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DRAFT REPORT

with recommendations to the Commission on the review of the European
Arrest Warrant
(2013/2109(INL))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Sarah Ludford

(Initiative – Rule 42 of the Rules of Procedure)

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

with recommendations to the Commission on the review of the European Arrest Warrant (2013/2109(INL))

The European Parliament,

- having regard to Article 225 of the Treaty on the Functioning of the European Union,
 - having regard to Article 5 of the Decision of the European Parliament of 28 September 2005 adopting the Statute for Members of the European Parliament¹,
 - having regard to Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States²,
 - having regard to the Commission reports on the implementation of the European arrest warrant and the surrender procedures between Member States (COM(2005)0063 and SEC(2005)0267, COM(2006)0008 and SEC(2006)0079, COM(2007)0407 and SEC(2007)0979 and COM(2011)0175 and SEC(2011)0430),
 - having regard to the Council's final report on the fourth round of mutual evaluations - the practical application of the European Arrest Warrant and corresponding surrender procedures between Member States of 28 May 2009 (CRIMORG 55),
 - having regard to the revised version of the European Handbook on how to issue a European Arrest Warrant (17195/1/10 REV 1),
 - having regard to the assessment of the European added value of Union measures concerning the European Arrest Warrant, carried out by the European Added Value Unit of the European Parliament,
 - having regard to Rules 42 and 48 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A7-0000/2013),
- A. Whereas Framework Decision 2002/584/JHA constitutes the cornerstone of mutual recognition and has been very successful in speeding up surrender compared to traditional extradition procedures among Member States;
- B. Whereas problems have however arisen in its operation, some specific to Framework Decision 2002/584/JHA and resulting largely from poor implementation, but others shared with the set of mutual recognition instruments due to the incomplete and unbalanced development of the Union area of criminal justice;

¹ OJ L 262, 7.10.2005, p. 1.

² OJ L 190, 18.7.2002, p. 1.

C. Whereas concern exists inter alia about:

- (i) the absence in Framework Decision 2002/584/JHA and other mutual recognition instruments of an explicit ground for refusal based on the infringement or risk of infringement of human rights, which has led to inconsistent transposition and practices in Member States;
- (ii) the absence of a provision in Framework Decision 2002/584/JHA and other mutual recognition instruments on the right to an effective remedy which is left to be governed by national law, leading to uncertainty and inconsistent practices between Member States;
- (iii) the lack of regular review of the Schengen Information System (SIS) and Interpol alerts as well as the lack of an automatic link between the withdrawal of a European Arrest Warrant (EAW) and the removal of such alerts, and uncertainty as to the effect of a refusal to execute an EAW on the continued validity of an EAW and the linked alerts;
- (iv) disproportionate use of the EAW for minor offences or in circumstances where less intrusive alternatives might be used, leading to unwarranted arrests, time spent in pre-trial detention and burdens on the resources of Member States;
- (v) the lack of precision as to the meaning of "for the purposes of conducting a criminal prosecution" in Article 1 of Framework Decision 2002/584/JHA such that EAWs are apparently being issued to arrest people in order to hear them as suspects or witnesses rather than to prosecute and try them as accused persons;
- (vi) the lack of a definition of the term 'judicial authority' in Framework Decision 2002/584/JHA and other mutual recognition instruments which has led to a variation in practice between Member States causing uncertainty, harm to mutual trust, and litigation;
- (vii) the absence of Union provisions on compensation for miscarriages of justice, which leads to greatly divergent Member State practices and frequently to the lack of compensation for victims of miscarriages such as mistaken identity, contrary to standards laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and in the well-established case-law of the Court of Justice of the European Union (ECJ);
- (viii) the extensive periods that some individuals are spending in pre-trial detention, which should be a last resort;
- (ix) the poor conditions in a number of detention facilities across the Union and the impact that this has on the effectiveness and functioning of Union mutual recognition instruments;
- (x) the failure to use other existing Union judicial cooperation and mutual recognition tools;

1. Keeping in mind the new legal framework from 2014 under the Lisbon Treaty, considers that this report should not deal with problems arising directly from the incorrect implementation of Framework Decision 2002/584/JHA since it is more appropriate that such problems are remedied by way of enforcement proceedings brought by the Commission;
2. Considers that as the problems highlighted in recital C arise out of both the specifics of Framework Decision 2002/584/JHA and the incomplete and unbalanced nature of the Union area of criminal justice, the legislative solutions need to address both;
3. Therefore requests the Commission to submit, on the basis of Article 82 of the Treaty on the Functioning of the European Union, legislative proposals following the detailed recommendations set out in the Annex hereto and providing for:
 - (a) a mandatory refusal ground based on the infringement or risk of infringement of human rights applicable to mutual recognition instruments;
 - (b) a proportionality check when issuing mutual recognition decisions, based on the seriousness of the offence and the availability of an appropriate less intrusive alternative measure;
 - (c) a standardised consultation procedure whereby the relevant authorities in the issuing and executing state can exchange information regarding the execution of judicial decisions, for example in regard to the EAW to ascertain trial-readiness;
 - (d) a procedure whereby a mutual recognition measure can, if necessary, be validated in the issuing State by a judge, court, investigating magistrate or public prosecutor, in order to overcome the differing interpretations of the term “judicial authority”;
 - (e) consistent legal remedies to secure the right to an effective legal remedy in compliance with Article 47(1) of the Charter of Fundamental Rights of the European Union;
4. Calls for a regular review of non-executed EAWs and consideration of whether they, together with the corresponding SIS and Interpol alerts, should be withdrawn; also calls for the withdrawal of EAWs and the corresponding SIS and Interpol alerts where the EAW has been refused on mandatory grounds;
5. Calls on Member States to implement the whole body of Union criminal justice measures and thereby make available to judicial authorities alternative and less intrusive mutual recognition instruments;
6. Calls for Member States to compensate damage arising from miscarriages of justice relating to mutual recognition instruments, in accordance with the standards laid down in the ECHR and in the well-established case-law of the ECJ;
7. Calls on Member States and the Commission to cooperate in strengthening contact networks of judges, prosecutors and criminal defence lawyers to facilitate effective and well-informed EAW proceedings, and to offer relevant training at national and European level to judicial and legal practitioners including defence lawyers acting in such

proceedings.

8. Calls on the Commission to provide adequate funding to bodies such as the European Judicial Training Network, to the potential European Arrest Warrant Judicial Network and to a network of defence lawyers working on European criminal justice and extradition matters.
9. Calls on the Commission to explore the legal and financial means available at Union level to improve detention conditions in Member States.
10. Confirms that the recommendations respect fundamental rights and the principle of subsidiarity.
11. Instructs its President to forward this resolution and the accompanying detailed recommendations to the Commission and the Council.

ANNEX TO THE MOTION FOR A RESOLUTION: RECOMMENDATIONS AS TO LEGISLATIVE PROPOSALS

Fundamental Rights refusal ground to be applied to Union mutual recognition legal instruments:

- There are substantial grounds to believe that the execution of the measure would be incompatible with the executing Member State's obligations under Article 6 of the Treaty on European Union.

Proportionality check for Union mutual recognition legal instruments:

- When issuing a decision to be executed in another Member State, the competent authority shall carefully assess the need for the requested measure on the basis of the seriousness of the offence and apply the least intrusive available measure.

Consultation procedure between the relevant authorities in the issuing and executing state to be used for Union mutual recognition legal instruments:

- A standardised procedure whereby the competent authorities of the issuing and executing States shall exchange information and consult each other with a view to facilitating the smooth and efficient application of the relevant mutual recognition instruments, including for instance with regard to the EAW in order to ascertain trial-readiness;

Validation procedure for Union mutual legal recognition instruments:

- "issuing authority" in Union criminal legislation shall be defined as:
 - (i) a judge, a court, an investigating magistrate or a public prosecutor competent in the case concerned; or
 - (ii) any other competent authority as defined by the issuing State, provided that the act to be executed is validated, after examination of its conformity with the conditions for issuing the instrument, by a judge, court, investigating magistrate or a public prosecutor in the issuing State.

Provision on legal remedies applicable to mutual recognition instruments:

- Member States shall ensure that everyone whose rights and freedoms are violated by a decision, action or omission in the application of an instrument of mutual recognition in criminal matters has the right to an effective remedy before a tribunal. If such a remedy is exercised in the executing state and has suspensive effect, the final decision on such a remedy shall be taken within the time limits set by the applicable mutual recognition instrument or, in the absence of explicit time limits, with sufficient promptness to ensure that the purpose of the mutual recognition process is not jeopardised.

EXPLANATORY STATEMENT

The European Arrest Warrant¹ Framework Decision (henceforth "EAW FD") approved in 2002 entered into operation on 1 January 2004 and is the most important EU legal instrument based on the mutual recognition principle whereby judicial decisions are executed on the basis of mutual trust. The objective of the EAW FD was to make it quicker and easier to bring suspects and accused persons to justice by transforming the old cumbersome extradition procedure involving politicians into a new faster surrender system through communication between judicial authorities. The EAW facilitates surrender by, *inter alia*, setting strict time limits and limiting the use of dual criminality as a ground for refusal. It requires the requested Member State to execute the warrant without any assessment of the substance of the accusation or conviction.

Since its introduction, it has provided a more efficient mechanism to ensure that open borders are not exploited by those seeking to evade justice. At the same time, speedier surrender means that suspected and accused persons ought no longer to be detained for long periods of time while waiting to be extradited. The European Commission has presented three reports on the implementation of the EAW FD which deem the EAW's operational implementation an overall success in particular regarding the reduction in delay of extradition (from the average of one year pre-EAW to about fifteen days with consent and about fifty days without consent under the EAW)².

However, despite an overall positive evaluation, the European Commission's three reports on the implementation of the 2002 Framework Decision all reveal imperfections in the functioning of the system (including non-respect of procedural rights of suspected and accused persons, poor detention conditions, alleged overuse of EAWs by some Member States and failure to apply proportionality) which are perhaps borne out by the statistics that between 2005 and 2009 54,689 EAWs were issued and only 11,630 EAWs were executed.³

The reciprocal confidence necessary to the smooth operation of the EAW FD has thus been subject to a considerable number of challenges resulting from its practical application, including criticisms arising from the systematic use of the EAW FD for minor offences and concerns as to whether individual rights are at risk despite the incorporation in Article 1.3 and Recital 12 of the FD of an assumption that fundamental rights are respected in surrender procedures. Member States have thus sought to apply the principles of their national judicial systems due to fears that an issuing Member State applied lower standards with regard to procedural safeguards or fundamental rights.

In order not to undermine the credibility of the EAW and EU criminal justice initiatives in general, these problems should be addressed. Operational issues with the EAW have their roots in different causes: incomplete and inconsistent implementation of the EAW FD such as failure to comply with time limits; gaps in the EAW FD; and the incomplete and unbalanced

¹ Council Framework Decision 2002/584/JHA amended in 2009 by the Council Framework Decision 2009/299/JHA

² COM(2011)175, On the implementation since 2007 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States

³ COM(2011)175, On the implementation since 2007 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States

nature of the EU area of criminal justice.

Problems arising from the incomplete and inconsistent implementation of the EAW FD are not covered in this report as they should primarily be addressed by the European Commission rather than through EU legislative reform.

Problems arising from the gaps in the EAW FD are not necessarily unique to this measure but are to some extent shared with other mutual recognition instruments and are further related to the incomplete and unbalanced nature of the EU area of criminal justice. There have been legal or legislative changes at national level affecting EAW proceedings, for example in the UK and Poland, purporting to resolve issues such as proportionality, but the risk is that discrepancies between Member States will continue to persist or even grow. Soft law measures such as the revised *European Handbook on how to issue a European Arrest Warrant* are helpful but have not resolved all the problems. Legislative action at EU level is therefore considered necessary to reform the operation of the EAW and the other mutual recognition instruments and to secure better balance in the EU criminal justice area.