# JUDGMENT OF THE COURT (Grand Chamber)

3 May 2007 *

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,

* Language of the case: Dutch.

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. Jacubowitz 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-1579, paragraph 51, and Case C-355/04 P *Segi and Others* v *Council* [2007] ECR I-1657, 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 last 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-10211, 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-9199, 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]