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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the implementation of Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States

1. INTRODUCTION

1.1. Background

Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States[1] ('the Framework Decision') is the first EU legal instrument on cooperation in criminal matters based on the principle of mutual recognition[2]. The Framework Decision has provided a more efficient mechanism to ensure open borders are not exploited by those seeking to evade justice, and has contributed to the EU objective of developing and maintaining an area of freedom, security and justice. It is a widely used instrument for judicial cooperation in criminal matters in the EU. According to the statistics for 2018[3], an estimated average of 54,5% of requested persons consent to their surrender (compared to 62,96% in 2017), with the surrender procedure lasting on average 16,41 days after the arrest. The average surrender time for those who do not consent is around 45,12 days. This is in stark contrast with the lengthy extradition procedures that used to exist between Member States prior to the Framework Decision.

In February 2009, the Framework Decision was amended by Council Framework Decision 2009/299/JHA concerning trials *in absentia*[4], inserting a clear and common ground for non-execution of decisions rendered in the absence of the person concerned at the trial[5]. Furthermore, the procedural rights of persons arrested on the basis of a European arrest warrant have been strengthened by six directives[6] on: the right to interpretation and translation[7]; the right to information[8]; the right of access to a lawyer[9];

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[1] OJ L 190, 18.7.2002, p. 1.

[2] The program of measures to implement the principle of mutual recognition of criminal decisions envisaged in the Tampere European Council Conclusions and adopted by the Council on 30 November 2000,OJ C 12 E, 15.1.2001, p. 10: "The principle of mutual recognition is founded on mutual trust developed through the shared values of Member States concerning respect for human dignity, freedom, democracy, equality, the rule of law and human rights, so that each authority has confidence that the other authorities apply equivalent standards of protection of rights across their criminal justice systems".

[3] https://e-justice.europa.eu/content_european_arrest_warrant-90-en.do

[4] Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial, OJ L 81, 27.3.2009, p. 24.

[5] The consolidated version: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC1006(02)&from=DA, p. 45.

[6] Resolution of the Council of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings set the basis for six directives, OJ C 295, 4.12.2009, p. 1.

[7] Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, OJ L 280, 26.10.2010, p. 1; REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the implementation of Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, COM(2018) 857 final: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018DC0857.

[8] Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, OJ L 142, 1.6.2012, p. 1; REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the implementation of Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, COM(2018) 858 final:

strengthening certain aspects of the presumption of innocence and the right to be present at the trial[10]; procedural safeguards for children[11] and legal aid[12].

The Commission issued three reports on the implementation of the Framework Decision[13]. The Council published a Handbook on how to issue the European arrest warrant to assist practitioners in 2008[14] and revised it in 2010[15]. The Commission updated the Handbook in 2017[16]. Between March 2006 and April 2009, the practical application of the Framework Decision was subject to a peer review among Member States with the Commission as observer in the context of the 4th round of mutual evaluations[17]. Certain aspects of the Framework Decision are currently subject to a new peer review under the 9th round of mutual evaluations, assessing selected practical and operational aspects of the European arrest warrant[18].

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https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018DC0858.

[9] Directive 2013/48/EU the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, OJ L 294, 6.11.2013, p. 1; REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the implementation of Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third person informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, COM(2019) 560 final: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52019DC0560.

[10] Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial, OJ L 65, 11.3.2016, p. 1.

[11] Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects and accused in criminal proceedings, OJ L 132, 21.5.2016, p. 1.

[12] Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings, OJ L 297, 4.11.2016, p. 1; corrigendum: OJ L 91, 5.4.2017, p. 40.

[13] REPORT FROM THE COMMISSION based on Article 34 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (revised version), COM(2006) 8 final: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52006DC0008; REPORT FROM THE COMMISSION on the implementation since 2005 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, COM(2007) 407 final: https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1588746623870&uri=CELEX:52007DC0407 and REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL 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, COM(2011)175 final: https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1588746744852&uri=CELEX:52011DC0175.

[14] Final version of the European handbook on how to issue a European Arrest Warrant: https://data.consilium.europa.eu/doc/document/ST-8216-2008-REV-2/en/pdf.

[15] Revised version of the European handbook on how to issue a European Arrest Warrant: https://data.consilium.europa.eu/doc/document/ST-17195-2010-REV-1/en/pdf.

[16] Handbook on how to issue and execute a European arrest warrant, OJ C 335, 6.10.2017, p. 1: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC1006(02)&from=DA.

[17] Follow-up to the evaluation reports on the fourth round of mutual evaluations: practical application of the European arrest warrant and the relevant surrender procedures between Member States: https://data.consilium.europa.eu/doc/document/ST-15815-2011-INIT/en/pdf.

[18] 9th round of mutual evaluations - Scope of the evaluation and contributions to the questionnaire: https://data.consilium.europa.eu/doc/document/ST-6333-2019-INIT/en/pdf.

On 27 February 2014, the European Parliament adopted a resolution with recommendations to the Commission on the review of the European arrest warrant[19], proposing in particular a prior proportionality check; a mandatory ground for non-execution concerning fundamental rights; the right to an effective legal remedy and a better definition of the crimes where the European arrest warrant should apply. The Commission in its reply to the European Parliament explained why it did not consider it appropriate to revise the Framework Decision either alone or alongside a revision of other mutual recognition instruments[20].

The limitations of the judicial control by the Court of Justice and of the enforcement powers of the Commission in the area of police cooperation and judicial cooperation in criminal matters were lifted on 1 December 2014, following the end of the five year transitional period concerning the ex-third pillar instruments under Protocol No 36 to the Treaty on the Functioning of the European Union[21]. Consequently, the interpretation of the Framework Decision has given rise to a steadily increasing number of requests for preliminary rulings to the Court of Justice. Therefore, the number of preliminary ruling references on the Framework Decision has rapidly increased, from a total of 12 in 2014 to over 50 by the middle of 2020.

1.2. Purpose and main elements of the Framework Decision

The Framework Decision 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. It is based on the principle of mutual recognition. The issuing Member State's judicial decision must be recognised in the executing Member State without further formalities, unless grounds for non-execution apply.

The main elements of the Framework Decision distinguishing it from extradition regimes are:

- The European arrest warrant is a judicial decision enforceable in another Member State on the basis of the principle of mutual recognition;
- The grounds for non-execution are limited and exhaustively listed in the Framework Decision;
- There is no verification of double criminality with regard to 32 categories of offences listed in Article 2(2) of the Framework Decision, as defined by the issuing Member State, if those offences are punishable by a custodial sentence or a detention order for a maximum period of at least three years;
- The surrender of a Member State's own nationals is the general rule, with only few exceptions. These exceptions concern the enforcement of custodial sentences in one's 'home' Member State and apply equally to residents. The main reason for these exceptions is to promote the social rehabilitation of a requested person;

[19] European Parliament resolution of 27 February 2014 with recommendations to the Commission on the review of the European Arrest Warrant (2013/2109(INL)), OJ C 285, 29.8.2017, p. 135.
[20] Follow up to the European Parliament resolution with recommendations to the Commission on the review of the European arrest warrant, SP(2014) 447: https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2013/2109(INL).
[21] OJ C 115, 9.5.2008, p. 322.

- There are strict time limits to take a decision on the execution of a European arrest warrant and to surrender a requested person;
- To make requests simpler and easier to comply with, they are based on the European arrest warrant form.

1.3. Objective and scope of the report

This report assesses how the Framework Decision as amended by Council Framework Decision 2009/299/JHA has been transposed in all 27 Member States bound by it[22]. The assessment is based primarily on the analysis of the national measures transposing the Framework Decision that were notified to the General Secretariat of the Council and the Commission in accordance with Article 34(2) of the Framework Decision.

Most Member States have amended their national laws transposing the Framework Decision since the last Commission report from 2011[23]. Therefore, in preparing this report, the Commission's recommendations from previous reports and recommendations from the 4th round of mutual evaluations concerning transposition (e.g. on proportionality of issued European arrest warrants[24]) were taken into consideration.

Similar to the first Commission implementation report from 2005[25], this report includes an assessment of the provisions of the Framework Decision. It focuses on selected provisions, which form the core of the Framework Decision and are crucial for the smooth functioning of the European arrest warrant. These provisions include in particular: the designation of the competent judicial authorities, the definition and the scope of the European arrest warrant, fundamental rights and procedural rights of a requested person, grounds for non-execution and verification of double criminality, and time limits for taking a decision and surrendering a requested person.

2. GENERAL ASSESSMENT

As of the publication date of this report, all Member States had notified transposition of the Framework Decision[26].

[22] The Framework Decision is binding on all 27 Member States, including Denmark and Ireland. The report also includes the UK, which is bound by the Framework Decision until the end of the transition period on 31 December 2020.

[23] REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL 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, COM(2011)175 final: https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1588746744852&uri=CELEX:52011DC0175.

[24] A downward trend concerning the number of issued European arrest warrant could be observed in some Member States on the basis of statistics provided by Member States: https://e-justice.europa.eu/content_european_arrest_warrant-90-en.do.

[25] REPORT FROM THE COMMISSION based on Article 34 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (revised version), COM(2006) 8 final: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52006DC0008.

[26] Under Article 34(1) of the Framework Decision, Member States had to transpose the Framework Decision into national law by 31 December 2003. In case of Member States, which joined the EU later (respectively in 2004, 2007 and 2013), the applicable deadline for transposition was their accession date. More than half of the Member States met the deadlines for transposition.

The general assessment demonstrates a rather satisfactory level of implementation of the Framework Decision in a significant number of Member States. However, the assessment of national implementing measures has also demonstrated certain issues of compliance in some Member States. Unless remedied, such deficiencies limit the effectiveness of the European arrest warrant. Therefore, the Commission will take every appropriate measure to ensure conformity with the Framework Decision throughout the EU, including, where necessary, initiating infringement proceedings under Article 258 of the Treaty on the Functioning of the European Union.

Since the publication of the last implementation report, the Commission has organised five experts' meetings with the Member States to support them in the practical operation of the Framework Decision[27].

In March 2020, a European arrest warrant coordination group was set up. The purpose of the European arrest warrant coordination group is to enhance the swift exchange of information and cooperation of different actors involved in the operation of the Framework Decision, i.e. practitioners and policy-makers from Member States, Eurojust, EJN, the General Secretariat of the Council and the Commission. The exchanges within the group should lead to a more uniform application of the Framework Decision.

3. SPECIFIC POINTS OF ASSESSMENT

3.1. Competent judicial authorities and central authorities (Articles 6 and 7)

In accordance with Article 6, all Member States have notified the General Secretariat of the Council which judicial authorities are competent to issue and execute a European arrest warrant. In general, this has been their judicial authorities competent to investigate and hear criminal cases.

3.1.1. *Issuing judicial authorities (Article 6(1))*

The Court of Justice ruled that the term 'judicial authority' in Article 6(1) of the Framework Decision is not limited only to the judges or courts of a Member State, but must be construed more broadly, including the authorities participating in the administration of criminal justice in that Member State. Therefore, public prosecutor's offices qualify as issuing judicial authorities, provided that they are not exposed to the risk of being subject, directly or indirectly, to directions or instructions in a specific case from the executive, such as a Minister for Justice, in connection with the adoption of a decision to issue a European arrest warrant[28]. Furthermore, the Court of Justice clarified that the term 'judicial authority' cannot be interpreted as also covering a police service[29] or an organ of the executive of a Member State, such as a Ministry of Justice[30].

[27] On 1 April 2014, 20 November 2014, 7 July 2016, 17 October 2017 and 7 May 2019.

[28] *Cf.* Judgments of the Court of Justice of 27 May 2019, *OG* and *PI*, C-508/18 and C-82/19 PPU, ECLI:EU:C:2019:456 and *PF*, C-509/18, ECLI:EU:C:2019:457; judgments of the Court of Justice of 12 December 2019, *JR* and *YC*, C-566/19 PPU and C-626/19 PPU, ECLI:EU:C:2019:1077, *XD*, C-625/19 PPU, ECLI:EU:C:2019:1078 and *ZB*, C-627/19 PPU, ECLI:EU:C:2019:1079.

[29] *Cf.* Judgment of the Court of Justice of 10 November 2016, *Poltorak*, C-452/16 PPU, ECLI:EU:C:2016:858.

[30] *Cf.* Judgment of the Court of Justice of 10 November 2016, *Kovalkovas*, C-477/16 PPU, ECLI:EU:C:2016:861.

Given the possibility for the executive to give instructions to their public prosecutors[31], a small number of Member States have recently designated courts or judges as the competent issuing authorities to comply with the judgment in joined Cases C-508/18, *OG* and C-82/19 PPU, *PI*[32] and the judgment in Case C-509/18, *PF*[33].

Currently, in half of the Member States courts or judges are solely competent to issue a European arrest warrant. In a few Member States, it is entirely to the public prosecutor's offices to issue a European arrest warrant. Several Member States have designated both courts and public prosecutor's offices as issuing authorities. Furthermore, some of those Member States have designated different authorities depending on the stage of criminal proceedings (e.g. pre-indictment and post-indictment or pre-trial and trial) or on the purpose of the European arrest warrant (prosecution or execution of a sentence). In one Member State, a court endorses a proposal by a public prosecutor's office to issue a European arrest warrant[34]. One Member State designated its public prosecutor's office and criminal sanctions agency as competent authorities. A small number of Member States have appointed a single dedicated body (e.g. the Prosecutor General's Office).

3.1.2. *Executing judicial authorities (Article 6(2))*

As competent executing authorities, a large majority of Member States have designated courts (e.g. courts of appeal; district courts; supreme courts) or judges. For example, one Member State designated a specialised juvenile judge for European arrest warrants concerning minors; another Member State designated two different bodies, depending on whether a person consents to surrender or not. A few Member States have designated public prosecutor's offices. A small number of Member States have designated both courts and public prosecutor's offices. Some Member States have appointed a single dedicated body (e.g. the Prosecutor General's Office or the High Court).

3.1.3. *Central authorities (Article 7)*

Article 7 provides for a possibility for Member States to designate one or more central authorities to assist the competent judicial authorities with the administrative transmission and reception of European arrest warrants and other related official correspondence.

A significant number of Member States have designated a central authority in accordance with Article 7(1). In most cases, this was their Ministry of Justice. A small number of Member States have designated multiple central authorities (e.g. three central authorities: besides the Ministry of Justice also the Chief Public Prosecutor and the Police Presidium, or the Federal Ministry of Interior and the Federal Criminal Police Office).

A few Member States granted the designated central authority(ies) additional powers not authorised under Article 7(2) (e.g. the central authorities are responsible for preliminary endorsement of incoming European arrest warrants; or the central authority may under certain conditions postpone execution of a ruling on surrender).

[31] The 2019 EU Justice Scoreboard: https://ec.europa.eu/info/sites/info/files/justice_scoreboard_2019_en.pdf, p. 51 – 52.
[32] *Cf.* Judgment of the Court of Justice of 27 May 2019, *OG* and *PI*, C-508/18 and C-82/19 PPU, ECLI:EU:C:2019:456.
[33] *Cf.* Judgment of the Court of Justice of 27 May 2019, *PF*, C-509/18, ECLI:EU:C:2019:457.
[34] *Cf.* Judgment of the Court of Justice of 9 October 2019, *NJ*, C-489/19 PPU, ECLI:EU:C:2019:849.

3.2. Language regime (Article 8(2))

Under Article 8(2), a European arrest warrant must be translated by the competent issuing authorities into the official language(s) of the executing Member State. Member States may declare that they will accept a translation in one or more other official EU languages.

More than half of the Member States deposited a declaration stating that they accept European arrest warrants in other official languages than their own (typically English)[35]. A small number of Member States have made their declarations conditional on a reciprocal commitment from other Member States. A few Member States have established preferential language regimes for incoming European arrest warrants from certain neighbouring Member States.

3.3. Definition of the European arrest warrant and obligation to respect fundamental rights and fundamental legal principles (Article 1)

3.3.1. *Definition (Article 1(1))*

All Member States transposed Article 1(1) of the Framework Decision defining the European arrest warrant as a judicial decision[36] 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.

Most Member States explicitly refer to the European arrest warrant as a judicial decision, and almost all Member States laid out explicitly that the European arrest warrant must apply for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order. However, where European arrest warrants for the purposes of conducting a criminal prosecution are concerned, a couple of Member States deviated from the Framework Decision having adopted a narrower approach towards the prosecution purposes, by requiring that a European arrest warrant is "trial ready"[37]. All Member States make a reference to "custodial sentence"; however, a small number lack an explicit reference to "detention order".

3.3.2. *Obligation to respect fundamental rights and fundamental legal principles (Article 1(3) and Recitals 10, 12 and 13)*

Article 1(3) states that the Framework Decision must 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[38]. Article 6 of the Treaty on European Union refers to the Charter of Fundamental Rights of the European Union[39], the European

[35] Handbook on how to issue and execute a European arrest warrant, OJ C 335, 6.10.2017, p. 1, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC1006(02)&from=DA, p. 74 – 75.
[36] *Cf.* Judgments of the Court of Justice of 10 November 2016, *Poltorak*, C-452/16 PPU, ECLI:EU:C:2016:858; *Kovalkovas*, C-477/16 PPU, ECLI:EU:C:2016:861 and judgment of the Court of Justice of 9 October 2019, *NJ*, C-489/19 PPU, ECLI:EU:C:2019:849.
[37] Trial readiness means that a decision has been made to charge the person with, and try him or her for an offence.
[38] OJ C 326, 26.10.2012, p. 13.
[39] OJ C 326, 26.10.2012, p. 391.

Convention for the Protection of Human Rights and Fundamental Freedoms[40] and the constitutional traditions common to the Member States.

Recital 10 specifies that the mechanism of the European arrest warrant 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 a Member State of the principles set out in Article 2 of the Treaty on European Union[41], determined by the European Council pursuant to Article 7(2) of the Treaty on European Union[42] with the consequences set out in Article 7(3)[43] of the Treaty on European Union[44].

Recital 12 provides that nothing in the Framework Decision may be interpreted as prohibiting refusal to surrender a person for whom a European arrest warrant 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 the person's position may be prejudiced for any of these reasons. Recital 12 also states that the 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.

Recital 13 reflects Articles 4 and 19(2) of the Charter of Fundamental Rights of the European Union stating that 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[45].

These provisions apply to Member States both when acting as the issuing Member State and as the executing Member State[46].

The large majority of Member States have explicitly transposed the obligation to respect fundamental rights and fundamental legal principles, some in general terms, but others with specific reference to the rights mentioned in recitals 12 and 13. For example, some national transpositions refer generally to treaties on human rights and fundamental freedoms[47] and/or to Article 6 of the Treaty on European Union. A few Member States transposed Article 1(3) of the Framework Decision by referring solely to the European

[40] Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (ETS No.005).
[41] Before the amendments of the Treaty on European Union: Article 6(1).
[42] Before the amendments of the Treaty on European Union: Article 7(1).
[43] Before the amendments of the Treaty on European Union: Article 7(2).
[44] *Cf.* Judgment of the Court of Justice of 25 July 2018, *LM*, C-216/18 PPU, ECLI:EU:C:2018:586.
[45] *Cf.* Judgment of the Court of Justice of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, ECLI:EU:C:2016:198, paragraph 104; judgment of the Court of Justice of 6 September 2016, *Petruhhin*, C-182/15, ECLI:EU:C:2016:630, paragraph 60; order of the Court of Justice of 6 September 2017, *Schotthöfer & Steiner v Adelsmayr*, C-473/15, ECLI:EU:C:2017:633, paragraph 27; judgment of the Court of Justice of 25 July 2018, *ML*, C-220/18 PPU, ECLI:EU:C:2018:589; judgment of the Court of Justice of 15 October 2019, *Dorobantu*, C-128/18, ECLI:EU:C:2019:857 and judgment of the Court of Justice of 2 April 2020, *IN*, Case C-897/19 PPU, ECLI:EU:C:2020:262, paragraphs 63 to 68.
[46] *Cf.* Judgment of the Court of Justice of 29 January 2013, *Radu* C-396/11, ECLI:EU:C:2013:39, paragraphs 39 to 43; judgment of the Court of Justice of 16 July 2015, *Lanigan*, C-237/15 PPU, ECLI:EU:C:2015:474, paragraphs 53 and 54 and judgment of the Court of Justice of 6 December 2018, *IK*, C-551/18 PPU, ECLI:EU:C:2018:991, paragraphs 66 and 67.
[47] E.g. the European Convention for the Protection of Human Rights and Fundamental Freedoms; the Convention against torture and other cruel, inhuman or degrading treatment or punishment of 10 December 1984; the International Covenant on Civil and Political Rights of 16 December 1966; Convention relating to the status of refugees of 28 July 1951.

Convention for the Protection of Human Rights and Fundamental Freedoms, omitting a reference to the Charter of Fundamental Rights of the European Union.

Some Member States refer also to national constitutions. However, referring to national constitutions may go beyond Article 1(3) of the Framework Decision, in particular as Article 6 of the Treaty on European Union refers only to those constitutional principles that are common to Member States. According to the case law of the Court of Justice Member States cannot demand a higher level of national protection of fundamental rights from another Member State than that provided by EU law[48].

Furthermore, a small number of Member States have not explicitly referred to fundamental rights and fundamental legal principles in their implementing provisions, since their constitutional laws oblige them to respect fundamental rights and fundamental legal principles.

Despite the absence of a corresponding provision in the Framework Decision, most Member States explicitly provide for a mandatory ground for non-execution, based on the violation of fundamental rights or by referring to violations of rights referred to in recitals 12 and 13 (e.g. race, nationality, religion or political opinions).

3.4. Issuing a European arrest warrant (Articles 2(1) and 8(1))

3.4.1. *Scope and conditions for issuing a European arrest warrant (Article 2(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 made, for sentences of at least four months.

This provision was transposed in a conform manner by most Member States. However, a small number of Member States have not explicitly provided discretion for their competent issuing judicial authorities to examine whether, in the light of the particular circumstances of each case, it is proportionate to issue a European arrest warrant[49].

A few Member States have provided for a narrower scope to address the proportionality[50] of European arrest warrants that can be issued by their judicial authorities (e.g. imposing higher thresholds; requiring that a term of four months should still remain to be served, or requiring that an European arrest warrant must be in the interest of justice).

The Framework Decision is silent on surrender for offences punishable by a lower penalty than the threshold set out in Article 2(1) when those offences are accessory to the

[48] *Cf.* Judgment of the Court of Justice of 26 February 2013, *Melloni*, C-399/11, ECLI:EU:C:2013:107, paragraph 63 and judgment of the Court of Justice of 15 October 2019, *Dorobantu*, C-128/18, ECLI:EU:C:2019:857, paragraph 79.

[49] *Cf.* Judgment of the Court of Justice of 27 May 2019, *OG and PI*, C-508/18 and C-82/19 PPU, ECLI:EU:C:2019:456, paragraphs 71 and 75.

[50] REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the implementation since 2007 of the Council Framework Decision of 13 June 2002, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0175&from=EN, p. 7 – 8.

main offences that do meet that threshold[51]. In practice, some Member States have decided to allow surrender in such cases, whereas others do not[52].

Moreover, some Member States have explicitly adapted the scope in accordance with Council Framework Decision 2009/829/JHA on supervision measures as an alternative to provisional detention[53], to the effect that a European arrest warrant can also be issued where the threshold of 12 months is not fulfilled, if a supervision measure has been breached.

3.4.2. *Requirements for the content of a European arrest warrant and the first level of judicial protection (Article 8(1))*

Article 8(1) of the Framework Decision lays down the requirements regarding the content of a European arrest warrant[54]. In particular this includes:

- evidence of an enforceable judicial decision[55] (such as a national arrest warrant) which must be distinct from the European arrest warrant itself to guarantee the first level of judicial protection[56];
- the nature and legal classification of the offence;
- 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 and the penalty imposed[57].

Nearly all Member States transposed Article 8(1) of the Framework Decision in a complete and conform manner, with a comparatively high number of literal transpositions of Article 8(1). One Member State stipulates that the European arrest warrant must be accompanied by additional documents (e.g. a copy of the applicable provisions; a report concerning facts on which the European arrest warrant is based; information about the sources of evidence).

[51] The European Convention on Extradition of 13 December 1957 (ETS No 024) contains a provision on accessory offences.
[52] Handbook on how to issue and execute a European arrest warrant, OJ C 335, 6.10.2017, p. 1, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC1006(02)&from=DA, p. 82.
[53] Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention, OJ L 294, 11.11.2009, p. 20.
[54] *Cf.* Judgment of the Court of Justice of 1 December 2008, *Leymann and Pustovarov*, C-388/08 PPU, ECLI:EU:C:2008:669, paragraphs 52 and 53 and judgment of the Court of Justice of 23 January 2018, *Piotrowski*, C-367/16, EU:C:2018:27, paragraphs 57 to 59.
[55] *Cf.* Judgment of the Court of Justice of 1 June 2016, *Bob-Dogi*, C-241/15, ECLI:EU:C:2016:385, paragraphs 54 and 58 and judgment of 10 November 2016, *Özçelik*, C-453/16 PPU, ECLI:EU:C:2016:860, paragraphs 33 to 37.
[56] *Cf.* Judgment of the Court of Justice of 1 June 2016, *Bob-Dogi*, C-241/15, ECLI:EU:C:2016:385, paragraphs 55 and 56; judgment of the Court of Justice of 27 May 2019, *OG* and *PI*, C-508/18 and C-82/19 PPU, ECLI:EU:C:2019:456, paragraphs 66 and 67 and judgment of the Court of Justice of 27 May 2019, *PF*, C-509/18, ECLI:EU:C:2019:457, paragraphs 44 and 45.
[57] *Cf.* Judgment of the Court of Justice of 1 December 2008, *Leymann and Pustovarov*, C-388/08 PPU, ECLI:EU:C:2008:669, paragraph 52; judgment of the Court of Justice of 6 December 2018, *IK*, C-551/18 PPU, ECLI:EU:C:2018:991 and judgment of the Court of Justice of 3 March 2020, *X*, C-717/18, ECLI:EU:C:2020:142, paragraph 37.

3.5. Direct contacts between the issuing judicial authority and the executing judicial authority (Articles 10(5) and 15(2))

Article 10(5) provides that all difficulties concerning the transmission or the authenticity of any document needed for executing the European arrest warrant must 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 (cf. 3.1). Over half of the Member States correctly transposed Article 10(5); however, in some Member States the relevant provisions could not be identified, and a small number of Member States have transposed it only partially (e.g. expressly addressing only the authenticity, but not the transmission issues).

In accordance with Article 15(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 must request that the necessary supplementary information be furnished as a matter of urgency[58]. This is in particular with respect to Articles 3 to 5 (Grounds for non-execution, cf. 3.8. and Guarantees, cf. 3.9.) and Article 8 (Content, cf. 3.4.2.) of the Framework Decision[59]. The executing judicial authority may fix a time limit for the receipt of this information, taking into account the need to observe the time limits set in Article 17 (cf. 3.13.). A large number of Member States transposed the provision in a conform manner. Some Member States do not explicitly refer to the element of urgency, but specify that time limits must be fixed. One Member State transposed the provision as optional. However, in two Member States the relevant provisions could not be identified.

3.6. Executing a European arrest warrant (Article 1(2))

The executing judicial authority has a general duty to execute a European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of the Framework Decision (Article 1(2))[60].

Less than half of the Member States have provided an explicit reference to the principle of mutual recognition in their laws. Two Member States have referred to this principle in soft law. A few Member States have instead referred to the principle of reciprocity. In some others, no specific transposing provisions could be identified. In cases where the principle of mutual recognition is not explicitly mentioned in the national laws transposing the Framework Decision, it can be inferred from the structure of the transposing laws. However, the transposition of the grounds for non-execution in particular indicates that the principle of mutual recognition is not fully observed in a significant number of Member States (cf. 3.8.).

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[58] *Cf.* Judgment of the Court of Justice of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, ECLI:EU:C:2016:198, paragraphs 95 and 96; judgment of the Court of Justice of 1 June 2016, *Bob-Dogi*, C-241/15, ECLI:EU:C:2016:385, paragraph 65; judgment of the Court of Justice of 23 January 2018, *Piotrowski*, C-367/16, EU:C:2018:27, paragraphs 60 and 61; judgment of the Court of Justice of 25 July 2018, *ML*, C-220/18 PPU, ECLI:EU:C:2018:589, paragraph 63 and judgment of the Court of Justice of 15 October 2019, *Dorobantu*, C-128/18, ECLI:EU:C:2019:857, paragraph 67.

[59] *Cf.* Judgment of the Court of Justice of 22 December 2017, *Ardic*, C-571/17 PPU, ECLI:EU:C:2017:1026, paragraph 91.

[60] *Cf.* Judgment of the Court of Justice of 26 February 2013, *Melloni*, C-399/11, ECLI:EU:C:2013:107, paragraph 36; judgment of the Court of Justice of 30 May 2013, *Jeremy F*, C-168/13, ECLI:EU:C:2013:358, paragraph 34 and judgment of the Court of Justice of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, paragraph 79.

3.7. Double criminality (Article 2(2) and (4))

3.7.1. *List of 32 offences which give rise to surrender without verification of double criminality (Article 2(2))*

Article 2(2) provides the list of 32 categories of criminal offences that give rise to surrender without verification of double criminality, 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[61].

Some of the categories of the 32 offences have been harmonised to a certain extent at EU level on the basis of Article 83 of the Treaty on the Functioning of the European Union[62].

The majority of Member States transposed Article 2(2) literally. A few Member States have introduced a direct reference to Article 2(2) in their national legislation. However, two Member States have introduced substantial changes that affect the list of 32 offences (e.g. by narrowing the scope of certain categories or not transposing all categories). Moreover, a couple of Member States provide for verification of double criminality in cases concerning their own nationals. One Member State provides that aggravating circumstances should not be taken into account when considering the threshold of at least three years when acting as the executing Member State.

3.7.2. *Verification of double criminality (Article 2(4))*

The executing judicial authority may verify double criminality for offences that are not on the list of 32 offences, or for offences that are on the list but the threshold of three years is not met[63]. Therefore, 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[64] (Article 2(4)). All Member States transposed Article 2(4) of the Framework Decision. However, in a small number of Member States the related provisions concerning the lack of double criminality as a ground for non-execution could not be identified (cf. 3.8.2.).

Most Member States have not transposed explicitly that the double criminality verification must be conducted as regards the corresponding offence under the law of the executing Member State "whatever its constituent elements or however it is described".

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[61] *Cf.* Judgment of the Court of Justice of 3 May 2007, *Advocaten voor de Wereld*, C-303/05, ECLI:EU:C:2007:261, paragraphs 48 to 60 and judgment of the Court of Justice of 3 March 2020, *X*, C-717/18, ECLI:EU:C:2020:142, paragraphs 36 to 39.

[62] E.g.: **financial crime**: Directive 2014/62/EU of the European Parliament and of the Council of 15 May 2014 on the protection of the euro and other currencies against counterfeiting by criminal law, and replacing Council Framework Decision 2000/383/JHA, OJ L 151, 21.5.2014, p. 1; **terrorism**: Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, OJ L 88, 31.3.2017, p. 6; **cybercrime**: Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA, OJ L 218, 14.8.2013, p. 8 and **trafficking in human beings**: Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ L 101, 15.4.2011, p. 1.

[63] *Cf.* Judgment of the Court of Justice of 3 March 2020, *X*, C-717/18, ECLI:EU:C:2020:142, paragraph 42.

[64] *Cf.* Judgment of the Court of Justice of 11 January 2017, *Grundza*, C-289/15, ECLI:EU:C:2017:4, paragraphs 35, 38 and 49.

Moreover, a small number of Member States have imposed additional conditions (e.g. requiring that the offence subject to the double criminality verification must be punishable by 12 months of imprisonment in both, the issuing and the executing Member State[65]; or requiring classification as a misdemeanour or as a felony under the law of the executing Member State; or excluding aggravating circumstances when considering the threshold of at least 12 months; or imposing a requirement concerning a European arrest warrant for execution purposes that a term of four months must still remain to be served).

3.8. Grounds for non-execution (refusal) (Articles 3, 4 and 4a)

The general duty to execute a European arrest warrant enshrined in Article 1(2) is limited by the mandatory and optional grounds for non-execution of the European arrest warrant (Articles 3, 4 and 4a of the Framework Decision). These grounds are exhaustive[66]. As regards the grounds for optional non-execution, the executing judicial authority may only invoke those which are transposed into its national law[67]. Moreover, the refusal to execute a European arrest warrant is intended to be an exception which must be interpreted strictly[68].

However, the assessment indicates that over half of the Member States have provided for additional grounds for non-execution (e.g. based on the fundamental rights (cf. 3.3.2.), political offences, the proportionality principle, additional thresholds in the executing Member States (cf. 3.7.2.), the requirement of trial-readiness (cf. 3.3.1.) or indication of guilt, if a requested person does not consent, danger for security, public order or other essential interests of the executing Member State).

Moreover, some Member States have provided additional requirements and restrictions concerning own nationals (e.g. verification of double criminality concerning own nationals).

3.8.1. *Mandatory grounds for non-execution*

Where one or more of the three mandatory grounds for non-execution apply, the executing judicial authority must refuse to execute the European arrest warrant (Article 3).

- **Amnesty (Article 3(1))**

Execution must be refused if the offence on which the European arrest warrant is based is covered by amnesty in the executing Member State. Another requirement is that the executing Member State had jurisdiction to prosecute the offence under its own criminal law. Nearly all Member States transposed Article 3(1). In one Member State, the relevant provision could not be identified. A small number of Member States have referred to "pardon" instead of "amnesty", or to both.

[65] *Cf.* Order of the Court of Justice of 25 September 2015, *A*, C-463/15, ECLI:EU:C:2015:634.
[66] *Cf.* Judgment of the Court of Justice of 6 October 2009, *Wolzenburg*, C-123/08, ECLI:EU:C:2009:616, paragraph 57 and judgment of the Court of Justice of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, ECLI:EU:C:2016:198, paragraph 80.
[67] *Cf.* Judgment of the Court of Justice of 29 June 2017, *Popławski*, C-579/15, ECLI:EU:C:2017:503, paragraph 21.
[68] *Cf.* Judgment of the Court of Justice of 29 June 2017, *Popławski*, C-579/15, ECLI:EU:C:2017:503, paragraph 19 and judgment of the Court of Justice of 10 August 2017, *Tupikas*, C-270/17 PPU, ECLI:EU:C:2017:628, paragraph 50.

- ***Ne bis in idem* (Article 3(2))**

Execution must be refused if the executing judicial authority is informed that the requested person has been finally judged[69] by a Member State in respect of the same acts (the *idem* requirement[70] as an autonomous concept of EU law[71]). It is also required where a sentence has been passed, that sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State (the enforcement requirements[72]).

All Member States have transposed Article 3(2). However, a small number of Member States refer to "the same offence" instead of "the same acts"[73]. Concerning the enforcement requirements, several Member States have not transposed all three alternative criteria.

- **Under the age of criminal responsibility (Article 3(3))**

Execution must be refused where, due to his or her age, the requested person cannot be held criminally responsible for the acts on which the European arrest warrant is based under the law of the executing Member State[74]. No issues have been identified with respect to transposition of Article 3(3), even though the age for criminal responsibility may vary from one Member State to another.

[69] *Cf.* Judgment of the Court of Justice of 11 February 2003, *Gözütok and Brügge*, C-187/01, ECLI:EU:C:2003:87; judgment of the Court of Justice of 10 March 2005, *Miraglia*, C-469/03, ECLI:EU:C:2005:156; judgment of the Court of Justice of 28 September 2006, *van Straaten*, C-150/05, ECLI:EU:C:2006:614; judgment of the Court of Justice of 22 December 2008, *Turanský*, C-491/07, ECLI:EU:C:2008:768; judgment of the Court of Justice of 16 November 2010, *Mantello*, C-261/09, ECLI:EU:C:2010:683; judgment of the Court of Justice of 5 June 2014, *M*, C-398/12, ECLI:EU:C:2014:1057; judgment of the Court of Justice of 29 June 2016, *Kossowski*, C-486/14, ECLI:EU:C:2016:483 and judgment of the Court of Justice of 25 July 2018, *AY*, C-268/17, ECLI:EU:C:2018:602.

[70] *Cf.* Judgment of the Court of Justice of 9 March 2006, *Van Esbroeck*, C-436/04, ECLI:EU:C:2006:165; judgment of the Court of Justice of 28 September 2006, *van Straaten*, C-150/05, ECLI:EU:C:2006:614; judgment of the Court of Justice of 28 September 2006, *Gasparini and Others*, C-467/04, ECLI:EU:C:2006:610; judgment of the Court of Justice of 18 July 2007, *Kretzinger*, C-288/05, ECLI:EU:C:2007:441; judgment of the Court of Justice of 18 July 2007, *Kraaijenbrink*, C-367/05, ECLI:EU:C:2007:444; and judgment of the Court of Justice of 16 November 2010, *Mantello*, C-261/09, ECLI:EU:C:2010:683.

[71] *Cf.* Judgment of the Court of Justice of 16 November 2010, *Mantello*, C-261/09, ECLI:EU:C:2010:683, paragraph 38.

[72] *Cf.* Judgment of the Court of Justice of 11 February 2003, *Gözütok and Brügge*, C-187/01, ECLI:EU:C:2003:87; judgment of the Court of Justice of 18 July 2007, *Kretzinger*, C-288/05, ECLI:EU:C:2007:441; judgment of the Court of Justice of 11 December 2008, *Bourquain*, C-297/07, ECLI:EU:C:2008:708 and judgment of Court of Justice of 27 May 2014, *Spasic*, C- 129/14 PPU, ECLI:EU:C:2014:586.

[73] The same remark applies to other relevant Articles, e.g. Article 4(2), (3) and (5) of the Framework Decision, which refer to "same acts".

[74] *Cf.* Judgment of the Court of Justice of 23 January 2018, *Piotrowski*, C-367/16, ECLI:EU:C:2018:27.

3.8.2. *Grounds for optional non-execution (Articles 4 and 4a)*

Articles 4 and 4a of the Framework Decision provide for eight optional grounds for non-execution. Member States have no obligation to transpose the optional grounds for non-execution[75].

Some Member State have transposed only certain grounds from Article 4. Furthermore, a number of Member State have made all of the transposed grounds mandatory, giving no discretion to their executing authorities. Only a small number of Member States have made all of the transposed grounds optional. Moreover, some Member States have transposed certain grounds from Article 4 and Article 4a as optional, and certain grounds as mandatory.

- **Lack of double criminality (Article 4(1))**

Execution of a European arrest warrant may be refused where, in cases referred to in Article 2(4) (cf. 3.7.2.), the act on which the European arrest warrant is based does not constitute an offence under the law of the executing Member State[76], except for offences related to taxes or duties, customs and exchange (fiscal offences). Moreover, Article 4(1) only concerns offences which are not covered by the list of 32 offences, for which the verification of double criminality is abolished if the threshold of three years is met[77] (Article 2(2)).

In a small number of Member States, the relevant provision could not be identified, even though they have transposed Article 2(4) (cf. 3.7.1.). Some Member States transposed Article 4(1) as an optional ground and a number of Member States transposed Article 4(1) as a mandatory ground for non-execution.

Most Member States have transposed the exception on fiscal offences related to taxes or duties, customs and exchange. However, some Member State have transposed the exception only partially (e.g. omitting a reference to "customs and exchanges"). A small number of Member States have not explicitly transposed the exception for fiscal offences. Moreover, in one Member State the fiscal offences are explicitly subject to similarity of taxes and duties in the issuing and the executing Member State, including a requirement of a custodial sentence of at least three years (excluding aggravating circumstances) in the executing Member State.

A small number of Member States have imposed additional requirements (cf. 3.7.2.).

- **Prosecution pending in the executing Member State (Article 4(2))**

Execution may be refused where the person who is the subject of the European arrest warrant is being prosecuted in the executing Member State for the same act as that on which the European arrest warrant is based.

All Member States have transposed Article 4(2). Most have transposed it as an optional ground for non-execution, except for those where it is mandatory or partially mandatory

[75] *Cf.* Judgment of the Court of Justice of 6 October 2009, *Wolzenburg*, C-123/08, ECLI:EU:C:2009:616, paragraphs 59 to 61 and judgment of the Court of Justice of 29 June 2017, *Popławski*, C-579/15, ECLI:EU:C:2017:503, paragraph 21.
[76] *Cf.* Judgment of the Court of Justice of 11 January 2017, *Grundza*, C-289/15, ECLI:EU:C:2017:4, paragraphs 38 and 49.
[77] *Cf.* Judgment of the Court of Justice of 3 March 2020, *X*, C-717/18, ECLI:EU:C:2020:142, paragraph 42.

(e.g. one Member State favours its own nationals by providing that the ground for non-execution is mandatory for its own nationals and optional for non-nationals). For example, one Member State has made the ground conditional on criminal proceedings clearly being able to be conducted more easily in the executing Member State.

- **Prosecution for the same offence precluded in the executing Member State (Article 4(3))**

Transposition of Article 4(3) requires a distinction among three situations: the judicial authorities of the executing Member State have decided either not to prosecute for the offence on which the European arrest warrant is based or to stop proceedings, or a final judgment has been passed upon the requested person in a Member State, in respect of the same acts, which prevents further proceedings.

Only one Member State has not transposed Article 4(3). Half of Member States have transposed it as an optional ground for non-execution. Other Member States have transposed it as a mandatory ground, except for a small number that have transposed some of the three alternative conditions as optional, and some as mandatory. Moreover, some of those Member States have only partially transposed the three conditions from Article 4(3).

- **Prosecution or punishment statute-barred (Article 4(4))**

Execution may be refused 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.

Nearly all Member States, except one, have transposed Article 4(4). One has referred to the passage of time. A number of Member States have established this ground for non-execution as mandatory.

- **Final judgment in a third State - transnational *ne bis in idem* (Article 4(5))**

Execution may be refused where the executing judicial authority is informed that the requested person has been finally judged by a third State for the same acts (the *idem* requirement) provided that, where there has been a sentence, it has been served or is currently being served or may no longer be executed under the law of the sentencing country (enforcement requirements).

All Member States, but one, have implemented Article 4(5). More than half of the Member States have transposed it as an optional ground for non-execution, and the rest as a mandatory ground. However, some Member States only partially transposed the three alternative conditions concerning enforcement.

- **The executing Member State undertakes the execution of the sentence (Article 4(6))**

Where the European arrest warrant has been issued for the purposes of execution of a custodial sentence or detention order, and the requested person is staying in, or is a national or a resident of the executing Member State, the executing judicial authority might consider whether the sentence could be executed in its Member State instead of

surrendering the person to the issuing Member State[78]. The terms 'resident' and 'staying' in Article 4(6) must be defined uniformly, since they concern autonomous concepts of EU law[79].

A small number of Member States have not transposed Article 4(6). Other Member States have transposed it in a varied manner, since the personal scope of transposition of Article 4(6) is quite diverse.

Only some Member States have transposed Article 4(6) as an optional ground for non-execution. Most have made it mandatory[80] or partially mandatory, since some of them distinguish between own nationals and non-nationals[81] (residents) by providing a mandatory ground for non-execution for own nationals and an optional ground for residents, or being silent on residents. Some Member States further qualified the condition of residency (e.g. permanent residence[82] of 2 or 5 years, a residence permit[83]). Moreover, one Member State has transposed Article 4(6) as applying only to EU citizens, and thereby excluding third country nationals. On the other hand, one Member State explicitly refers to persons granted asylum. Only a small number of Member States have transposed Article 4(6) to also cover persons staying in.

- **Extraterritoriality (offences committed outside the territory of the issuing Member State) (Article 4(7))**

Execution may be refused where the European arrest warrant 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.

Some Member States transposed only one of the two grounds.

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[78] *Cf.* Judgment of the Court of Justice of 29 June 2017, *Popławski*, C-579/15, ECLI:EU:C:2017:503, paragraph 21 to 24; judgment of the Court of Justice of 13 December 2018, *Sut*, C-514/17, ECLI:EU:C:2018:1016, paragraph 34 to 38 and judgment of the Court of Justice of 24 June 2019, *Popławski II*, C- 573/17, *ECLI*:EU:C:2019:530.
Cf. Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union, OJ L 327, 5.12.2008, p. 27; Handbook on the transfer of sentenced persons and custodial sentences in the European Union, OJ C 403, 29.11.2019, p. 2:
https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XC1129(01)&from=EN, p. 34.
[79] *Cf.* Judgment of the Court of Justice of 17 July 2008, *Kozłowski*, C-66/08, ECLI:EU:C:2008:437, paragraphs 46 and 54.
[80] *Cf.* Judgment of the Court of Justice of 29 June 2017, *Popławski*, C-579/15, ECLI:EU:C:2017:503, paragraph 21.
[81] *Cf.* Judgment of the Court of Justice of 5 September 2012, *Lopes da Silva Jorge*, C-42/11, ECLI:EU:C:2012:517, paragraphs 52 and 59.
[82] *Cf.* Judgment of the Court of Justice of 6 October 2009, *Wolzenburg*, C-123/08, ECLI:EU:C:2009:616, paragraph 74.
[83] *Cf.* Judgment of the Court of Justice of 6 October 2009, *Wolzenburg*, C-123/08, ECLI:EU:C:2009:616, paragraph 53.

A few Member States have not transposed the ground under paragraph (a). More than half of the Member States transposed the ground under paragraph (a) as an optional ground for non-execution. Moreover, some of those Member States have not explicitly transposed "in whole or in part" and/or "place treated as such".

A small number of Member States have not transposed the ground under paragraph (b). More than half of the Member States transposed this provision as an optional ground for non-execution.

- **Trials *in absentia* (Article 4a)**

Article 4a provides for an optional ground for non-execution for situations where an executing judicial authority has received a European arrest warrant concerning execution of a custodial sentence or a detention order arising from proceedings in the issuing Member State where the person was not present[84] (a decision rendered *in absentia*). However, this option is accompanied by four exceptions, where an executing judicial authority cannot refuse to execute a European arrest warrant based on a decision rendered *in absentia*[85].

Half of the Member States transposed Article 4a as a mandatory ground for non-execution and the other half transposed it as an optional ground. Concerning the four exceptions, the relevant provisions could not be identified in several Member States. In some Member States, which transposed the four exceptions, the minimum procedural standards defined in these exceptions have not been explicitly transposed. These include autonomous concepts of EU law, concerning in particular "being summoned in person", "actually received official information" or "being aware of the scheduled trial"[86].

3.9. Guarantees to be given by the issuing Member State (Article 5)

Article 5 provides that the execution of the European arrest warrant by the executing judicial authority may, by its national law, be subject to certain conditions, which are exhaustively laid down in Article 5[87]. Those conditions may relate to the review of life-term imprisonment or the return of nationals and residents to the executing Member State to serve custodial sentences passed against them in the issuing Member State[88].

Over half of the Member States have transposed the option to make the execution of the European arrest warrant conditional on review of a custodial life sentence or lifetime detention order. Moreover, a large majority of Member States has transposed the possibility to make the execution of the European arrest warrant conditional upon returning nationals and residents after being heard to the executing Member State to

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[84] *Cf.* Judgments of the Court of Justice of 10 August 2017, *Zdziaszek*, C-271/17 PPU, ECLI:EU:C:2017:629 and *Tupikas*, C-270/17 PPU, ECLI:EU:C:2017:628 and judgment of the Court of Justice of 22 December 2017, *Ardic*, C-571/17 PPU, ECLI:EU:C:2017:1026.

[85] *Cf.* Judgment of the Court of Justice of 26 February 2013, *Melloni*, C-399/11, ECLI:EU:C:2013:107, paragraphs 51 and 52.

[86] *Cf.* Judgment of the Court of Justice of 24 May 2016, *Dworzecki*, C-108/16 PPU, ECLI:EU:C:2016:346, paragraph 32.

[87] *Cf.* Judgment of the Court of Justice of 26 February 2013, *Melloni*, C-399/11, ECLI:EU:C:2013:107, paragraph 38; judgment of the Court of Justice of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, ECLI:EU:C:2016:198, paragraph 80 and judgment of the Court of Justice of 16 July 2015, *Lanigan*, C-237/15, ECLI:EU:C:2015:474, paragraph 36.

[88] *Cf.* Judgment of the Court of Justice of 11 March 2020, *SF*, C-314/18, ECLI:EU:C:2020:191.

serve the custodial sentence or detention order passed against them in the issuing Member State. Transposition has been only partial in some Member States, since they have not set out clearly that the person must be returned after being heard. Moreover, some Member States are giving preferential treatment to their own nationals.

3.10. Procedural rights of the requested person (Articles 11, 13(2), 14 and 23(5))

The Framework Decision grants the requested person several procedural rights. In accordance with Article 11 the requested person has the right to be informed of the European arrest warrant and its contents, the possibility of consenting to surrender, and has the right to be assisted by a legal counsel and an interpreter. These rights must be provided in accordance with the national law of the executing Member State. Moreover, the directives on minimum procedural rights have supplemented and strengthened the rights provided in the Framework Decision[89].

All Member States have transposed Article 11. However, in a few Member States the requirements were only partially transposed or not all the relevant elements could be identified (e.g. no explicit provisions requiring that the requested person be informed of the possibility to consent to surrender, or the requested person is informed only on entering a detention facility).

In addition, various provisions of the Framework Decision grant the requested person minimum procedural rights, in particular:

- Article 13(2) requires Member States to adopt the measures necessary to ensure that the consent to surrender and renunciation of the entitlement to the speciality rule (referred to in Article 27(2)) are established in such a way as to show that the person concerned has expressed them voluntarily and in full awareness of the consequences before the executing authority. To that end, the requested person must have the right to a legal counsel. All Member States transposed Article 13(2). However, the elements of voluntariness and full awareness of the consequences could not be identified in the national legislation of some Member States. Similar issues were detected in some Member States with regard to renunciation of entitlement to the speciality rule in the issuing Member State after a surrender (Article 27(3)(f)).

- Article 14 provides that where the arrested person does not consent to his/her surrender, he/she is entitled to be heard by the executing judicial authority, in accordance with the law of the executing Member State[90]. Nearly all Member States correctly transposed Article 14.

- Article 23(5) provides that on expiry of the time limits for surrender the requested person must be released[91]. Most Member States correctly transposed Article 23(5). However, one Member State includes the explicit possibility for the

[89] *Cf.* 1.1. p. 1 and judgment of the Court of Justice of 12 December 2019, *XD*, C-625/19 PPU, ECLI:EU:C:2019:1078, paragraph 55.
[90] *Cf.* Judgment of the Court of Justice of 29 January 2013, *Radu* C-396/11, ECLI:EU:C:2013:39, paragraphs 41 and 42.
[91] *Cf.* Judgment of the Court of Justice of 25 January 2017, *Vilkas*, C-640/15, ECLI:EU:C:2017:39, paragraphs 70 to 73.

executing authority to unilaterally extend detention of the requested person for 10 days prior to agreeing on a new date and time with the issuing authority (cf. 3.14.). In a small number of Member States, the relevant provisions could not be identified.

3.11. Privileges and immunities (Article 20)

Article 20 of the Framework Decision concerns privileges and immunities on which the requested person can rely. The provision was transposed in a complete and conform manner by less than a half of the Member States. In others only partial transposition was noted (e.g. privileges have not been explicitly addressed) or the relevant provisions could not be identified (e.g. the procedure to request waiving of privileges or immunities).

3.12. Consent to surrender, rule of speciality and its renunciation (Articles 13 and 27)

In general, a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to the surrender other than that for which the person was surrendered. This is the rule of speciality, set out in Article 27 of the Framework Decision[92].

The Framework Decision gives a possibility to Member States to notify that, in their relations with other Member States that have given the same notification, they renounce the rule of speciality, unless in a particular case the executing judicial authority states otherwise in its decision on surrender. According to the information available to the Commission, only three Member States have given such notifications.

Moreover, Article 27(3) provides for several exceptions to the rule of speciality, one of them being a renunciation to the rule of speciality by the requested person, in accordance with Article 13.

The requested person has a possibility to consent to surrender under Article 13. If the arrested person indicates that he or she consents to surrender, that consent and, if appropriate, express renunciation of entitlement to the rule of speciality must be given before the executing judicial authority, in accordance with the domestic law of the executing Member State. Most Member States transposed Article 13 correctly. However, in a small number of Member States the requested person automatically loses the protection of the rule of speciality in situations where he or she has consented to be surrendered. Consequently, the requested person no longer has a say in waiving protection by the rule of speciality. In some Member States, the transposing provisions could not be identified, or transposition is only partial by not explicitly providing for renunciation of entitlement to the rule of speciality.

A few Member States have applied the possibility for the person to revoke both consent and renunciation. A small number of Member States have applied only the option to

[92] *Cf.* Judgment of the Court of Justice of 1 December 2008, *Leymann and Pustovarov*, C-388/08 PPU, ECLI:EU:C:2008:669 and judgment of the Court of Justice of 6 December 2018, *IK*, C-551/18 PPU, ECLI:EU:C:2018:991, paragraphs 59 to 61.

revoke the consent. In the majority of Member States, consent to surrender and renunciation cannot be revoked.

In this context, in some Member States, an appeal against a decision to surrender a requested person is possible, even when a person consents to surrender.

3.13. Time frame and procedures for the decision to execute the European arrest warrant (Articles 15(1) and 17)

The decision on surrender must in principle be taken within strict time limits, as specified in the Framework Decision (Article 15(1))[93]. Notwithstanding these time limits, all European arrest warrants must be dealt with and executed as a matter of urgency (Article 17(1)). However, not all Member States have explicitly transposed this requirement.

If the requested person **consents to his or her surrender**, the final decision on the execution of the European arrest warrant should be taken within a period of 10 days after consent has been given (Article 17(2)). The majority of Member States have correctly transposed this provision; in two Member States, the transposing provisions could not be identified.

If the requested person **does not consent to his or her surrender**, the final decision on the execution of the European arrest warrant should be taken within a period of 60 days after the arrest of the requested person (Article 17(3)). A large majority of Member States have correctly transposed this provision. One Member State has not transposed the time limit of 60 days. Moreover, a few Member States provide alternatively that the 60 day time limit starts either on the day of the arrest or from the day of the first interrogation.

A few Member States have transposed the 10 and/or 60 day time limits as non-mandatory.

Exceptionally, where in a specific case the European arrest warrant cannot be executed within the applicable time limits, they may be extended by a further 30 days. In that case, the executing judicial authority must immediately inform the issuing judicial authority and give the reasons for the delay (Article 17(4)).

Less than half of the Member States transposed this provision completely. Most transposed it only partially (e.g. the immediate nature of notification is not expressly reflected; the reasons for the delay are not required to be provided; there is only a reference to the time limit under Article 17(3), with the time limit of 10 days in Article 17(2) not covered). In a small number of Member States the relevant provisions could not be identified.

Moreover, the problems meeting the time limits specified in the Framework Decision in some Member States seem to stem also from lengthy appeal proceedings[94]. The relevant provisions concerning the length of the appeal proceedings could not be identified for all Member States. Some Member States do, however, provide strict time limits for appeal proceedings.

[93] *Cf.* Judgment of the Court of Justice of 30 May 2013, *Jeremy F*, C-168/13, ECLI:EU:C:2013:358, paragraph 62 and judgment of the Court of Justice of 16 July 2015, *Lanigan*, C-237/15, ECLI:EU:C:2015:474, paragraphs 32 and 33.
[94] *Cf.* Judgment of the Court of Justice of 30 May 2013, *Jeremy F*, C-168/13, ECLI:EU:C:2013:358.

As long as the executing judicial authority has not taken a final decision on the European arrest warrant, it must ensure that the material conditions necessary for effective surrender of the person remain fulfilled (Article 17(5))[95]. A significant number of Member States correctly transposed Article 17(5). However, one provides a general and unconditional obligation to release a requested person arrested pursuant to a European arrest warrant as soon as a period of 90 days from that person's arrest has elapsed[96].

Article 17(7) provides that, where in exceptional circumstances a Member State cannot observe the applicable time limits, it must inform Eurojust[97], giving the reasons for the delay. In addition, a Member State which has experienced repeated delays on the part of another Member State in executing of European arrest warrants must inform the Council with a view to evaluating the implementation of the Framework Decision. In over half of the Member States the transposition is complete and conform. Other Member States only partially transposed Article 17(7) (e.g. by only referring to the time limit of 60 days, or by not imposing an obligation to inform Eurojust).

3.14. Time limits for surrender of the person (Article 23(1) to (4))

The time limit for surrendering the requested person starts to run immediately after the final decision on the execution of the European arrest warrant is taken. The authorities concerned should arrange and agree on the person's surrender as soon as possible (Article 23(1)). In any event, the surrender must take place no later than 10 days after the final decision on the execution of the European arrest warrant (Article 23(2)). Article 23(3) and (4) address respectively extensions of the time limits in cases when the surrender of the requested person within the 10 day period is prevented by circumstances beyond the control of any of the Member States[98] or in cases of serious humanitarian reasons.

The timeframe for surrender has generally been transposed in an overall conform manner by some Member States only. In most Member States the main elements of Article 23(1) to (4) were not transposed (e.g. the urgency, the mandatory time limits and their calculation; only referring to the circumstances in the issuing Member State; too narrow or too broad definition of "serious humanitarian reasons").

4. CONCLUSION

While recognising the efforts made by Member States to date, the level of implementation of the Framework Decision is still not satisfactory in some Member States. This assessment, the statistics on the European arrest warrant and a comparative analysis with previous reports all indicate that certain Member States have not addressed some of the previous Commission's recommendations and those stemming from the 4th round of mutual evaluations. Moreover, it appears that some Member States have not yet implemented certain judgments of the Court of Justice.

[95] *Cf.* Judgment of the Court of Justice of 16 July 2015, *Lanigan*, C-237/15, ECLI:EU:C:2015:474, paragraph 58 to 61.
[96] *Cf.* Judgment of the Court of Justice of 12 February 2019, *TC*, C-492/18 PPU, ECLI:EU:C:2019:10.8
[97] In practice the reporting rate is rather low.
Cf. Statistics on the European arrest warrant:
https://e-justice.europa.eu/content_european_arrest_warrant-90-en.do.
[98] *Cf.* Judgment of the Court of Justice of 25 January 2017, *Vilkas*, C-640/15, ECLI:EU:C:2017:39.

The incomplete and/or incorrect transposition of the Framework Decision hampers the application of the principle of mutual recognition in criminal justice matters. The objective of developing an area of freedom, security and justice for all EU citizens, as laid down in Article 3 of the Treaty on European Union, cannot be achieved if Member States do not properly implement the instruments they all agreed on.

The Commission will continue to assess individual Member States' compliance with the Framework Decision. Unless remedied, the Commission will take the appropriate measures to ensure compliance with the Framework Decision throughout the EU, including, where necessary, initiating infringement proceedings under Article 258 of the Treaty on the Functioning of the European Union.