



**COUNCIL OF
THE EUROPEAN UNION**

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**CATS 55
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I/A ITEM NOTE

from: General Secretariat

to: Coreper/Council

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Subject: Draft Council conclusions on the application of the European arrest warrant and its relationship with Council of Europe legal instruments

Delegations will find in the Annex the draft Council conclusions on the application of the European arrest warrant and its relationship with Council of Europe legal instruments, as they were agreed upon by the Article 36 Committee at its meeting on 10 September 2003, subject to a parliamentary reservation by Denmark.

Coreper/Council is invited to adopt these conclusions subject to Denmark having lifted its parliamentary reservation.

WHEREAS:

- all Member States are parties to the European Convention on Extradition, concluded under Council of Europe auspices on 13 December 1957. This Convention is supplemented by two Additional Protocols of 15 October 1975 and 17 March 1978 respectively;
- the European Convention on the Suppression of Terrorism, concluded in Strasbourg on 27 January 1977, also has a bearing on the Convention of 13 December 1957, by laying down a new list of offences which cannot be regarded as political offences for extradition purposes;
- it has been agreed at the Council of Europe to amend the latter Convention by means of a Protocol opened for signing on 15 May 2003;
- those international instruments are essential for legal cooperation between Member States and other members of the Council of Europe and will continue to have a key role to play in cooperation with Council of Europe members;
- in recent years, Member States have engaged in a high level of judicial cooperation, under Title VI of the TEU, aimed at establishing an area of freedom, security and justice in the Union;
- in particular, significant progress has been made with the adoption of the Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States and with the introduction of a common definition of terrorist offences under the Framework Decision of 13 June 2002 on combating terrorism;

- there is a need to ensure that provisions adopted within the European Union are put into practice, particularly in order to have the European arrest warrant uniformly applied as from 1 January 2004 for current Member States and as from 1 May 2004 for the new Member States, and a commitment to act with full sincerity and legal certainty in relations with states party to the above European Conventions;

BEARING IN MIND THAT:

- Article 28(3) of the 1957 European Convention on Extradition stipulates that:

"Where, as between two or more Contracting Parties, extradition takes place on the basis of a uniform law, the Parties shall be free to regulate their mutual relations in respect of extradition exclusively in accordance with such a system notwithstanding the provisions of this Convention. The same principle shall apply as between two or more Contracting Parties each of which has in force a law providing for the execution in its territory of warrants of arrest issued in the territory of the other Party or Parties. Contracting Parties which exclude or may in the future exclude the application of this Convention as between themselves in accordance with this paragraph shall notify the Secretary General of the Council of Europe accordingly. The Secretary General shall inform the other Contracting Parties of any notification received in accordance with this paragraph.";

- Article 9 of the European Convention on the Suppression of Terrorism, as inserted by the latest Protocol, in turn states that:

"The Contracting States may conclude between themselves bilateral or multilateral agreements in order to supplement the provisions of this Convention or to facilitate the application of the principles contained therein.";

- the Framework Decision on the European arrest warrant constitutes a uniform law as referred to in Article 28(3) of the 1957 European Convention on Extradition;
- all of the above legal instruments allow Member States to apply between themselves any pre-existing agreements or conclude any new agreements in order to facilitate or simplify even further their procedures for the surrender of individuals,

THE COUNCIL ACCORDINGLY:

1. urges Member States and the Acceding States to give the notification referred to in Article 28(3) of the European Convention on Extradition as soon as possible and by 1 January 2004 at the latest for current Member States and from 1 May 2004 for the new Member States;
2. points out that Article 9 of the European Convention on the Suppression of Terrorism, when in force, is the appropriate provision, as between Member States, to allow for the application of relevant European Union instruments so far adopted as such;
3. instructs the Presidency to inform the parties to the above Council of Europe Conventions, via the relevant Council of Europe bodies, regarding these conclusions and, if appropriate, to coordinate Member States' positions.

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