EUROPEAN PARLIAMENT

2004 *2009*

Committee on Civil Liberties, Justice and Home Affairs

PROVISIONAL
2005/2175(INI)

30.11.2005

DRAFT REPORT

with a proposal for a European Parliament recommendation to the Council on evaluation of the European arrest warrant
(2005/2175(INI))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Adeline Hazan

PR_INI_art114

CONTENTS

Page

PROPOSAL FOR A EUROPEAN PARLIAMENT RECOMMENDATION TO THE COUNCIL 3

EXPLANATORY STATEMENT 8

PROPOSAL FOR A RECOMMENDATION TO THE COUNCIL (B6-0455/2005) 9

PROPOSAL FOR A EUROPEAN PARLIAMENT RECOMMENDATION TO THE COUNCIL

on evaluation of the European arrest warrant
(2005/2175(INI))

The European Parliament,

– having regard to the proposal for a recommendation to the Council by Adeline Hazan on behalf of the PSE Group on evaluation of the European arrest warrant (B6-0455/2005),

– having regard to the Treaty of Amsterdam, which for the first time textually enshrined the objective of establishing a European judicial area,

– having regard to the conclusions of the Tampere summit of 15 and 16 October 1999, which established the principle of mutual recognition as the cornerstone of judicial cooperation,

– having regard to its resolution of 6 February 2002 on the draft Council framework decision on the European arrest warrant and the surrender procedures between Member States[1],

– having regard to the Council framework decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States[2],

– having regard to to the Commission's report 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 (COM(2005)0063),

– having regard to the judgments of the constitutional courts of Poland (27 April 2005), Germany (18 July 2005) and Cyprus (7 November 2005) and the various procedures under way, notably that before the Belgian Court of Arbitration,

– having regard to the parliamentary meeting held on 17 and 18 October 2005 on improving parliamentary control of judicial and police cooperation in Europe, with the participation of one hundred national parliamentarians and members of the Committee on Civil Liberties, Justice and Home Affairs,

– having regard to Rule 114(1) of its Rules of Procedure,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0000/2006),

A. having regard to the innovative and exemplary role of the European arrest warrant in the development of judicial cooperation and the strengthening of mutual trust, as well as its direct impact on the liberties of the public,

[1] OJ C 284, 21.11.2002, p. 193
[2] OJ L 190, 18.7.2002, p. 1

B. whereas the Commission's initial evaluation shows that the European arrest warrant has demonstrated its effectiveness by comparison with the slow, cumbersome and out-of-date extradition procedure, while also making it possible to reduce the risks of a defendant or sentenced person eluding justice for reasons of 'legal sovereignty', as well as to fight organised crime and terrorism more effectively,

C. having regard to the non-political nature of the European arrest warrant procedure, by contrast with that of the extradition procedure,

D. having regard to the wishes expressed by several Member States concerning retention of certain elements of the traditional extradition system (controls to avoid double jeopardy, intervention of the political authorities in the judicial procedure) or introducing additional grounds for rejection which would be contrary to Framework Decision 2002/584/JHA, such as political reasons, national security or human rights arguments,

E. having regard to the practical obstacles that have been encountered in the operation of the European arrest warrant, including problems of translation, transmission or use of differing forms incompatible with its criteria,

F. having regard to the difficulties of transposition encountered by several Member States (especially Germany) and to the need to bring national constitutions into line with Framework Decision 2002/584/JHA in order to permit the surrender of nationals (in particular in Poland and Cyprus),

G. concerned that these problems may undermine mutual trust and lead to a chain reaction which could threaten the implementation of the European arrest warrant by other Member States; whereas these fears are borne out by the refusal of the Spanish 'Audiencia nacional' to surrender Spanish citizens to Germany, following the judgment of the German constitutional court rejecting the application of European arrest warrants to German citizens pending adoption of a new transposing law that is compatible with the Basic Law,

H. whereas the creation of the area of freedom, security and justice based on mutual trust cannot be conceived without a minimum degree of harmonisation of national law, as Parliament has stressed in its resolution of 15 February 2005[1],

I. whereas the Commission's evaluation at present concerns only 24 Member States and needs to be completed as soon as possible for Italy, the last Member State to transpose framework decision 2002/584/JHA,

J. whereas the transposition problems encountered by Member States are essentially of a similar nature, as is evident from the debates which took place at the parliamentary meeting of 17 and 18 October 2005; whereas in future fuller exchanges of information and closer cooperation between the national parliaments and the European Parliament will be necessary with a view to ensuring the transposition in correct conditions of Framework Decision 2002/584/JHA and of other texts still under consideration,

[1] Texts adopted on that date, P6_TA(2005)0030

K. regretting the fact that the role of Parliament in the adoption of the European arrest warrant and the control of its application by the European Court of Justice are limited by its status as a third-pillar instrument based on Articles 31 and 34 of the EU Treaty,

L. whereas the treaty establishing a constitution for Europe provides for numerous improvements relating to judicial and police cooperation in Europe; whereas these include measures such as the abolition of the pillars and the communitarisation of procedures which would strengthen the Union's capacity to act and the democratic and transparent nature of the decisions taken; stresses that this element of the treaty was not raised as grounds for contestation or opposition in the recent ratification campaigns;

M. having regard to the need to apply the Treaties currently in force in full, and, accordingly, to implement the 'passerelle' referred to in Article 42 of the EU Treaty,

1. Addresses the following recommendations to the Council:

Transposition and implementation in practice

a) adopt, as soon as possible, the proposal for a framework decision on certain procedural rights in criminal proceedings throughout the European Union, taking account of Parliament's amendments in its position of 12 April 2005[1]; this measure is essential in order to ensure a similar standard of legal protection for all European citizens, and its guarantees will facilitate the surrender by a Member State of one of its nationals to another Member State;

b) ensure that, in the transposition of framework decision 2002/584/JHA, Member States do not reinstate systematic checks regarding double jeopardy for their nationals, as this would undermine both the effectiveness of the European arrest warrant and the principle of mutual trust between Member States;

c) ensure that no political authority can interfere in the procedure of implementation of the European arrest warrant, in the fashion that created problems for the extradition procedure; recalls that in future the central authority should not go beyond its role of facilitator of the process of surrender of suspects or sentenced persons;

d) ensure that the difficulties persisting in some Member States over the application *ratione temporis* of framework decision 2002/584/JHA are resolved and that they do not affect its implementation by those Member States which have thus far been applying it correctly;

Evaluation

e) ensure with Parliament, in the context of the powers of the two branches of the budgetary authority, that the Commission, in its capacity as guardian of the Treaties, has the resources needed for the detailed monitoring of the quality of transposition;

[1] Texts adopted on that date, P6_TA(2005)0091.

f) undertake, with the Commission's support and in coordinated fashion, an objective, impartial and more detailed evaluation of the problems encountered by legal professionals in the various Member States, backing it up with a qualitative assessment arrived at via a breakdown of the European arrest warrants by type of offence;

g) avoid a proliferation of parallel research activities on the same subject, even if the Council is tempted to carry out its own study, on the grounds that this is a third-pillar measure;

h) undertake the regular information and consultation of the European Parliament and the national parliaments on the progress achieved in the implementation of the European arrest warrant, involving them in the evaluation process in the spirit of Article III-260 of the Treaty establishing a Constitution for Europe;

Fundamental rights

i) ensure that a non-uniform implementation of the European arrest warrant (see the non-justified transposition by numerous Member States of recitals 12 and 13 of framework decision 2002/584/JHA regarding fundamental rights) does not lead to situations of discrimination in the sense of the judge of the implementing Member State having to verify or not whether an European arrest warrant is compatible with fundamental rights, despite this text being grounded in the principle of mutual recognition;

j) pay close attention to the issue of respect for human rights and individual freedoms in the implementation of the European arrest warrant, a task to which the proposed Agency for Fundamental Rights should be asked to contribute;

Effectiveness and democracy

k) ensure the rapid activation of the 'passerelle' provided for in Article 42 of the EU Treaty, so as to confer a fully democratic character and greater effectiveness on the measures taken for the European judicial area;

l) prepare a revision of framework decision 2002/584/JHA so as to extend the list of 32 offences for which double jeopardy does not need to be checked;

m) examine the situation of citizens of a Member State extradited by another Member State to a third country, which is not currently covered by framework decision 2002/584/JHA; while Member States have traditionally refused to extradite one of their nationals, this may constiute a source of discrimination between European citizens; believes the Commission should submit a proposal on this subject to Parliament and the Council;

2. Instructs its President to forward this recommendation to the Council and, for information, to the Commission and the Governments and Parliaments of the Member States.

EXPLANATORY STATEMENT

In submitting, on behalf of the Committee on Civil Liberties, Justice and Home Affairs, this recommendation on the evaluation of the European arrest warrant, I have, as your rapporteur, grounded my arguments in the findings presented by the Commission in its report based on Article 34 of the Council framework decision of 13 June 2002 on the European arrest warrant and the relevant procedures. I shall not here repeat the detailed remarks set out in the two working documents submitted earlier.[1].

The parliamentary meeting held in Brussels on 17 and 18 October[2], with the participation of almost a hundred members of the Union's parliaments and members of LIBE, made it possible, at a special session on the European arrest warrant, to examine its state of implementation in the different Member States. It emerged from the debates that advances have been made on the traditional extradition model but that there are still numerous obstacles, arising from either dubious transposition formulas - some of them validated by constitutional checks on the national transposition laws - or from the practicalities of application.

On the basis of the available data and of additional information received from Member States, professional organisations and NGOs, and in the light of the debates held at the parliamentary meeting, your rapporteur submits the recommendations included in this report for the approval of the LIBE committee and of Parliament.

Your rapporteur awaits with interest the up-to-date evaluations which the Commission has still to submit for Italy and also for all the Member States in 2006, and hopes that they will contain more detailed qualitative information than that available at the present stage.

[1] PE 362.745 and PE 362.744
[2] http://www.europarl.eu.int/comparl/libe/elsj/events/hearings/20051017/default_en.htm

1.9.2005

DRAFT RECOMMENDATION TO THE COUNCIL (B6-0455/2005)

pursuant to Rule 114(1) of the Rules of Procedure

by Adeline Hazan

on behalf of the PSE Group

on evaluation of the European arrest warrant

The European Parliament,

– having regard to the framework decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States,

– having regard to the Commission report (COM 2005/63) 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,

– having regard to the recent judgments of the Constitutional Courts of Poland and Germany,

– having regard to Rule 114(1) of its Rules of Procedure,

1. Addresses the following recommendations to the Council:

   (a) that it should ensure that in transposing the framework decision the Member States do not reintroduce systematic verification of double criminality for their nationals, since this reduces the effectiveness of the European arrest warrant and poses a threat to the principle of mutual confidence between the Member States;

   (b) that it should pay particular attention to the fact that non-uniform implementation of the European arrest warrant (failure of some States to transpose recitals 12 and 13 on fundamental rights) could create discrimination, depending on whether or not the judge in the State of implementation must verify consistency of the European arrest warrant with fundamental rights, whereas the nature of the text is based on the principle of mutual recognition;

   (c) that it should be concerned by the continuation of a certain level of interference by the political authorities in the European arrest warrant procedure, which caused a problem in the extradition procedure, whereas in this case the central authority must not go beyond its role of facilitator in the procedure of surrender of suspects or individuals already sentenced;

(d) that it should take account of the fact that there are continuing difficulties in some Member States in the application *ratione temporis* of the framework decision, with a resulting risk of problems in its implementation by other Member States which are applying the framework decision correctly;

(e) that it should ensure that the European Parliament is regularly consulted on progress in implementing the European arrest warrant;

(f) that it should ensure that a more thorough, objective and impartial evaluation of the difficulties encountered by judicial authorities on the ground is carried out;

(g) that it should think about the possibility in future of revising the framework decision with a view to extending the list of 32 offences for which double criminality is not verified;

(h) that it should ensure that the issue of respect for human rights and individual freedoms is paid particular attention in applying the European arrest warrant;

2. Instructs its President to forward this recommendation to the Council and, for information, to the Commission and the governments of the Member States.