 27(2), shall be given before the executing judicial authority, in accordance with the domestic law of the executing Member State.
2. Each Member State shall adopt the measures necessary to ensure that consent and, where appropriate, renunciation, as referred to in § 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. The consent and, where appropriate, renunciation, as referred to in § 1, shall be formally recorded in accordance with the procedure laid down by the domestic law of the executing Member 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 domestic 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 limits laid down in Art. 17. A Member State which wishes to have recourse to this possibility shall inform the General Secretariat of the Council accordingly when this Framework Decision is adopted and shall specify the procedures whereby revocation of consent shall be possible and any amendment to them.

Article 14 Hearing of the requested person

Where the arrested person does not consent to his or her surrender as referred to in Art. 13, he or she shall be entitled to be heard by the executing judicial authority, in accordance with the law of the executing Member State.

Article 15 Surrender decision

1. The executing judicial authority shall decide, within the time-limits 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 that the necessary supplementary information, in particular with respect to Art.3 to 5 and Art. 8, be furnished as a matter of urgency and may fix a time limit for the receipt thereof, taking into account the need to observe the time limits set in Art. 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 EAW for the same person, the decision on which of the EAW 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 EAW and whether the warrant has been issued for the purposes of prosecution or for execution of a custodial sentence or detention order.
2. The executing judicial authority may seek the advice of Eurojust when making the choice referred to in § 1.
3. In the event of a conflict between a EAW and a request for extradition presented by a third country, the decision on whether the EAW or the extradition request takes precedence shall be taken by the competent authority of the executing Member State with due consideration of all the circumstances, in particular those referred to in § 1 and those mentioned in the applicable convention.
4. This article 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 to execute the EAW

1. A EAW 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 EAW 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 EAW should be taken within a period of 60 days after the arrest of the requested person.
4. Where in specific cases the EAW cannot be executed within the time limits laid down in §§ 2 or 3, the executing judicial authority shall immediately inform the issuing judicial authority thereof, giving the reasons for the delay. In such case, the time limits may be extended by a further 30 days.
5. As long as the executing judicial authority has not taken a final decision on the EAW, it shall ensure that the material conditions necessary for effective surrender of the person remain fulfilled.
6. Reasons must be given for any refusal to execute a EAW.

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 on the part of another Member State in the execution of EAW shall inform the Council with a view to evaluating the implementation of this Framework Decision at Member State level.

Article 18 Situation pending the decision

1. Where the EAW has been issued for the purpose of conducting a criminal prosecution, the executing judicial authority must:
 - (a) either agree that the requested person should be heard according to Art. 19;
 - (b) or agree to the 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 or her as part of the surrender procedure.

Article 19 Hearing the person pending the decision

1. The requested person shall be heard by a judicial authority, assisted by another 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 judicial authority may assign another judicial authority 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 20 Privileges and immunities

1. Where the requested person enjoys a privilege or immunity regarding jurisdiction or execution in the executing Member State, the time limits referred to in Art. 17 shall not start running unless, and counting from the day when, the executing judicial authority is informed of the fact that the privilege or immunity has been waived. The executing Member State shall ensure that the material conditions necessary for effective surrender are fulfilled when the person no longer enjoys such privilege or immunity.
2. Where power to waive the privilege or immunity lies with an authority of the executing Member 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 State or international organisation, it shall be for the issuing judicial authority to request it to exercise that power.

Article 21 Competing 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 third State and where that person is protected by provisions of the arrangement under which he or she was extradited concerning speciality. 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 or she can be surrendered to the Member State which issued the EAW. The time limits referred to in Art. 17 shall not start running until the day on which these speciality rules cease to apply. Pending the decision of the State from which the requested person was extradited, the executing Member State will ensure that the material conditions necessary for effective surrender remain fulfilled.

Article 22 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 EAW.

Article 23 Time limits 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 or she shall be surrendered no later than 10 days after the final decision on the execution of the EAW.
3. If the surrender of the requested person within the period laid down in § 2 is prevented by circumstances beyond the control of any of the Member State, 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 10 days of the new date thus agreed.
4. The surrender may exceptionally be temporarily postponed for serious humanitarian reasons, for example if there are substantial grounds for believing that it would manifestly endanger the requested person's life or health. The execution of the EAW 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 10 days of the new date thus agreed.
5. Upon expiry of the time limits referred to in § 2 to 4, if the person is still being held in custody he shall be released.

Article 24 Postponed or conditional surrender

1. The executing judicial authority may, after deciding to execute the EAW, postpone the surrender of the requested person so that he or she may be prosecuted in the executing Member State or, if he or she has already been sentenced, so that he or she may serve, in its territory, a sentence passed for an act other than that referred to in the EAW.
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 25 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 custodial sentence or detention order, permit the transit through its territory of a requested person who is being surrendered provided that it has been given information on:
 - (a) the identity and nationality of the person subject to the EAW;
 - (b) the existence of a EAW;
 - (c) the nature and legal classification of the offence;
 - (d) the description of the circumstances of the offence, including the date and place.Where a person who is the subject of a EAW for the purposes of prosecution is a national or resident of the Member State of transit, transit may be subject to the condition that the person, after being heard, is returned to the transit Member State to serve the custodial sentence or detention order passed against him in the issuing Member 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 § 1 may be addressed to the authority designated pursuant to § 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 issuing Member State shall provide the authority designated pursuant to § 2 with the information provided for in § 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, "EAW" shall be deemed to be replaced by, "extradition request".

Article 26 Deduction of the period of detention served in the executing MS

1. The issuing Member State shall deduct all periods of detention arising from the execution of a EAW from the total period of detention to be served in the issuing Member State as a result of a custodial sentence or detention order being passed.
2. To that end, all information concerning the duration of the detention of the requested person on the basis of the EAW shall be transmitted by the executing judicial authority or the central authority designated under Art. 7 to the issuing judicial authority at the time of the surrender.

Article 27 Possible prosecution for other offences

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, consent is presumed to have been given for the prosecution, sentencing or detention with a view to the carrying out of a custodial sentence or detention order for an offence committed prior to his or her surrender, other than that for which he or she was surrendered, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.
2. Except in the cases referred to in § 1 and 3, a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered.
3. Paragraph 2 does not apply in the following cases:
 - (a) when the person having had an opportunity to leave the territory of the Member State to which he or she has been surrendered has not done so within 45 days of his or her final discharge, or has returned to that territory after leaving it;
 - (b) the offence is not punishable by a custodial sentence or detention order;
 - © the criminal proceedings do not give rise to the application of a measure restricting personal liberty;
 - (d) when the person could be liable to a penalty or a measure not involving the deprivation of liberty, in particular a financial penalty or a measure in lieu thereof, even if the penalty or measure may give rise to a restriction of his or her personal liberty;

(e) when the person consented to be surrendered, where appropriate at the same time as he or she renounced the speciality rule, in accordance with Art. 13;

(f) when the person, after his/her surrender, has expressly renounced entitlement to the speciality rule with regard to specific offences preceding his/her 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 domestic law. The renunciation shall be drawn up in such a way as to make clear that the person has given it voluntarily and in full awareness of the consequences. To that end, the person shall have the right to legal counsel;

(g) where the executing judicial authority which surrendered the person gives its consent in accordance with § 4.

4. A request for consent shall be submitted to the executing judicial authority, accompanied by the information mentioned in Art. 8(1) and a translation as referred to in Art. 8(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. Consent shall be refused on the grounds referred to in Art. 3 and otherwise may be refused only on the grounds referred to in Art. 4. The decision shall be taken no later than 30 days after receipt of the request. For the situations mentioned in Art. 5 the issuing Member State must give the guarantees provided for therein.

Article 28 Surrender or subsequent extradition

1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States which have given the same notification, the consent for the surrender of a person to a Member State other than the executing Member State pursuant to an EAW issued for an offence committed prior to his or her surrender is presumed to have been given, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.
2. In any case, a person who has been surrendered to the issuing Member State pursuant to an EAW may, without the consent of the executing Member State, be surrendered to a Member State other than the executing Member State pursuant to an EAW issued for any offence committed prior to his or her surrender in the following cases:

- (a) where the requested person, having had an opportunity to leave the territory of the Member State to which he or she 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 Member State pursuant to an EAW. Consent 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. It shall be drawn up in such a way as to make clear that the person concerned 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 Art. 27(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) the request for consent shall be submitted in accordance with Art. 9, accompanied by the information mentioned in Art. 8(1) and a translation as stated in Art. 8(2);
 - (b) 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;
 - (c) the decision shall be taken no later than 30 days after receipt of the request;
 - (d) consent shall be refused on the grounds referred to in Art. 3 and otherwise may be refused only on the grounds referred to in Art. 4. For the situations referred to in Art. 5, the issuing Member State must give the guarantees provided for therein.
4. Notwithstanding paragraph 1, a person who has been surrendered pursuant to an EAW shall not be extradited to a third State without the consent of the competent authority of the Member State which surrendered the person. Such consent shall be given in accordance with the Conventions by which that Member State is bound, as well as with its domestic law.

Article 29 Handing over of property

1. At the request of the issuing judicial authority or on its own initiative, the executing judicial authority shall, in accordance with its national law, 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 EAW 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 the criminal proceedings have been terminated.

Article 30 Expenses

1. Expenses incurred in the territory of the executing Member State for the execution of an EAW 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 31 Relation to other legal instruments

1. Without prejudice to their application in relations between Member States and third States, this Framework Decision shall, from 1 January 2004, replace the corresponding provisions of the following conventions applicable in the field of extradition in 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 12 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 10.03.1995 on simplified extradition procedure between the Member States of the EU;
 - (d) the Convention of 27 September 1996 relating to extradition between the Member States of the EU;
 - (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 in so far as such agreements or arrangements allow the objectives of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for surrender of persons who are the subject of an EAW.

Member States may conclude bilateral or multilateral agreements or arrangements after this Framework Decision has come into force in so far as such agreements or arrangements allow the prescriptions of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for surrender of persons who are the subject of an EAW, in particular by fixing time limits shorter than those fixed in Art. 17, by extending the list of offences laid down in Art. 2(2), by further limiting the grounds for refusal set out in Articles 3 and 4, or by lowering the threshold provided for in Art. 2(1) or (2).

The agreements and arrangements referred to in the second subparagraph may in no case affect relations with Member States which are not parties to them. Member States shall, within three months from the entry into force of this Framework Decision, notify the Council and the Commission of the existing agreements and arrangements referred to in the first subparagraph which they wish to continue applying. Member States shall also notify the Council and the Commission of any new agreement or arrangement as referred to in the second subparagraph, within three months of signing it.

3. Where the conventions or agreements 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 instruments shall continue to govern the relations existing between those territories and the other Member States.

Article 32 Transitional provision

Extradition requests received before 1 January 2004 will continue to be governed by existing instruments relating to extradition. Requests received after that date 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 Member 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 7 August 2002. The said statement will be published in the Official Journal of the European Communities. It may be withdrawn at any time.

Article 33 Provisions concerning Austria and Gibraltar

1. As long as Austria has not modified Art. 12(1) of the "Auslieferungs- und Rechtshilfegesetz" and, at the latest, until 31 December 2008, it may allow its executing judicial authorities to refuse the enforcement of an EAW if the requested person is an Austrian citizen and if the act for which the EAW has been issued is not punishable under Austrian law.
2. This Framework Decision shall apply to Gibraltar.

Article 34 Implementation

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 31 December 2003.
2. Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under 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 Art. 7(2), Art. 8(2), Art. 13(4) and Art. 25(2). It shall also have the information published in the Official Journal of the European Communities.

3. On the basis of the information communicated by the General Secretariat of the Council, the Commission shall, by 31.12.2004 at the latest, submit a report to the European Parliament and to the Council on the operation of this Framework Decision, accompanied, where necessary, by legislative proposals.
4. The Council shall in the second half of 2003 conduct a review, in particular of the practical application, of the provisions of this Framework Decision by the Member States as well as the functioning of the Schengen Information System.

Article 35 Entry into force

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

ANNEX II

THE EUROPEAN ARREST WARRANT FORM

European Arrest Warrant ¹⁾

This warrant has been issued by a competent judicial authority. I request that the person mentioned below be arrested and surrendered for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

¹⁾ This warrant must be written in, or translated into, one of the official languages of the executing Member State, when that State is known, or any other language accepted by that State.

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

Name:
 Forename(s):
 Maiden name, where applicable:
 Aliases, where applicable:
 Sex:
 Nationality:
 Date of birth:
 Place of birth:
 Residence and/or known address:

Language(s) which the requested person understands (if known):

Distinctive marks/description of the requested person:

Photo and fingerprints of the requested person, if they are available and can be transmitted, or contact details of the person to be contacted in order to obtain such information or a DNA profile (where this evidence can be supplied but has not been included)

(b) Decision on which the warrant is based:

1. Arrest warrant or judicial decision having the same effect:
 Type:
2. Enforceable judgement:
 Reference:

(c) Indications on the length of the sentence:

1. Maximum length of the custodial sentence or detention order which may be imposed for the offence(s):
2. Length of the custodial sentence or detention order imposed:
 Remaining sentence to be served:

(d) Decision rendered in absentia and:

– The person concerned has been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered in absentia

or

– 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 but has the following legal guarantees after surrender (such guarantees can be given in advance)
Specify the legal guarantees

(e) Offences:

This warrant relates to in total: offences.

Description of the circumstances in which the offence(s) was (were) committed, including the time, place and degree of participation in the offence(s) by the requested person

Nature and legal classification of the offence(s) and the applicable statutory provision/code:

- I. If applicable, tick one or more of the following offences punishable in the issuing Member State by a custodial sentence or detention order of a maximum of at least 3 years as defined by the laws of the issuing Member State:
- 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 European Communities' financial interests;
- laundering of the proceeds of crime;
- counterfeiting of currency, including 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 piracy of products;
- 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;
- trafficking in stolen vehicles;

0 rape;
0 arson;
0 crimes within the jurisdiction of the International Criminal Court;
0 unlawful seizure of aircraft/ships;
0 sabotage.

II. Full descriptions of offence(s) not covered by section I above:

(f) Other circumstances relevant to the case (optional information):

(NB: This could cover remarks on extraterritoriality, interruption of periods of time limitation and other consequences of the offence)

(g) This warrant pertains also to the seizure and handing over of property which may be required as evidence:

This warrant pertains also to the seizure and handing over of property acquired by the requested person as a result of the offence:

Description of the property (and location) (if known):

(h) The offence(s) on the basis of which this warrant has been issued is(are) punishable by/has(have) led to a custodial life sentence or lifetime detention order:

– the legal system of the issuing Member State allows for a review of the penalty or measure imposed – on request or at least after 20 years – aiming at a non-execution of such penalty or measure,

and/or

– the legal system of the issuing Member State allows for the application of measures of clemency to which the person is entitled under the law or practice of the issuing Member State, aiming at non- execution of such penalty or measure.

(i) The judicial authority which issued the warrant:
Official name:

Name of its representative¹⁾ :

Post held (title/grade):

File reference:
Address:

Tel. No.: (country code) (area/city code) (...)
Fax No. (country code) (area/city code) ()
E-mail
Contact details of the person to contact to make necessary practical
arrangements for the surrender:

1) In the different language versions a reference to the "holder" of the judicial
authority will be included.

Where a central authority has been made responsible for the transmission and administrative
reception of European arrest warrants:

Name of the central authority:

Contact person, if applicable (title/grade and name):

Address:

Tel. No.: (country code) (area/city code) (...)

Fax No.: (country code) (area/city code) (...)

E-mail:

Signature of the issuing judicial authority and/or its representative:

Name:

Post held (title/grade):

Date:

Official stamp (if available)

ANNEX III

GUIDELINES ON HOW TO FILL IN THE EUROPEAN ARREST WARRANT FORM

This warrant has been issued by a competent judicial authority. I request that the person mentioned below be arrested and surrendered for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

Comment¹

- *It is advisable to download the form from the EJN website and keep it on your own computer, in case there is no access to the website when needed.*
- *Fill in the form using a computer.*
- *If a box is not relevant, write "not applicable" or indicate clearly, for instance by a specific mark (e. g.: -) that it is not applicable.*
- *If there are several offences covered by the EAW, please number them offences 1, 2, 3 and so on and keep that numbering throughout the EAW and in particular box (b).*

¹ The comments entered here are not binding. Judicial authorities are however reminded of their obligation to interpret their national law in conformity with the Framework Decision (see the Pupino case C-105/03).

Box (a)

Information necessary for the identification of the requested person

Comment:

Please fill in all fields, if possible.

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

Name: *Comment: obligatory field. Include previous official name, if known, and write the name as it is in national language, name should not be translated.*

Forename(s): *Comment: obligatory field*

Maiden name, where applicable:

Aliases, where applicable: *Comment: Include false names. Indicate nicknames in brackets. If person uses false identity, this false identity should be inserted in all fields, e.g. false date of birth and false address.*

Sex: *Comment: obligatory field.*

Nationality: *Comment: obligatory field.*

Date of birth: *Comment: obligatory field.*

Place of birth: *Comment: obligatory field, if information available.*

Residence and/or known address: *Comment: obligatory field, if information available. Indicate "not known" if there is no information.*

Language(s) which the requested person understands (if known):

Distinctive marks/description of the requested person: *Comment: obligatory field, if information is available. Also indicate if the person is dangerous and/or may carry a weapon.*

Photo and fingerprints of the requested person, if they are available and can be transmitted, or contact details of the person to be contacted in order to obtain such information or a DNA profile (where this evidence can be supplied but has not been included) *Comment: Obligatory to provide via Interpol or SIS if information is available. This is crucial in order to ensure that the right person is arrested*

Box (b)
Information concerning the decision on which the EAW is based

Comment:

The Form should only be filled in as regards the requested purpose – prosecution or conviction cases. Box (b) uses the term "Decision". This may mean a court or judicial order, including an order by an investigating judge or equivalent competent judicial body. In some Member States the underlying detention order may be a decision by which the suspect is referred to the trial court, if this decision is a basis for (pre-trial) detention in those Member States. Where the decision that has led to the detention order has been changed into, for instance, a judgment in absentia, a new EAW (with the new title) should be issued.

Pre-trial stage (EAW is issued for conducting a criminal prosecution)

- (b) 1. Identify the decision on which the warrant is based (Court order or judicial order, rendered on dd/mm/year, having determined a coercive measure of preventive detention). Note that where box (b) 1. is filled in box (c) 1. should also be filled in.
- (b) 2. write "not applicable".

Post-trial stage (EAW issued for execution of a sentence or where sentence has been rendered in absentia).

- (b) 1. When EAW is issued in cases rendered in absentia, please identify the court decision. Only one box should be filled in. If the judicial decision was rendered in absentia, then the judgment is not enforceable in most Member States and (b)1. should be filled in. Box (f) could also be used to explain the situation.
- (b) 2. Refer to the relevant judgment or ruling, which became final on dd/mm/yyyy and insert the case number and the name of the court which issued the decision.

(b) Decision on which the warrant is based:

1. Arrest warrant or judicial decision having the same effect:

Type: *Comment: Specify court order or other judicial order and date and the case reference.*

2. Enforceable judgement: *Comment: If the judgment is enforceable, also specify the date when it became final.*

Reference: *Comment: indicate date, case number, type of decision.*

Box (c)
Information on the length of the sentence/custodial sentence

Comment:

The purpose of this box is to place on record the fact that the EAW exceeds the punishment thresholds laid down in Art. 2 (1) of the Framework Decision. During the pre-trial stage, that minimum will apply to sentence which could be imposed in principle, and where a sentence has been passed, it will apply to the length of the actual penalty. As in box (b), just one paragraph should in principle be filled in.

Pre-trial stage (EAW is issued for conducting a criminal prosecution)

- (c) 1. Indicate the penalty which can be imposed in principle. Please note that according to Article 2(1) of the Framework Decision the EAW may be issued for acts punishable by a custodial sentence or detention order of a maximum of at least 12 months. Where box (b) 1. is filled in box (c) 1. should also be filled in.
- (c) 2. write not "applicable".

Post-trial stage (EAW issued for execution of a sentence/sentence in absentia)

- (c) 2. Indicate the length of the custodial sentence or detention order imposed. Please note that according to Article 2(1) of the Framework Decision, an EAW may be issued for sentences of at least 4 months where a sentence has been passed or a detention order has been made. Where box (b) 2. is filled in, box (c) 2. should also be filled in.
- (c) 2. Indicate years, months and days. It should be noted that the Framework Decision has not set a minimum amount of remaining sentence for an EAW to be issued. Indeed, the provisions of Article 2(1) only apply where a sentence of at least 4 months has been passed or where a detention order has been made. It is recommended that the decision to issue an EAW should be carefully weighed in situations where the **remaining sentence** is of less than 4 months but the original sentence was 4 months or more. Normally in such cases it is recommended that the EAW is not issued.

(c) Indications on the length of the sentence:

1. Maximum length of the custodial sentence or detention order which may be imposed for the offence(s):

2. Length of the custodial sentence or detention order imposed: *Comment: In cases where a custodial sentence or detention order has been made, the period of the detention order may be indefinite, e. g. life imprisonment or a sentence involving psychiatric care.*

Remaining sentence to be served: *Comment: If the sentence is of indefinite duration, indicate that at least 4 months remain to be served.*

Box (d)

Cases when decisions are rendered in absentia

Comment:

Indents in the form are changed into boxes, click one box for the applicable situation. There are two situations: either the person has been summoned in person or otherwise informed of the date and place of the hearing or he has not. In the second situation he has legal guarantees for a retrial, an appeal or to make an opposition (legal systems vary). These guarantees vary between the Member States. Please be specific when you indicate the guarantees.

Pre-trial stage (EAW is issued for conducting a criminal prosecution)

- Not applicable. Indicate in the box that it is not applicable.

Post-trial stage (EAW issued for execution of a sentence/sentence in absentia)

- **If box 1 has been ticked, you do not need to specify any legal guarantees.**
- “Otherwise informed” means informed in conformity with the national law. Indicate specific circumstances. How did the person obtain actual knowledge? It would be helpful to know the details of how the person has been informed (see box (f)), although the FD does not require this information. Please specify if there are any time limits to be applied for the retrial, etc. It is also helpful if you specify when and how long an application to reopen the proceedings can be made. Can an application to reopen the proceedings be filed after the actual surrender of the person? The notification of the EAW may in some countries be considered as information on the formal notification of the judgment itself and as a consequence the time limits for the retrial starts to run. In this case the issuing authority should clearly specify this in order for the executing authority to correctly inform the person rendered in absentia.
- **In countries where absentia cases do not exist, write “since we have no absentia, this is not applicable”**

(d) Decision rendered in absentia and:

The person concerned has been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered in absentia

or

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 but has the following legal guarantees after surrender (such guarantees can be given in advance)

Specify the legal guarantees

Comment: In some Member States, both types of case will be covered and the judge will therefore also specify legal guarantees for the situation mentioned in the first case. Specify the opportunities for appeal/retrial or opposition and the conditions for exercising the remedy.

.....

OR

- 3.2 being aware of the scheduled trial the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;

Provide information on how this condition has been met:

.....

OR

- 3.3 the person, after being served with the decision, expressly stated that he or she does not contest this decision.

Describe when and how the person expressly stated that he or she does not contest the decision:

.....

OR

- 3.4 the person was entitled to a retrial or appeal under the following conditions:

- 3.4.1 the person was personally served with the decision on (day/month/year); and
 - the person was expressly informed of the right to a retrial or appeal and to be present at that trial; and
 - after being informed of this right, the person did not request a retrial or appeal within the applicable timeframe.

OR

- 3.4.2 the person was not personally served with the decision, but
 - the person will be personally served with this decision without delay after the surrender; and
 - when served with the decision, the person will be expressly informed of his/her right to a retrial or appeal and to be present at that trial; and

- after being served with the decision, the person will have the right to request a retrial or appeal within days.

If you ticked this box 3.4.2, please confirm

- that if the person sought, when being informed in the executing State about the content of the European arrest warrant, requests to receive a copy of the judgment before being surrendered, that person shall immediately after such request via the executing authority be provided with a copy of the judgment;

and
- that if the person has requested a retrial or appeal, the detention of the person awaiting such retrial or appeal shall, until the proceedings are finalised, be reviewed in accordance with the law of the issuing State, either on a regular basis or upon request of the person concerned; such a review shall in particular include the possibility of suspension or interruption of the detention;

and
- that if the person has requested a retrial or appeal, such retrial or appeal shall begin within due time after the surrender.

Box (e)
Offences concerned

Comment:

The original idea behind box (e) was that a relatively short but precise description of the circumstances of the case could be made, including the time, place and degree of participation in the offence by the requested person. The executing judge, for most of the cases where an EAW has been issued, should not "go beyond the box"; in other words, he should not examine the facts of the case when a box relating to one of the 32 categories of offences has been ticked. This was also a reason why it was thought that a short and precise description would suffice in such cases, and a full description was only needed under II, when double criminality had to be checked.

However, practice has shown that in many instances a full description of the case is already included at the beginning of the box. In cases of abolition of double criminality, it is the definition of the offence in the issuing Member States' Criminal Code that applies and it is not necessary to incorporate the text of the Code into the EAW (or attach it as is the practice of some judicial authorities - this avoids unnecessary translation of legal texts, although some jurisdictions do request copies of the legal text.). The circumstances of the case must always be described fully and exhaustively, so that the application of the rule of speciality, *ne bis in idem* and prescription can be assessed.

Pre-trial and post-trial stage

- Insert the number of offences concerned.
- Give a precise explanation of the facts justifying the request: use short sentences which are easy to translate. The factual description should consist only of a short summary and not of a full transcript of whole pages of the file. However in more complex cases, and in particular where double criminality applies, a longer description is necessary in order to document the main aspects of the facts. In those cases, include the data which is **essential** for a decision on the EAW by the executing authority, in particular to identify any possible grounds for non-recognition or with a view to application of the rule of specialty or *ne bis in idem*. A short description will also be useful for the insertion of alerts in the SIS by the SIRENE National Office.

- Insert the legal classification of the offence and which provisions it violates.
- If the issuing authority recognises the offence as an offence on the list, it should tick a category of offence from the list.
- Should the attempted offence be punishable by a custodial sentence or detention order of a maximum of at least 3 years, the relevant box (that of an offence) should be ticked.
- The original intention of the authors of the Framework Decision was that it would not be necessary to incorporate legal texts into the EAW. This only results in unnecessary translation. There are technical reasons for excluding legal texts, such as the fact that the length of the electronic transmission of the box by SIRENE is limited to 1024 characters (about 15 lines in a size 12 Word font); exceeding that limit forces SIRENE to transmit part of the information in another complementary form (the M form) and to prepare a “*support translation*”, with the risk of system saturation, taking account of the fact that there are limited resources available for this process.
- It is recommended that only one form be used for one EAW concerning one person. If it contains several offences, it should be made clear (e.g. by using "offence 1", "offence 2", "offence 3",...) which tick applies to which offence (see in particular box (b)). Note that the SIS system will only allow for the insertion of one EAW.
- Surrender for *accessory offences* means surrender for one or several offences punishable by a lower sanction than the threshold set out in Article 2 (1) of the Framework Decision. The Framework Decision itself does not explicitly provide for a way to deal with the issue of accessory surrender. Some Member States allow it whereas others do not admit it. Before issuing an EAW, attention should be given to the fact that this situation may render the EAW invalid, in particular in conviction cases where a cumulative prison sentence is the objective of the EAW and parts of the offences are not covered by the threshold.
- In the case of several EAWs issued by the same country concerning the same person, these EAW's should not be considered to be competing ones. However, some jurisdictions do not accept more than one EAW in relation to the same person from the same issuing Member State.

(e) Offences:

This warrant relates to in total: offences.

Description of the circumstances in which the offence(s) was (were) committed, including the time, place and degree of participation in the offence(s) by the requested person: *Comment: For clarity, where e.g. 3 offences are concerned, the descriptions should be numbered 1, 2 and 3. Use short sentences, but give a complete factual description. Please be precise.*

.....

Nature and legal classification of the offence(s) and the applicable statutory provision/code: *Comment: Insert the legal classification of the offence and state which provisions of the Criminal Code it violates.*

.....

.....

I. If applicable, tick one or more of the following offences punishable in the issuing Member State by a custodial sentence or detention order of a maximum of at least 3 years as defined by the laws of the issuing Member State:

- 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 European Communities' financial interests;

- laundering of the proceeds of crime;
- counterfeiting of currency, including 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 piracy of products;
- 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;
- trafficking in stolen vehicles;
- rape;
- arson;
- crimes within the jurisdiction of the International Criminal Court;
- unlawful seizure of aircraft/ships;
- sabotage.

II. Full description of offence(s) not covered by section I above: *Comment: Anything already described above under (e) should not be repeated in section II. Beyond the full description, no information concerning national legislation is needed.*

If the circumstances are already indicated above do not repeat them. Do not insert legal texts if circumstances are clearly identified above; use this box only if double criminality applies and you need to give more details of the circumstances than are already mentioned above. For a judge to examine double criminality it is not necessary to have the legal text but only to know the precise circumstances of the case, although some jurisdictions do request copies of the legal text.

.....

.....

.

Box (f)

Other circumstances relevant to the case

Comment:

This box will not normally be filled in. Use it only where difficulties are foreseen in the execution of the EAW, despite clarifications through direct judicial communications. This is the appropriate place to request temporary surrenders, or when a negative decision is expected or a specific procedural act required (in particular a statement by the suspect). If the rules of the executing State allow it, a hearing by videoconference can be requested here. This box should be used to make a request for consent under Article 27 (4) of the Framework Decision.

Pre-trial stage (EAW is issued in order to conduct a criminal prosecution)

- Describe other circumstances relevant to the case, e.g. if the crime was committed a long time ago, why is the EAW being issued now?

Post-trial stage (EAW issued for execution of a sentence/sentence in absentia)

- Describe other circumstances relevant to the case. For example ... "unlawful absence from prison because the offender did not return to the Prison facility after a period of temporary release from 13 to 19 November 1995..".

(f) Other circumstances relevant to the case (optional information):

(NB: This could cover remarks on extraterritoriality, interruption of periods of time limitation and other consequences of the offence). Comment: This could also cover remarks on restrictions regarding contacts with third parties after arrest, indications that there is a risk of destruction of evidence or a risk of re-offending. It is not usually necessary to indicate any interruption of time limitation, but if the offence was committed a long time ago, such an indication may be useful. Some Member States may also require this on a regular basis, although the Framework Decision does not.

.....

.....

Box (g)
Seizure

Comment:

Pre-trial stage (EAW is issued in order to conduct a criminal prosecution)

- Give a short description of the requested item (i.e. weapon, ID, travel documents etc).
Where this kind of cooperation is not requested, write "not applicable".
- For example, describe the weapon of which the seizure is requested.
- If available, any information concerning a separate MLA request or freezing order should be given.
- Box (g) does not refer to “personal belongings”; indicate items which can be referred to as evidence, e.g. laptop, personal documents or mobile phones, in order to enable the seizure of property without issuing another EAW.
- Fill in bearing in mind that the seizure may avoid future letters rogatory.

Post-trial stage (EAW issued for execution of a sentence/sentence in absentia)

- Write "not applicable" (unless there is a confiscation order in the judgment).

(g) This warrant pertains also to the seizure and handing over of property which may be required as evidence:

This warrant pertains also to the seizure and handing over of property acquired by the requested person as a result of the offence:

Description of the property (and location) (if known): *Comment: the more precisely this box is filled in, the more likely it is that future letters rogatory may be avoided.*

.....
.....
.....

Box (h)

Comment:

The indents have been changed to boxes - tick where applicable. If the Constitution does not permit a life sentence, write "not applicable"

Pre-trial stage (EAW is issued in order to conduct a criminal prosecution)

- Tick the box if applicable.

Post-trial stage (EAW issued for execution of a sentence/sentence in absentia)

- Tick the box if applicable

(h) The offence(s) on the basis of which this warrant has been issued is(are) punishable by / has(have) led to a custodial life sentence or lifetime detention order:

- the legal system of the issuing Member State allows for a review of the penalty or measure imposed – on request or at least after 20 years – aiming at a non-execution of such penalty or measure,

and/or

- the legal system of the issuing Member State allows for the application of measures of clemency to which the person is entitled under the law or practice of the issuing Member State, aiming at non-execution of such penalty or measure.

Box (i)
Information on the issuing authority

Comment:

- Name of its representative: in the different language versions a reference to the "holder" of the judicial authority will be included.
- Insert address of the issuing authority
- Insert telephone number / fax / e-mail of the issuing authority
- Contact details for practical arrangements: If possible, indicate the name and contact details of a judicial official who is familiar with a foreign language (English/French).

(i)	The judicial authority which issued the warrant: Official name:
	Name of its representative :
	Post held (title/grade):
	File reference:
	Address:
	Tel. No.: (country code) (area/city code) (..).....
	Fax No. (country code) (area/city code) ()
	E-mail
	Contact details of the person to contact to make necessary practical arrangements for the surrender:

Contact information on the Central Authority

Comment:

Fill in all contact details with care, if applicable.

Where a central authority has been made responsible for the transmission and administrative reception of European arrest warrants:

Name of the central authority:

.....

Contact person, if applicable (title/grade and name):.....

.....

Address:.....

.....

Tel. No.: (country code) (area/city code) (...)

Fax No.: (country code) (area/city code) (...)

E-mail:

Signature and information on the issuing judicial authority

Comment:

- This may be the judicial authority or, for example, a Court Registrar who signs on behalf on the Court.
- Note that the requested country may require a seal of the issuing authority.

Signature of the issuing judicial authority and/or its representative:
Name:
Post held (title/grade):
Date:
Official stamp (if available) <i>Comment: this is the official stamp of the issuing authority under domestic law. Always use if available.</i>

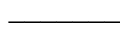
ANNEX IV

LANGUAGES ACCEPTED BY THE MEMBER STATES WHEN RECEIVING A EUROPEAN ARREST WARRANT

According to Article 8 (2) of the Framework Decision, the following statements have been made by Member States regarding languages accepted when receiving an EAW:

- Austria:** German or other language in reciprocity (accepts receiving the EAW in the official language of a Member State which also accepts receiving the EAW issued by Austrian judicial authorities in German).
- Belgium:** French, Dutch, German.
- Bulgaria:** Bulgarian.
- Cyprus:** Greek, Turkish, English.
- Czech Republic:** Czech; with regard to the Slovak Republic the Czech Republic will accept an EAW produced in the Slovak language or accompanied by a translation into the Slovak language, while with regard to Austria the Czech Republic will accept an EAW in German.
- Denmark:** Danish, English, Swedish.
- Estonia:** Estonian or English.
- Finland:** Finnish, Swedish, English.
- France:** French.
- Germany:** Germany applies reciprocity (accepts receiving the EAW in the official language of a Member State which also accepts receiving an EAW issued by German judicial authorities in German).
- Greece:** Greek.
- Hungary:** Hungarian or a translation of the EAW into Hungarian. In relation to Member States which do not exclusively accept the EAW in their own language or in one of their official languages, Hungary accepts the EAW in English, French or German, or accompanied by a translation into one of those languages.

Ireland:	Irish or English or a language that the Ministry of Justice may by order prescribe, or the EAW with a translation into Irish or English.
Italy:	Italian.
Latvia:	Latvian, English.
Lithuania:	Lithuanian, English.
Luxembourg:	French, German, English.
Malta:	Maltese, English.
Netherlands:	Dutch, English or any another official language of the European Union provided that an English translation is submitted at the same time.
Poland:	Polish.
Portugal	Portuguese.
Romania:	Romanian, French and English.
Slovakia:	Slovakian or, on the basis of prior bilateral treaties, German with Austria, Czech with the Czech Republic, Polish with Poland.
Slovenia:	Slovenian and English.
Spain:	Spanish. Where an EAW is issued through a SIS alert, the executing judicial authority will ensure translation if it is not in Spanish.
Sweden:	Swedish, Danish, Norwegian, English or a translation into one of those languages.
United Kingdom:	English or a translation of the EAW into English



ANNEX V

TIME LIMITS FOR THE RECEIPT OF THE EUROPEAN ARREST WARRANT FOLLOWING AN ARREST OF THE PERSON SOUGHT

Austria	40 days.
Belgium	10 days.
Bulgaria	24 hours.
Cyprus	3 days provided that the European arrest warrant was issued before the arrest of the person sought
Czech Republic	40 days.
Denmark	As soon as possible (pursuant to Danish law on administrative decisions an extradition shall be made as soon as possible, or as far as possible within 10 days after the person has been arrested or has consented to be extradited).
Estonia	3 working days.
Finland	as soon as possible or upon request within a time limit set by the Finnish executing competent authority, however, Finnish legislation does not require mandatory submission of an EAW when the request for an EAW has already been included in an SIS alert.
France	6 working days.
Germany	40 days.
Greece	15 days, can be extended to 30 days.
Hungary	40 days
Ireland	The person sought is arrested after the EAW has been received and endorsed by the High Court . A time limit of 7 days will apply when the SIS will be applicable to Ireland.
Italy	10 days.
Latvia	48 hours.
Lithuania	48 hours after the arrest of the person.

Luxembourg	6 working days.
Malta	In cases where there is a SIS alert this is deemed to be an EAW, and the court may set a time-limit for receipt of the EAW. In other cases arrest can be effected on the basis of a provisional arrest warrant and a 48 hour period applies for the receipt of the warrant. Provisional arrests will only be made in exceptional circumstances.
Netherlands	In relation to Member States who participate in the SIS: at the latest on the 23rd day following the arrest when this is based on SIS alert. In relation to Member States who do not participate in the SIS, the EAW has to be received as soon as possible.
Poland	48 hours.
Portugal	Left to the discretion of courts, usually 10 days.
Romania	48 hours after the person has been arrested with participation from the public prosecutor, the arrested person's counsel, and if necessary an interpreter according to the Romanian Criminal Procedure Code.
Slovakia	18 days from the arrest of a person for the receipt of the original European Arrest Warrant and the original document containing the translation of the EAW into the Slovak language. If the mentioned documents are not received within 18 days, a prosecutor can make request to the judge for the release of a person from custody, where applicable; if the documents are not received within 40 days, the release of the person is mandatory.
Slovenia	10 days.
Spain	Spanish legislation does not provide for a deadline for the receipt of the original of the EAW. However, the executing judicial authorities ask to receive the EAW as soon as possible and in any case within 10 days after the arrest of the person.
Sweden	as soon as possible (a few days, decided by the prosecutor)
United Kingdom	48 hours after a provisional arrest; however, provisional arrest will only be used in exceptional circumstances; if requested, the EAW must be supplied or the subject will be released.

ANNEX VI

JUDGMENT OF THE COURT (Grand Chamber)

16 June 2005

(Police and judicial cooperation in criminal matters – Articles 34 EU and 35 EU – Framework Decision 2001/220/JHA – Standing of victims in criminal proceedings – Protection of vulnerable persons – Hearing of minors as witnesses – Effects of a framework decision)

In Case C-105/03,

REFERENCE for a preliminary ruling under Article 35 EU by the judge in charge of preliminary enquiries at the Tribunale di Firenze (Italy), made by decision of 3 February 2003, received at the Court on 5 March 2003, in criminal proceedings against

Maria Pupino

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, R. Silva de Lapuerta and A. Borg Barthet, Presidents of Chambers, N. Colneric, S. von Bahr, J.N. Cunha Rodrigues (Rapporteur), P. Kūris, E. Juhász, G. Arestis and M. Ilešič, Judges

Advocate General: J. Kokott,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 26 October 2004, after considering the observations submitted on behalf of:

- Mrs Pupino, represented by M. Guagliani and D. Tanzarella, avvocati,
- the Italian Government, represented by I.M. Braguglia, acting as Agent, assisted by P. Gentili, avvocato dello Stato,
- the Greek Government, represented by A. Samoni-Rantou and K. Boskovits, acting as Agents,
- the French Government, represented by R. Abraham, G. de Bergues and C. Isidoro, acting as Agents,
- the Netherlands Government, represented by H.G. Sevenster and C. Wissels, acting as Agents,
- the Portuguese Government, represented by L. Fernandes, acting as Agent,
- the Swedish Government, represented by A. Kruse and K. Wistrand, acting as Agents,
- the United Kingdom Government, represented by R. Caudwell and E. O'Neill, acting as Agents, assisted by M. Hoskins, Barrister,
- the Commission of the European Communities, represented by M. Condou-Durande and L. Visaggio, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 November 2004, gives the following

Judgment

- 1 The reference for a preliminary ruling concerns the interpretation of Articles 2, 3 and 8 of Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings (OJ 2001 L 82, p. 1; 'the Framework Decision').
- 2 The reference has been made in the context of criminal proceedings against Mrs Pupino, a nursery school teacher charged with inflicting injuries on pupils aged less than five years at the time of the facts.

Legal background

The Treaty on European Union

- 3 Under Article 34(2) EU, in the version resulting from the Treaty of Amsterdam, which forms part of Title VI of the Treaty on European Union, headed ‘Provisions on police and judicial cooperation in criminal matters’:

‘The Council shall take measures and promote cooperation, using the appropriate form and procedures as set out in this Title, contributing to the pursuit of the objectives of the Union. To that end, acting unanimously on the initiative of any Member State or of the Commission, the Council may:

...

- b) adopt framework decisions for the purpose of approximation of the laws and regulations of the Member States. Framework decisions shall be binding upon the Member States as to the result to be achieved but shall leave to the national authorities the choice of form and methods. They shall not entail direct effect;

...’

- 4 Article 35 EU provides that:

‘1. The Court of Justice shall have jurisdiction, subject to the conditions laid down in this Article, to give preliminary rulings on the validity and interpretation of framework decisions, and decisions on the interpretation of conventions established under this Title and on the validity and interpretation of the measures implementing them.

2. By a declaration made at the time of signature of the Treaty of Amsterdam or at any time thereafter, any Member State shall be able to accept the jurisdiction of the Court of Justice to give preliminary rulings as specified in paragraph 1.

3. A Member State making a declaration pursuant to paragraph 2 shall specify that either:
 - a) any court or tribunal of that State against whose decisions there is no judicial remedy under national law may request the Court of Justice to give a preliminary ruling on a question raised in a case pending before it and concerning the validity or interpretation of an act referred to in paragraph 1 if that court or tribunal considers that a decision on the question is necessary to enable it to give judgment; or
 - b) any court or tribunal of that State may request the Court of Justice to give a preliminary ruling on a question raised in a case pending before it and concerning the validity or interpretation of an act referred to in paragraph 1 if that court or tribunal considers that a decision on the question is necessary to enable it to give judgment.

...'

- 5 The information published in the Official Journal of the European Communities of 1 May 1999 (OJ 1999 L 114, p. 56) on the date of entry into force of the Treaty of Amsterdam shows that the Italian Republic has made a declaration under Article 35(2) EU, whereby it has accepted the jurisdiction of the Court of Justice to rule in accordance with the arrangements under Article 35(3)(b) EU.

The Framework Decision

- 6 Under Article 2 of the Framework Decision, headed 'Respect and recognition':

'1. Each Member State shall ensure that victims have a real and appropriate role in its criminal legal system. It shall continue to make every effort to ensure that victims are treated with due respect for the dignity of the individual during proceedings and shall recognise the rights and legitimate interests of victims with particular reference to criminal proceedings.

2. Each Member State shall ensure that victims who are particularly vulnerable can benefit from specific treatment best suited to their circumstances.'

7 Article 3 of the Framework Decision, headed ‘Hearings and provision of evidence’ provides:

‘Each Member State shall safeguard the possibility for victims to be heard during proceedings and to supply evidence.

Each Member State shall take appropriate measures to ensure that its authorities question victims only insofar as necessary for the purpose of criminal proceedings.’

8 Article 8 of the Framework Decision, headed ‘Right to protection’, provides in paragraph 4:

‘Each Member State shall ensure that, where there is a need to protect victims – particularly those most vulnerable – from the effects of giving evidence in open court, victims may, by decision taken by the court, be entitled to testify in a manner which will enable this objective to be achieved, by any appropriate means compatible with its basic legal principles.’

9 Under Article 17 of the Framework Decision, each Member State is required to bring into force the laws, regulations and administrative provisions necessary to comply with the Framework Decision ‘not later than 22 March 2002’.

National legislation

10 Article 392 of the Codice di procedura penale (Italian Code of Criminal Procedure; ‘the CPP’), which appears in Book V, Part II, Title VII, headed ‘Preliminary enquiries and preliminary hearing’, provides:

‘1. During the preliminary enquiry, the Public Prosecutor’s Office and the person being examined may ask the judge to take evidence under special arrangements:

- a) where there are reasonable grounds for believing that the witness cannot be heard in open court by reason of illness or serious impediment;

b) where, on the basis of specific facts, there are reasonable grounds for believing that the witness is vulnerable to violence, threats, offers or promises of money or other benefits, to induce him or her not to testify or to give false testimony.

...

1a. In proceedings for offences under Articles 600a, 600b, 600d, 609a, 609c, 609d, and 609g of the criminal code [concerning sexual offences or offences with a sexual background], the Public Prosecutor's Office and the person being examined may ask for persons aged under 16 years to be heard in accordance with special arrangements even outside the cases referred to in paragraph 1.

...'

11 Under Article 398(5a) of the CPP:

'In enquiries concerning offences under Articles 600a, 600b, 600d, 609a, 609c, 609d, and 609g of the criminal code, where the evidence involves minors under 16, the judge shall determine by order the place, time and particular circumstances for hearing evidence where a minor's situation makes it appropriate and necessary. In such cases, the hearing can be held in a place other than the court, in special facilities or, failing that, at the minor's home. The witness statements must be fully documented by the use of sound and audiovisual recording equipment. Where recording equipment or technical personnel are not available, the judge shall use the expert report or technical advice procedures. The interview shall also be minuted. The recordings shall be transcribed only at the request of the parties.'

Factual background and the question referred

12 The order for reference shows that, in the criminal proceedings against Mrs Pupino, it is alleged that, in January and February 2001, she committed several offences of 'misuse of disciplinary measures' within the meaning of Article 571 of the Italian Criminal Code ('the CP') against a number of her pupils aged less than five years at the time, by such acts as regularly striking them, threatening to give them tranquillisers and to put sticking plasters over their mouths, and forbidding them from going to the toilet. She is further charged that, in February 2001, she inflicted 'serious injuries', as referred to in Articles 582, 585 and 576 of the CP, in conjunction with Article 61(2) and (11) thereof, by hitting a pupil in such a way as to cause a slight swelling of the forehead. The proceedings before the Tribunale di Firenze are at the preliminary enquiry stage.

- 13 The referring court states in that respect that, under Italian law, criminal procedure comprises two distinct stages. During the first stage, namely that of the preliminary enquiry, the Public Prosecutor's Office makes enquiries and, under the supervision of the judge in charge of preliminary enquiries, gathers the evidence on the basis of which it will assess whether the prosecution should be abandoned or the matter should proceed to trial. The final decision on whether to allow the prosecution to proceed or to dismiss the matter is taken by the judge in charge of preliminary enquiries at the conclusion of an informal hearing.
- 14 A decision to send the examined person for trial opens the second stage of the proceedings, namely the adversarial stage, in which the judge in charge of preliminary enquiries does not take part. The proceedings proper begin with this stage. It is only at that stage that, as a rule, evidence must be taken at the initiative of the parties and in compliance with the adversarial principle. The referring court states that it is during the trial that the parties' submissions may be accepted as evidence within the technical sense of the term. In those circumstances, the evidence gathered by the Public Prosecutor's Office during the preliminary enquiry stage, in order to enable the Office to decide whether to institute criminal proceedings by proposing committal for trial or to ask for the matter to be closed, must be subjected to cross-examination during the trial proper in order to acquire the value of 'evidence' in the full sense.
- 15 The national court states, however, that there are exceptions to that rule, laid down by Article 392 of the CPP, which allow evidence to be established early, during the preliminary enquiry period, on a decision of the judge in charge of preliminary enquiries and in compliance with the adversarial principle, by means of the Special Inquiry procedure. Evidence gathered in that way has the same probative value as that gathered during the second stage of the proceedings. Article 392(1a) of the CPP has introduced the possibility of using that special procedure when taking evidence from victims of certain restrictively listed offences (sexual offences or offences with a sexual background) aged less than 16 years, even outside the cases envisaged in paragraph 1 of that article. Article 398(5a) of the CPP also allows the same judge to order evidence to be taken, in the case of enquiries concerning offences referred to in Article 392(1a) of the CPP, under special arrangements allowing the protection of the minors concerned. According to the national court, those additional derogations are designed to protect, first, the dignity, modesty and character of a minor witness, and, secondly, the authenticity of the evidence.

- 16 In this case, the Public Prosecutor's Office asked the judge in charge of preliminary enquiries in August 2001 to take the testimony of eight children, witnesses and victims of the offences for which Mrs Pupino is being examined, by the special procedure for taking evidence early, pursuant to Article 392(1a) of the CPP, on the ground that such evidence could not be deferred until the trial on account of the witnesses' extreme youth, inevitable alterations in their psychological state, and a possible process of repression. The Public Prosecutor's Office also requested that evidence be gathered under the special arrangements referred to in Article 398(5a) of the CPP, whereby the hearing should take place in specially designed facilities, with arrangements to protect the dignity, privacy and tranquillity of the minors concerned, possibly involving an expert in child psychology by reason of the delicate and serious nature of the facts and the difficulties caused by the victims' young age. Mrs Pupino opposed that application, arguing that it did not fall within any of the cases envisaged by Article 392(1) and (1a) of the CPP.
- 17 The referring court states that, under the national provisions in question, the application of the Public Prosecutor's Office would have to be dismissed. Those provisions do not provide for the use of the Special Inquiry procedure, or for the use of special arrangements for gathering evidence, where the facts are such as those alleged against the defendant, even if there is no reason to preclude those provisions also covering cases other than those referred to in Article 392(1) of the CPP in which the victim is a minor. A number of offences excluded from the scope of Article 392(1) of the CPP might well prove more serious for the victim than those referred to in that provision. That, in the view of the national court, is the case here, where, according to the Public Prosecutor's Office, Mrs Pupino maltreated several children aged less than five years, causing them psychological trauma.

18 Considering that, ‘apart from the question of the existence or otherwise of a direct effect of Community law’, the national court must ‘interpret its national law in the light of the letter and the spirit of Community provisions’, and having doubts as to the compatibility of Articles 392(1a) and 398(5a) of the CPP with Articles 2, 3 and 8 of the Framework Decision, inasmuch as the provisions of that code limit the ability of the judge in charge of preliminary enquiries to apply the Special Inquiry procedure for the early gathering of evidence, and the special arrangements for its gathering, to sexual offences or offences with a sexual background, the judge in charge of preliminary enquiries at the Tribunale di Firenze has decided to stay the proceedings and ask the Court of Justice to rule on the scope of Articles 2, 3 and 8 of the Framework Decision.

Jurisdiction of the Court of Justice

- 19 Under Article 46(b) EU, the provisions of the EC, EAEC and ECSC Treaties concerning the powers of the Court of Justice and the exercise of those powers, including the provisions of Article 234 EC, apply to the provisions of Title VI of the Treaty on European Union under the conditions laid down by Article 35 EU. It follows that the system under Article 234 EC is capable of being applied to the Court’s jurisdiction to give preliminary rulings by virtue of Article 35 EU, subject to the conditions laid down by that provision.
- 20 As stated in paragraph 5 of this judgment, the Italian Republic indicated by a declaration which took effect on 1 May 1999, the date on which the Treaty of Amsterdam came into force, that it accepted the jurisdiction of the Court of Justice to rule on the validity and interpretation of the acts referred to in Article 35 EU in accordance with the rules laid down in paragraph 3(b) of that article.
- 21 Concerning the acts referred to in Article 35(1) EU, Article 35(3)(b) provides, in terms identical to those of the first and second paragraphs of Article 234 EC, that ‘any court or tribunal’ of a Member State may ‘request the Court of Justice to give a preliminary ruling’ on a question raised in a case pending before it and concerning the ‘validity or interpretation’ of such acts, ‘if it considers that a decision on the question is necessary to enable it to give judgment’.

- 22 It is undisputed, first, that the judge in charge of preliminary enquiries in criminal proceedings, such as those instituted in this case, acts in a judicial capacity, so that he must be regarded as a ‘court or tribunal of a Member State’ within the meaning of Article 35 EU (see to that effect, in relation to Article 234 EC, Joined Cases C-54/94 and C-74/94 *Cacchiarelli and Stanghellini* [1995] ECR I-391, and Joined Cases C-74/95 and C-129/95 X [1996] ECR I-6609) and, secondly, that the Framework Decision, based on Articles 31 EU and 34 EU, is one of the acts referred to in Article 35(1) EU, in respect of which the Court may give a preliminary ruling.
- 23 Whilst in principle, therefore, the Court of Justice has jurisdiction to reply to the question raised, the French and Italian Governments have nevertheless raised an objection of inadmissibility against the application that has been made, arguing that the Court’s answer would not be useful in resolving the dispute in the main proceedings.
- 24 The French Government argues that the national court is seeking to apply certain provisions of the Framework Decision in place of national legislation, whereas, in accordance with the very wording of Article 34(2)(b) EU, Framework Decisions cannot have such a direct effect. It further points out that, as the national court itself acknowledges, an interpretation of national law in accordance with the Framework Decision is impossible. In accordance with the case-law of the Court of Justice, the principle that national law must be given a conforming interpretation cannot lead to an interpretation that is *contra legem*, or to a worsening of the position of an individual in criminal proceedings, on the basis of the Framework Decision alone, which is precisely what would happen in the main proceedings.
- 25 The Italian Government argues as its main argument that framework decisions and Community directives are completely different and separate sources of law, and that a framework decision cannot therefore place a national court under an obligation to interpret national law in conformity, such as the obligation which the Court of Justice has found in its case-law concerning Community directives.

- 26 Without expressly querying the admissibility of the reference, the Swedish and United Kingdom Governments generally argue in the same way as the Italian Government, insisting in particular on the inter-governmental nature of cooperation between Member States in the context of Title VI of the Treaty on European Union.
- 27 Finally, the Netherlands Government stresses the limits imposed on the obligation of conforming interpretation and poses the question whether, assuming that obligation applies to framework decisions, it can apply in the case in the main proceedings, have regard precisely to those limits.
- 28 As stated in paragraph 19 of this judgment, the system under Article 234 EC is capable of being applied to Article 35 EU, subject to the conditions laid down in Article 35.
- 29 Like Article 234 EC, Article 35 EU makes reference to the Court of Justice for a preliminary ruling subject to the condition that the national court ‘considers that a decision on the question is necessary in order to enable it to give judgment’, so that the case-law of the Court of Justice on the admissibility of references under Article 234 EC is, in principle, transposable to references for a preliminary ruling submitted to the Court of Justice under Article 35 EU.
- 30 It follows that the presumption of relevance attaching to questions referred by national courts for a preliminary ruling may be rebutted only in exceptional cases, where it is quite obvious that the interpretation of Community law sought bears no relation to the actual facts of the main action or to its purpose, or where the problem is hypothetical and the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted. Save for such cases, the Court is, in principle, required to give a ruling on questions concerning the interpretation of the acts referred to in Article 35(1) EU (see for example, in relation to Article 234 CE, Case C-355/97 Beck and Bergdorf [1999] ECR I-4977, paragraph 22, and Case C-17/03 VEMW and Others [2005] ECR I-0000, paragraph 34).

- 31 Having regard to the arguments of the French, Italian, Swedish, Netherlands and United Kingdom Governments, it has to be examined whether, as the national court presupposes and as the French, Greek and Portuguese Governments and the Commission maintain, the obligation on the national authorities to interpret their national law as far as possible in the light of the wording and purpose of Community directives applies with the same effects and within the same limits where the act concerned is a framework decision taken on the basis of Title VI of the Treaty on European Union.
- 32 If so, it has to be determined whether, as the French, Italian, Swedish and United Kingdom Governments have observed, it is obvious that a reply to the question referred cannot have a concrete impact on the solution of the dispute in the main proceedings, given the inherent limits on the obligation of conforming interpretation.
- 33 It should be noted at the outset that the wording of Article 34(2)(b) EU is very closely inspired by that of the third paragraph of Article 249 EC. Article 34(2)(b) EU confers a binding character on framework decisions in the sense that they ‘bind’ the Member States ‘as to the result to be achieved but shall leave to the national authorities the choice of form and methods’.
- 34 The binding character of framework decisions, formulated in terms identical to those of the third paragraph of Article 249 EC, places on national authorities, and particularly national courts, an obligation to interpret national law in conformity.
- 35 The fact that, by virtue of Article 35 EU, the jurisdiction of the Court of Justice is less extensive under Title VI of the Treaty on European Union than it is under the EC Treaty, and the fact that there is no complete system of actions and procedures designed to ensure the legality of the acts of the institutions in the context of Title VI, does nothing to invalidate that conclusion.

- 36 Irrespective of the degree of integration envisaged by the Treaty of Amsterdam in the process of creating an ever closer union among the peoples of Europe within the meaning of the second paragraph of Article 1 EU, it is perfectly comprehensible that the authors of the Treaty on European Union should have considered it useful to make provision, in the context of Title VI of that treaty, for recourse to legal instruments with effects similar to those provided for by the EC Treaty, in order to contribute effectively to the pursuit of the Union's objectives.
- 37 The importance of the Court's jurisdiction to give preliminary rulings under Article 35 EU is confirmed by the fact that, under Article 35(4), any Member State, whether or not it has made a declaration pursuant to Article 35(2), is entitled to submit statements of case or written observations to the Court in cases which arise under Article 35(1).
- 38 That jurisdiction would be deprived of most of its useful effect if individuals were not entitled to invoke framework decisions in order to obtain a conforming interpretation of national law before the courts of the Member States.
- 39 In support of their position, the Italian and United Kingdom Governments argue that, unlike the EC Treaty, the Treaty on European Union contains no obligation similar to that laid down in Article 10 EC, on which the case-law of the Court of Justice partially relied in order to justify the obligation to interpret national law in conformity with Community law.
- 40 That argument must be rejected.
- 41 The second and third paragraphs of Article 1 of the Treaty on European Union provide that that treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe and that the task of the Union, which is founded on the European Communities, supplemented by the policies and forms of cooperation established by that treaty, shall be to organise, in a manner demonstrating consistency and solidarity, relations between the Member States and between their peoples.

- 42 It would be difficult for the Union to carry out its task effectively if the principle of loyal cooperation, requiring in particular that Member States take all appropriate measures, whether general or particular, to ensure fulfilment of their obligations under European Union law, were not also binding in the area of police and judicial cooperation in criminal matters, which is moreover entirely based on cooperation between the Member States and the institutions, as the Advocate General has rightly pointed out in paragraph 26 of her Opinion.
- 43 In the light of all the above considerations, the Court concludes that the principle of conforming interpretation is binding in relation to framework decisions adopted in the context of Title VI of the Treaty on European Union. When applying national law, the national court that is called upon to interpret it must do so as far as possible in the light of the wording and purpose of the framework decision in order to attain the result which it pursues and thus comply with Article 34(2)(b) EU.
- 44 It should be noted, however, that the obligation on the national court to refer to the content of a framework decision when interpreting the relevant rules of its national law is limited by general principles of law, particularly those of legal certainty and non-retroactivity.
- 45 In particular, those principles prevent that obligation from leading to the criminal liability of persons who contravene the provisions of a framework decision from being determined or aggravated on the basis of such a decision alone, independently of an implementing law (see for example, in relation to Community directives, Joined Cases C-74/95 and C-129/95 X [1996] ECR I-6609, paragraph 24, and Joined Cases C-387/02, C-391/02 and C-403/02 Berlusconi and Others [2005] ECR I-0000, paragraph 74).
- 46 However, the provisions which form the subject-matter of this reference for a preliminary ruling do not concern the extent of the criminal liability of the person concerned but the conduct of the proceedings and the means of taking evidence.

47 The obligation on the national court to refer to the content of a framework decision when interpreting the relevant rules of its national law ceases when the latter cannot receive an application which would lead to a result compatible with that envisaged by that framework decision. In other words, the principle of conforming interpretation cannot serve as the basis for an interpretation of national law *contra legem*. That principle does, however, require that, where necessary, the national court consider the whole of national law in order to assess how far it can be applied in such a way as not to produce a result contrary to that envisaged by the framework decision.

48 In this case, as the Advocate General has pointed out in paragraph 40 of her Opinion, it is not obvious that an interpretation of national law in conformity with the framework decision is impossible. It is for the national court to determine whether, in this case, a conforming interpretation of national law is possible.

49 Subject to that reservation, the Court will answer the question referred.

The question referred for a preliminary ruling

50 By its question, the national court essentially asks whether, on a proper interpretation of Articles 2, 3 and 8(4) of the Framework Decision, a national court must be able to authorise young children, who, as in this case, claim to have been victims of maltreatment, to give their testimony in accordance with arrangements ensuring them an appropriate level of protection, outside the public trial and before it is held.

51 Article 3 of the Framework Decision requires each Member State to safeguard the possibility for victims to be heard during proceedings and to supply evidence, and to take appropriate measures to ensure that its authorities question victims only insofar as necessary for the purpose of criminal proceedings.

- 52 Articles 2 and 8(4) of the Framework Decision require each Member State to make every effort to ensure that victims are treated with due respect for their personal dignity during proceedings, to ensure that particularly vulnerable victims benefit from specific treatment best suited to their circumstances, and to ensure that where there is a need to protect victims, particularly those most vulnerable, from the effects of giving evidence in open court, victims may, by decision taken by the court, be entitled to testify in a manner enabling that objective to be achieved, by any appropriate means compatible with its basic legal principles.
- 53 The Framework Decision does not define the concept of a victim's vulnerability for the purposes of Articles 2(2) and 8(4). However, independently of whether a victim's minority is as a general rule sufficient to classify such a victim as particularly vulnerable within the meaning of the Framework Decision, it cannot be denied that where, as in this case, young children claim to have been maltreated, and maltreated, moreover, by a teacher, those children are suitable for such classification having regard in particular to their age and to the nature and consequences of the offences of which they consider themselves to have been victims, with a view to benefiting from the specific protection required by the provisions of the Framework Decision referred to above.
- 54 None of the three provisions of the Framework Decision referred to by the national court lays down detailed rules for implementing the objectives which they state, and which consist, in particular, in ensuring that particularly vulnerable victims receive 'specific treatment best suited to their circumstances', and the benefit of special hearing arrangements that are capable of guaranteeing to all victims treatment which pays due respect to their individual dignity and gives them the opportunity to be heard and to supply evidence, and in ensuring that those victims are questioned 'only insofar as necessary for the purpose of criminal proceedings'.

- 55 Under the legislation at issue in the main proceedings, testimony given during the preliminary enquiries must generally be repeated at the trial in order to acquire full evidential value. It is, however, permissible in certain cases to give that testimony only once, during the preliminary enquiries, with the same probative value, but under different arrangements from those which apply at the trial.
- 56 In those circumstances, achievement of the aims pursued by the abovementioned provisions of the framework decision require that a national court should be able, in respect of particularly vulnerable victims, to use a special procedure, such as the Special Inquiry for early gathering of evidence provided for in the law of a Member State, and the special arrangements for hearing testimony for which provision is also made, if that procedure best corresponds to the situation of those victims and is necessary in order to prevent the loss of evidence, to reduce the repetition of questioning to a minimum, and to prevent the damaging consequences, for those victims, of their giving testimony at the trial
- 57 It should be noted in that respect that, according to Article 8(4) of the Framework Decision, the conditions for giving testimony that are adopted must in any event be compatible with the basic legal principles of the Member State concerned.
- 58 Moreover, in accordance with Article 6(2) EU, the Union must respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 ('the Convention'), and as they result from the constitutional traditions common to the Member States, as general principles of law.
- 59 The Framework Decision must thus be interpreted in such a way that fundamental rights, including in particular the right to a fair trial as set out in Article 6 of the Convention and interpreted by the European Court of Human Rights, are respected.

60 It is for the national court to ensure that – assuming use of the Special Inquiry and of the special arrangements for the hearing of testimony under Italian law is possible in this case, bearing in mind the obligation to give national law a conforming interpretation – the application of those measures is not likely to make the criminal proceedings against Mrs Pupino, considered as a whole, unfair within the meaning of Article 6 of the Convention, as interpreted by the European Court of Human Rights (see, for example, ECHR judgments of 20 December 2001, *P.S. v Germany*, of 2 July 2002, *S.N. v Sweden*, Reports of judgments and decisions 2002-V, of 13 February 2004, *Rachdad v France*, and the decision of 20 January 2005, *Accardi and Others v Italy*, App. 30598/02).

61 In the light of all the above considerations, the answer to the question must be that Articles 2, 3 and 8(4) of the Framework Decision must be interpreted as meaning that the national court must be able to authorise young children, who, as in this case, claim to have been victims of maltreatment, to give their testimony in accordance with arrangements allowing those children to be guaranteed an appropriate level of protection, for example outside the trial and before it takes place. The national court is required to take into consideration all the rules of national law and to interpret them, so far as possible, in the light of the wording and purpose of the Framework Decision.

Costs

62 Since these proceedings are, for the parties to the main proceedings, a step in the proceedings before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than by those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

Articles 2, 3 and 8(4) of Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings must be interpreted as meaning that the national court must be able to authorise young children, who, as in this case, claim to have been victims of maltreatment, to give their testimony in accordance with arrangements allowing those children to be guaranteed an appropriate level of protection, for example outside the trial and before it takes place.

The national court is required to take into consideration all the rules of national law and to interpret them, so far as possible, in the light of the wording and purpose of the Framework Decision.

[Signatures]

JUDGMENT OF THE COURT (Grand Chamber)

3 May 2007

(Police and judicial cooperation in criminal matters – Articles 6(2) EU and 34(2)(b) EU – Framework Decision 2002/584/JHA – European arrest warrant and surrender procedures between Member States – Approximation of national laws – Removal of verification of double criminality – Validity)

In Case C-303/05,

REFERENCE under Article 35 EU for a preliminary ruling by the Arbitragehof (Belgium), made by decision of 13 July 2005, received at the Court on 29 July 2005, in the proceedings

Advocaten voor de Wereld VZW

v

Leden van de Ministerraad,

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, R. Schintgen, P. Kūris, E. Juhász and J. Klučka, Presidents of Chambers, J.N. Cunha Rodrigues (Rapporteur), J. Makarczyk, U. Lõhmus, E. Levits and L. Bay Larsen, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 11 July 2006,

after considering the observations submitted on behalf of:

- Advocaten voor de Wereld VZW, by L. Deleu, P. Bekaert and F. van Vlaenderen, advocaten,
- the Belgian Government, by M. Wimmer, acting as Agent, assisted by E. Jacobowitz and P. de Maeyer, avocats,
- the Czech Government, by T. Boček, acting as Agent,
- the Spanish Government, by J.M. Rodríguez Cárcamo, acting as Agent,
- the French Government, by G. de Bergues, J.-C. Niollet and E. Belliard, acting as Agents,
- the Latvian Government, by E. Balode-Buraka, acting as Agent,
- the Lithuanian Government, by D. Kriaučiūnas, acting as Agent,
- the Netherlands Government, by H.G. Sevenster, M. de Mol and C.M. Wissels, acting as Agents,
- the Polish Government, by J. Pietras, acting as Agent,
- the Finnish Government, by E. Bygglin, acting as Agent,
- the United Kingdom Government, by S. Nwaokolo and C. Gibbs, acting as Agents, and by A. Dashwood, Barrister,
- the Council of the European Union, by S. Kyriakopoulou, J. Schutte and O. Petersen, acting as Agents,
- the Commission of the European Communities, by W. Bogensberger and R. Troosters, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 12 September 2006, gives the following

Judgment

- 1 The reference for a preliminary ruling concerns the assessment as to the validity of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1) ('the Framework Decision').

- 2 This reference has been submitted in the course of an action brought by Advocaten voor de Wereld VZW (‘Advocaten voor de Wereld’) before the Belgian Arbitragehof (Court of Arbitration) and seeking the annulment of the Belgian Law of 19 December 2003 on the European arrest warrant (Belgisch Staatsblad of 22 December 2003, p. 60075) (‘the Law of 19 December 2003’), in particular Articles 3, 5(1) and (2) and 7 thereof.

Legal context

- 3 Recital (5) in the preamble to the Framework Decision provides:

‘The objective set for the Union to become an area of freedom, security and justice leads to abolishing extradition between Member States and replacing it by a system of surrender between judicial authorities. Further, the introduction of a new simplified system of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal sentences makes it possible to remove the complexity and potential for delay inherent in the present extradition procedures. Traditional cooperation relations which have prevailed up till now between Member States should be replaced by a system of free movement of judicial decisions in criminal matters, covering both pre-sentence and final decisions, within an area of freedom, security and justice.’

- 4 Recital (6) in the preamble to the Framework Decision is worded as follows:

‘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 referred to as the “cornerstone” of judicial cooperation.’

- 5 Recital (7) in the preamble to the Framework Decision provides:

‘Since the aim of replacing the system of multilateral extradition built upon the European Convention on Extradition of 13 December 1957 cannot be sufficiently achieved by the Member States acting unilaterally and can therefore, by reason of its scale and effects, be better achieved at Union level, the Council may adopt measures in accordance with the principle of subsidiarity as referred to in Article 2 of the Treaty on European Union and Article 5 of the Treaty establishing the European Community. 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 that objective.’

6 According to recital (11) in the preamble to the Framework Decision:

‘In relations between Member States, the European arrest warrant should replace all the previous instruments concerning extradition, including the provisions of Title III of the Convention implementing the Schengen Agreement which concern extradition.’

7 Article 1 of the Framework Decision, which was adopted on the basis of Article 31(1)(a) and (b) EU and Article 34(2)(b) EU, provides:

‘1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

2. Member States shall 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 modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.’

8 Article 2 of the Framework Decision provides:

‘1. A European arrest warrant may be issued for acts punishable by the law of the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months.

2. The following offences, if they are punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three 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:

- 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 currency, including 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 piracy of products,
- 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,
- trafficking in stolen vehicles,
- rape,
- arson,
- crimes within the jurisdiction of the International Criminal Court,
- unlawful seizure of aircraft/ships,
- sabotage.

3. The Council may decide at any time, acting unanimously after consultation of the European Parliament under the conditions laid down in Article 39(1) of the Treaty on European Union (TEU), to add other categories of offence to the list contained in paragraph 2. The Council shall examine, in the light of the report submitted by the Commission pursuant to Article 34(3), 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 has been issued constitute an offence under the law of the executing Member State, whatever the constituent elements or however it is described.’

9 Article 31 of the Framework Decision provides:

‘1. Without prejudice to their application in relations between Member States and third States, this Framework Decision shall, from 1 January 2004, replace the corresponding provisions of the following conventions applicable in the field of extradition in 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 12 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;
- (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 in so far as such agreements or arrangements allow the objectives of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for surrender of persons who are the subject of European arrest warrants.

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

The agreements and arrangements referred to in the second subparagraph may in no case affect relations with Member States which are not parties to them.

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

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

3. Where the conventions or agreements 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 instruments shall continue to govern the relations existing between those territories and the other Member States.’

The dispute in the main proceedings and the questions referred for preliminary ruling

- 10 According to the decision making the reference, *Advocaten voor de Wereld* brought an action before the *Arbitragehof* on 21 June 2004 in which it sought the annulment, in whole or in part, of the Law of 19 December 2003 transposing the provisions of the Framework Decision into Belgian law.
- 11 In support of its action, *Advocaten voor de Wereld* submits inter alia that the Framework Decision is invalid on the ground that the subject-matter of the European arrest warrant ought to have been implemented by way of a convention and not by way of a framework decision since, under Article 34(2)(b) EU, framework decisions may be adopted only ‘for the purpose of approximation of the laws and regulations of the Member States’, which, it claims, is not the position in the present case.

- 12 Advocaten voor de Wereld also submits that Article 5(2) of the Law of 19 December 2003, which transposes Article 2(2) of the Framework Decision into Belgian domestic law, infringes the principle of equality and non-discrimination in that, for the offences mentioned in that latter provision, in the event of enforcement of a European arrest warrant, there is a derogation, without objective and reasonable justification, from the requirement of double criminality, whereas that requirement is maintained for other offences.
- 13 Advocaten voor de Wereld further argues that the Law of 19 December 2003 also fails to satisfy the conditions of the principle of legality in criminal matters in that it lists, not offences having a sufficiently clear and precise legal content, but only vague categories of undesirable behaviour. The judicial authority which must decide on the enforcement of a European arrest warrant will, it submits, have insufficient information to determine effectively whether the offences for which the person sought is being charged, or in respect of which a penalty has been imposed on him, come within one of the categories mentioned in Article 5(2) of that Law. The absence of a clear and precise definition of the offences referred to in that provision, it contends, leads to a disparate application of that Law by the various authorities responsible for the enforcement of a European arrest warrant and, by reason of that fact, also infringes the principle of equality and non-discrimination.
- 14 The Arbitragehof points out that the Law of 19 December 2003 is the direct result of the Council's decision to regulate the subject-matter of the European arrest warrant by means of a framework decision. The heads of complaint invoked by Advocaten voor de Wereld against that Law also hold good in equal measure with regard to the Framework Decision. In its view, differences of interpretation between courts with regard to the validity of Community measures and the validity of the legislation which constitutes the implementation of those measures in national law jeopardise the unity of the Community legal order and adversely affect the general principle of legal certainty.
- 15 The Arbitragehof adds that, under Article 35(1) EU, the Court alone has jurisdiction to give a preliminary ruling on the validity of framework decisions and that, under Article 35(2) EU, the Kingdom of Belgium has accepted the Court's jurisdiction in this field.

16 In those circumstances, the Arbitragehof decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

- ‘1. Is [the] Framework Decision ... compatible with Article 34(2)(b) of the [EU] Treaty, under which framework decisions may be adopted only for the purpose of approximation of the laws and regulations of the Member States?
2. Is Article 2(2) of [the] Framework Decision ..., in so far as it sets aside verification of the requirement of double criminality for the offences listed therein, compatible with Article 6(2) of the [EU] Treaty ... and, more specifically, with the principle of legality in criminal proceedings guaranteed by that provision and with the principle of equality and non-discrimination?’

The questions referred for preliminary ruling

The first question

Admissibility

- 17 The Czech Government submits that the first question referred is inadmissible on the ground that it requires the Court to examine Article 34(2)(b) EU, which is a provision of primary law not reviewable by the Court.
- 18 That argument is unfounded. Under Article 35(1) EU, the Court has jurisdiction, subject to the conditions laid down in that article, to give preliminary rulings on the interpretation and validity of, inter alia, framework decisions, which necessarily implies that it can, even if there is no express power to that effect, be called upon to interpret provisions of primary law, such as Article 34(2)(b) EU where, as in the case in the main proceedings, the Court is being asked to examine whether a framework decision has been properly adopted on the basis of that latter provision.

- 19 According to the Czech Government, the first question referred is also inadmissible inasmuch as the decision to refer fails to indicate clearly the relevant grounds which would justify a finding that the framework decision is invalid. It submits that it was for that reason impossible for it to submit any meaningful observations on that question. More specifically, in so far as *Advocaten voor de Wereld* contends that the Framework Decision did not bring about approximation of the laws of the Member States, it ought to have substantiated that assertion and the Arbitragehof ought to have made a note to that effect in its decision to refer.
- 20 It should be borne in mind that the information provided in orders for reference must not only be such as to enable the Court to reply usefully but must also enable the governments of the Member States and other interested parties to submit observations pursuant to Article 23 of the Statute of the Court of Justice (order in Case C-422/98 *Colonia Versicherung and Others* [1999] ECR I-1279, paragraph 5).
- 21 In the case in the main proceedings, the decision making the reference contains sufficient information to address those requirements. As indicated in paragraph 11 of this judgment, it appears from the decision making the reference that *Advocaten voor de Wereld* is submitting that the subject-matter of the European arrest warrant ought to have been implemented by way of a convention and not by way of a framework decision on the ground that, under Article 34(2)(b) EU, framework decisions may be adopted only ‘for the purpose of approximation of the laws and regulations of the Member States’, which is not the position in the present case.
- 22 Information of this kind is sufficient not only to enable the Court to provide a useful reply but also to safeguard the possibility open to the parties to the dispute, the Member States, the Council and Commission to submit observations pursuant to Article 23 of the Statute of the Court of Justice, as is, moreover, indicated by the observations lodged by all of the parties which have intervened in these proceedings, including those submitted by the Czech Government.

23 The first question referred is therefore admissible.

Substance

24 Advocaten voor de Wereld submits, in contrast to all of the other parties which have submitted observations in these proceedings, that the subject-matter of the European arrest warrant ought, in accordance with Article 34(2)(d) EU, to have been regulated by way of a convention.

25 In the first place, it argues, the framework decision could not have been validly adopted for the purpose of the approximation of laws and regulations as referred to in Article 34(2)(b) EU, inasmuch as the Council is empowered to adopt framework decisions only to approximate progressively the rules on criminal matters in the cases referred to in the third indent of the second paragraph of Article 29 EU and in Article 31(e) EU. For other common action on judicial cooperation in criminal matters, the Council must have recourse to conventions, pursuant to Article 34(2)(d) EU.

26 Second, pursuant to Article 31 of the Framework Agreement, the latter was to replace, as from 1 January 2004, the convention law in the field of extradition in relations between Member States. Only a measure of the same kind, that is to say, a convention within the meaning of Article 34(2)(d) EU, can validly derogate from the convention law in force.

27 That argument cannot be accepted.

28 As is clear in particular from Article 1(1) and (2) of the Framework Decision and recitals (5), (6), (7) and (11) in its preamble, the purpose of the Framework Decision is to replace the multilateral system of extradition between Member States with a system of surrender, as between judicial authorities, of convicted persons or suspects for the purpose of enforcing judgments or of criminal proceedings based on the principle of mutual recognition.

- 29 The mutual recognition of the arrest warrants issued in the different Member States in accordance with the law of the issuing State concerned requires the approximation of the laws and regulations of the Member States with regard to judicial cooperation in criminal matters and, more specifically, of the rules relating to the conditions, procedures and effects of surrender as between national authorities.
- 30 That is precisely the purpose of the Framework Decision in regard, inter alia, to the rules relating to the categories of listed offences in respect of which there is no verification of double criminality (Article 2(2)), to the grounds for mandatory or optional non-execution of the European arrest warrant (Articles 3 and 4), to the content and form of that warrant (Article 8), to the transmission of such a warrant and the detailed procedures governing such transmission (Articles 9 and 10), to the minimum guarantees which must be granted to a requested or arrested person (Articles 11 to 14), to the time-limits and procedures for the decision to execute that warrant (Article 17) and to the time-limits for surrender of the person sought (Article 23).
- 31 The Framework Decision is based on Article 31(1)(a) and (b) EU, which provides that common action on judicial cooperation in criminal matters is, respectively, to facilitate and accelerate judicial cooperation in relation to proceedings and the enforcement of decisions and to facilitate extradition between Member States.
- 32 Contrary to what *Advocaten voor de Wereld* contends, there is nothing to justify the conclusion that the approximation of the laws and regulations of the Member States by the adoption of framework decisions under Article 34(2)(b) EU is directed only at the Member States' rules of criminal law mentioned in Article 31(1)(e) EU, that is to say, those rules which relate to the constituent elements of criminal offences and the penalties applicable within the areas listed in the latter provision.

- 33 Under the fourth indent of the first paragraph of Article 2 EU, the development of an area of freedom, security and justice features as one of the objectives of the Union and the first paragraph of Article 29 EU states that, in order to provide citizens with a high level of safety within such an area, common action is to be developed among the Member States, inter alia in the field of judicial cooperation in criminal matters. According to the second indent of the second paragraph of Article 29 EU, ‘closer cooperation between judicial and other competent authorities of the Member States ... in accordance with the provisions of Articles 31 [EU] and 32 [EU]’ is to contribute to the achievement of that objective.
- 34 Article 31(1)(a) and (b) EU does not, however, contain any indication as to the legal instruments which are to be used for this purpose.
- 35 Moreover, it is in general terms that Article 34(2) EU states that the Council ‘shall take measures and promote cooperation, ..., contributing to the pursuit of the objectives of the Union’ and, ‘[to] that end’, empowers the Council to adopt a variety of different types of measures, set out in Article 34(2)(a) to (d) EU, which include framework decisions and conventions.
- 36 Furthermore, neither Article 34(2) EU nor any other provision of Title VI of the EU Treaty draws a distinction as to the type of measures which may be adopted on the basis of the subject-matter to which the joint action in the field of criminal cooperation relates.
- 37 Article 34(2) EU also does not establish any order of priority between the different instruments listed in that provision, with the result that it cannot be ruled out that the Council may have a choice between several instruments in order to regulate the same subject-matter, subject to the limits imposed by the nature of the instrument selected.
- 38 In those circumstances, in so far as it lists and defines, in general terms, the different types of legal instruments which may be used in the ‘pursuit of the objectives of the Union’ set out in Title VI of the EU Treaty, Article 34(2) EU cannot be construed as meaning that the approximation of the laws and regulations of the Member States by the adoption of a framework decision under Article 34(2)(b) EU cannot relate to areas other than those mentioned in Article 31(1)(e) EU and, in particular, the matter of the European arrest warrant.

- 39 The interpretation to the effect that the approximation of the laws and regulations of the Member States by means of the adoption of framework decisions is not only authorised in the areas referred to in Article 31(1)(e) EU is corroborated by Article 31(1)(c) EU, which states that common action must also be aimed at ‘ensuring compatibility in rules applicable in the Member States, as may be necessary to improve such [judicial] cooperation [in criminal matters]’, without drawing any distinction between the different types of measures which may be used for the purpose of approximating those rules.
- 40 In the present case, in so far as Article 34(2)(c) EU precludes the Council from using a decision to effect approximation of the laws and regulations of the Member States and in so far as the legal instrument of the common position within the meaning of Article 34(2)(a) EU must be limited to defining the Union’s approach to a particular matter, the question thus arises as to whether, contrary to the argument put forward by *Advocaten voor de Wereld*, the Council was able validly to regulate the matter of the European arrest warrant by way of a framework decision rather than by means of a convention pursuant to Article 34(2)(d) EU.
- 41 While it is true that the European arrest warrant could equally have been the subject of a convention, it is within the Council’s discretion to give preference to the legal instrument of the framework decision in the case where, as here, the conditions governing the adoption of such a measure are satisfied.
- 42 This conclusion is not invalidated by the fact that, in accordance with Article 31(1) of the Framework Decision, the latter was to replace from 1 January 2004, only in relations between Member States, the corresponding provisions of the earlier conventions on extradition set out in that provision. Any other interpretation unsupported by either Article 34(2) EU or by any other provision of the EU Treaty would risk depriving of its essential effectiveness the Council’s recognised power to adopt framework decisions in fields previously governed by international conventions.

43 It follows that the Framework Decision was not adopted in a manner contrary to Article 34(2)(b) EU.

The second question

44 Advocaten voor de Wereld contends, in contrast to all of the other parties which have submitted observations in these proceedings, that, to the extent to which it dispenses with verification of the requirement of the double criminality of the offences mentioned in it, Article 2(2) of the Framework Decision is contrary to the principle of equality and non-discrimination and to the principle of legality in criminal matters.

45 It must be noted at the outset that, by virtue of Article 6 EU, the Union is founded on the principle of the rule of law and it respects fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and as they result from the constitutional provisions common to the Member States, as general principles of Community law. It follows that the institutions are subject to review of the conformity of their acts with the Treaties and the general principles of law, just like the Member States when they implement the law of the Union (see, inter alia, Case C-354/04 P Gestoras Pro Amnistía and Others v Council [2007] ECR I-0000, paragraph 51, and Case C-355/04 P Segi and Others v Council [2007] ECR I-0000, paragraph 51).

46 It is common ground that those principles include the principle of the legality of criminal offences and penalties and the principle of equality and non-discrimination, which are also reaffirmed respectively in Articles 49, 20 and 21 of the Charter of Fundamental Rights of the European Union, proclaimed in Nice on 7 December 2000 (OJ 2000 C 364, p. 1).

47 It is accordingly a matter for the Court to examine the validity of the Framework Decision in the light of those principles.

The principle of the legality of criminal offences and penalties

- 48 According to *Advocaten voor de Wereld*, the list of more than 30 offences in respect of which the traditional condition of double criminality is henceforth abandoned if those offences are punishable in the issuing Member State by a custodial sentence or detention order for a maximum period of at least three years is so vague and imprecise that it breaches, or at the very least is capable of breaching, the principle of legality in criminal matters. The offences set out in that list are not accompanied by their legal definition but constitute very vaguely defined categories of undesirable conduct. A person deprived of his liberty on foot of a European arrest warrant without verification of double criminality does not benefit from the guarantee that criminal legislation must satisfy conditions as to precision, clarity and predictability allowing each person to know, at the time when an act is committed, whether that act does or does not constitute an offence, by contrast to those who are deprived of their liberty otherwise than pursuant to a European arrest warrant.
- 49 The principle of the legality of criminal offences and penalties (*nullum crimen, nulla poena sine lege*), which is one of the general legal principles underlying the constitutional traditions common to the Member States, has also been enshrined in various international treaties, in particular in Article 7(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (see in this regard, *inter alia*, *Joined Cases C-74/95 and C-129/95 X* [1996] ECR I-6609, paragraph 25, and *Joined Cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P Dansk Rørindustri and Others v Commission* [2005] ECR I-5425, paragraphs 215 to 219).
- 50 This principle implies that legislation must define clearly offences and the penalties which they attract. That condition is met in the case where the individual concerned is in a position, on the basis of the wording of the relevant provision and with the help of the interpretative assistance given by the courts, to know which acts or omissions will make him criminally liable (see, *inter alia*, European Court of Human Rights judgment of 22 June 2000 in *Coëme and Others v Belgium*, Reports 2000-VII, § 145).
- 51 In accordance with Article 2(2) of the Framework Decision, the offences listed in that provision give rise to surrender pursuant to a European arrest warrant, without verification of the double criminality of the act, ‘if they are punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years and as they are defined by the law of the issuing Member State’.

- 52 Consequently, even if the Member States reproduce word-for-word the list of the categories of offences set out in Article 2(2) of the Framework Decision for the purposes of its implementation, the actual definition of those offences and the penalties applicable are those which follow from the law of ‘the issuing Member State’. The Framework Decision does not seek to harmonise the criminal offences in question in respect of their constituent elements or of the penalties which they attract.
- 53 Accordingly, while Article 2(2) of the Framework Decision dispenses with verification of double criminality for the categories of offences mentioned therein, the definition of those offences and of the penalties applicable continue to be matters determined by the law of the issuing Member State, which, as is, moreover, stated in Article 1(3) of the Framework Decision, must respect fundamental rights and fundamental legal principles as enshrined in Article 6 EU, and, consequently, the principle of the legality of criminal offences and penalties.
- 54 It follows that, in so far as it dispenses with verification of the requirement of double criminality in respect of the offences listed in that provision, Article 2(2) of the Framework Decision is not invalid on the ground that it infringes the principle of the legality of criminal offences and penalties.

The principle of equality and non-discrimination

- 55 According to *Advocaten voor de Wereld*, the principle of equality and non-discrimination is infringed by the Framework Decision inasmuch as, for offences other than those covered by Article 2(2) thereof, surrender may be made subject to the condition that the facts in respect of which the European arrest warrant was issued constitute an offence under the law of the Member State of execution. That distinction, it argues, is not objectively justified. The removal of verification of double criminality is all the more open to question as no detailed definition of the facts in respect of which surrender is requested features in the Framework Decision. The system established by the latter gives rise to an unjustified difference in treatment as between individuals depending on whether the facts alleged to constitute the offence occurred in the Member State of execution or outside that State. Those individuals will thus be judged differently with regard to the deprivation of their liberty without any justification for that difference.

- 56 The principle of equality and non-discrimination requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (see, in particular, Case C-248/04 Koninklijke Coöperatie Cosun [2006] ECR I-0000, paragraph 72 and the case-law there cited).
- 57 With regard, first, to the choice of the 32 categories of offences listed in Article 2(2) of the Framework Decision, the Council was able to form the view, on the basis of the principle of mutual recognition and in the light of the high degree of trust and solidarity between the Member States, that, whether by reason of their inherent nature or by reason of the punishment incurred of a maximum of at least three years, the categories of offences in question feature among those the seriousness of which in terms of adversely affecting public order and public safety justifies dispensing with the verification of double criminality.
- 58 Consequently, even if one were to assume that the situation of persons suspected of having committed offences featuring on the list set out in Article 2(2) of the Framework Decision or convicted of having committed such offences is comparable to the situation of persons suspected of having committed, or convicted of having committed, offences other than those listed in that provision, the distinction is, in any event, objectively justified.
- 59 With regard, second, to the fact that the lack of precision in the definition of the categories of offences in question risks giving rise to disparate implementation of the Framework Decision within the various national legal orders, suffice it to point out that it is not the objective of the Framework Decision to harmonise the substantive criminal law of the Member States and that nothing in Title VI of the EU Treaty, Articles 34 and 31 of which were indicated as forming the legal basis of the Framework Decision, makes the application of the European arrest warrant conditional on harmonisation of the criminal laws of the Member States within the area of the offences in question (see by way of analogy, *inter alia*, Joined Cases C-187/01 and C-385/01 Gözütok and Brügge [2003] ECR I-1345, paragraph 32, and Case C-467/04 Gasparini and Others [2006] ECR I-0000, paragraph 29).

60 It follows that, in so far as it dispenses with verification of double criminality in respect of the offences listed therein, Article 2(2) of the Framework Decision is not invalid inasmuch as it does not breach Article 6(2) EU or, more specifically, the principle of legality of criminal offences and penalties and the principle of equality and non-discrimination.

61 In the light of all of the foregoing, the answer must be that examination of the questions submitted has revealed no factor capable of affecting the validity of the Framework Decision.

Costs

62 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

Examination of the questions submitted has revealed no factor capable of affecting the validity of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.

[Signatures]

ANNEX VII

DECISIONS BY SOME SUPREME COURTS (in summary)

Portugal

- **an application made by Spain for the surrender of a Portuguese national. The EAW was issued for the enforcement of a three year prison sentence.**

A decision of the Évora Court of Appeal granted the surrender of the Portuguese national to serve the sentence. The Public Prosecutor appealed against the Decision, citing Article 4(6) of the Framework Decision and the absence of reciprocity on the part of Spain (see Article 12(2)(f) of Law 3/2003 of 14 March).

While recognising that under Spanish case law a different position would have been taken in a similar situation, the Supreme Court, in applying Article 33(5) of the Constitution of the Portuguese Republic, ruled that lack of reciprocity could not be an obstacle to cooperation in the European Union and therefore decided to surrender the Portuguese national to the appropriate Spanish court for execution of the sentence.

- **The defendant appealed against the Decision of the Lisbon Court of Appeal, allowing his surrender to the Spanish authorities, on the grounds that he had not presented his defence in writing and that the executing Court was unaware of the Decision of the issuing Court.**

The Constitutional Court ruled, as did the Supreme Court of Justice, that a written defence was mandatory only if there was an oral hearing, which had not been the case, and that the executing Court had been aware of the decision of the issuing Court. The decision was simply not in the defendant's favour, and that, naturally, had not pleased him.

- **The defendant appealed against the decision of the Lisbon Court of Appeal granting his surrender to the Belgian authorities on the grounds, firstly, that the decision was invalid since the form had been reworded and completed several times over, thus obscuring the accusation, and, secondly, that there were grounds for refusal to execute the EAW.**

The Supreme Court decided that:

1. The Court of Appeal had indeed requested additional information concerning the facts of the case in order to be able to determine the type of offence involved and to conclude that as the offence was of the type listed in Article 2, verification of the double criminality of the action was unnecessary.
2. As regards the ground for refusal mentioned by the defendant, none of the elements presented by the issuing Court in relation to the defendant's nationality, the location in which the actions took place or the nature of the action, would merit an examination of grounds for non-execution, which in any event would be optional. The surrender Decision of the Lisbon Court of Appeal was therefore confirmed.

Cyprus

On 7 November 2005, the Supreme Court of Cyprus has taken a significant decision with regard to the implementation and enforcement of the Framework Decision on European Arrest Warrant.

The Supreme Court of the Republic of Cyprus upheld the decision of a District Court in an appeal brought before it by the Attorney General against that decision which concluded that the arrest of a Cypriot national and his surrender to the United Kingdom's judicial authorities on the basis of a European arrest warrant, cannot be effected, as the national law transposing the Framework Decision into the domestic legal order is unconstitutional. The Constitution of Cyprus prohibits the extradition of Cypriot nationals to any other country.

The two main arguments submitted by the Attorney General in the appeal, namely that the European arrest warrant procedure is not identical in relation to the extradition procedure and, that, in any case the principle of the supremacy of Community law over the domestic legislation of the Member States should apply *mutatis mutandis* with regard to the law of the European Union, were rejected by the Court with the following reasoning:

- a. even though the nature of the European arrest warrant was discussed, mainly through references to the decision of the Polish Supreme Court on the same matter, the Court decided that irrespective of its nature and whether that amounts to extradition or not, it could not find an appropriate legal basis in the Constitution justifying the arrest of a Cypriot national for the purpose of surrendering him/her to the competent judicial authorities of another Member State on the basis of a European arrest warrant. The reasons justifying the arrest of persons are exhaustively enumerated in the Constitution and none of them may be interpreted as allowing the arrest and surrender of Cypriot nationals to another member state. It could not therefore interpret national law in conformity with the law of the European Union.
- b. Framework decisions issued on the basis of Article 34 of the Treaty on European Union, are not directly effective. The expected results which are binding on the Member States, may be achieved only through transposition “with the appropriate legitimate procedures existing in each Member State”. According to the Court, this has not been done in Cyprus, as the provisions of the relevant legislation transposing the framework decision on the European arrest warrant are in conflict with the provisions of the Constitution. With this reasoning, the Court concludes, even though not explicitly, that framework decisions may not be considered superior to the Constitution.

Following the decision of the Supreme Court and taking into account the consequences this entails for the fulfilment of the obligations of the Republic of Cyprus under the Treaty on European Union, the Government has decided to proceed with the submission to the House of Representatives of a proposal for the amendment of the Constitution.

In the meantime and until the Constitution is amended, the Cypriot competent authorities will not be in a position to execute any European arrest warrants issued by the competent authorities of other Member states, against Cypriot nationals.

In *Cyprus*, by a decision dated 7 November 2005, the Supreme Court of Cyprus declared the law transposing the EAW contrary to the Cypriot Constitution. A revision entered into force on 28 July 2006; however, the new Article 11 as thus amended places a time constraint on the possibility of surrendering nationals inasmuch as this is possible only for acts committed after the date of accession of Cyprus to the Union, i.e. 1 May 2004.

France

- Issuing of a European arrest warrant for acts committed before and after 1 November 1993

In ruling No 5233 handed down on 21 September 2004, the Supreme Court of Appeal, criminal chamber, held that a European arrest warrant could be executed where the request for surrender for the purpose of serving a custodial sentence concerned at least an act committed after 1 November 1993.

- Acts committed partially in France

In ruling No 4351 of 8 July 2004, the Supreme Court of Appeal, criminal chamber, held that the commission of a part of the acts on French territory justified refusal to surrender.

- Must courts systematically examine whether the sentence could be served in France (Article 695-24-2° of the Code of Criminal Procedure)

In ruling No 4540 handed down on 5 August 2004, the Supreme Court of Appeal, criminal chamber, held that the chamber to which a preparatory inquiry has been assigned and which has to rule on the surrender of a person who is the subject of a European arrest warrant issued for the purpose of execution of a sentence, is not bound to examine whether the sentence can be executed on national territory.

- **Surrender granted for acts not punishable under French law**

In ruling No 4540 handed down on 5 August 2004, the Supreme Court of Appeal, criminal chamber, held that a chamber to which a preparatory inquiry has been assigned could not validly order the surrender of a French national who is the subject of a European arrest warrant for acts that do not constitute an infringement in the light of French law.

- **Nature of the European arrest warrant procedure**

In ruling No 4630 handed down on 5 August 2004, the Supreme Court of Appeal, criminal chamber, held that the European arrest warrant procedure and the arrangements for its application do not constitute laws on the arrangements for the execution and application of sentences within the meaning of Article 112-2-3° of the Criminal Code, and that therefore, in accordance with Article 32 of the Council Framework Decision of 13 June 2002, they apply to acts committed as from 1 November 1993 (cf also Criminal Chamber on 23 November 2004, No 6578).

- **Significance of the time limit of six days for receiving the European arrest warrant**

In ruling No 4785 handed down on 1 September 2004, the Supreme Court of Appeal, criminal chamber, held that the time limit of six days laid down by French law for receiving the original or a copy of the European arrest warrant is not laid down subject to an objection of nullity. The question of whether or not such non-observance justifies release of the person has not yet been resolved.

- **Validity of a European arrest warrant issued subsequent to the Schengen alert on the basis of which the person was arrested.**

In ruling No 5548 handed down on 5 October 2004, the Supreme Court of Appeal, criminal chamber, held that a chamber to which a preparatory inquiry has been assigned which refuses the surrender of a person arrested following the issuing of an international arrest warrant alert in the Schengen system on the grounds that the issuing of the European arrest warrant was subsequent to the alert, is not giving a legal basis for its decision (cf also Criminal Chamber on 1 February 2005, No 00742).

- **Nature of decisions of the chamber to which a preparatory inquiry has been assigned subsequent to a decision on surrender (Article 695-46 of the Code of Criminal Procedure).**

In ruling No 5834 handed down on 13 October 2004, the Supreme Court of Appeal, criminal chamber, held that when it is seised of a request for the authorisation of prosecution for infringements other than that on which the surrender was based, and committed prior to the latter, the chamber to which a preparatory inquiry has been assigned is acting without possibility of appeal (cf also Criminal Chamber on 14 December 2004, No 7034).

- **Temporary surrender and absence of a detention order (Article 695-39 of the Code of Criminal Procedure).**

In ruling No 7071 handed down on 13 October 2004, the Supreme Court of Appeal, criminal chamber, held that Article 695-39 of the Code of Criminal Procedure does not make the decision on the temporary surrender of a person sought and prosecuted in France subject to the absence of a detention order concerning that person.

- **Surrender of a person sentenced to a detention order (Article 695-12 of the Code of Criminal Procedure).**

In ruling No 3197 handed down on 25 May 2005, the Supreme Court of Appeal, criminal chamber, held that the surrender of an individual sentenced to a detention order, in this particular instance psychiatric internment having to be reassessed every six months, was in accordance with the provisions of Articles 695-11 to 695-24 of the Code of Criminal Procedure since the duration of the detention order imposed was greater than a custodial sentence of four months.

ANNEX VIII

LIST OF EAW CONTACT POINTS AND CONTACT DETAILS

EUROPEAN ARREST WARRANT
List of contact points and contact details

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