

The European Arrest Warrant and Its Human Rights Implications

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I. Introduction

In the aftermath of 11 September 2001, the European Union enhanced its efforts in ensuring an effective prosecution of terrorists within Europe.¹ These efforts included not only measures specifically directed against terrorism (such as the approximation of criminal law with regard to terrorism²), but also measures designed to enhance cooperation in criminal matters in general, as an effective cooperation in criminal matters was considered to be an efficient tool in the fight against terrorism. One of the measures adopted was the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.³

With the European arrest warrant, the Framework Decision creates a new legal instrument that represents a significant departure from traditional extradition law: The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender of a requested person by another Member State, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order. The Framework Decision obliges Member States to execute such an arrest warrant on the basis of the principle of mutual recognition of judicial decisions. By providing for the automatic recognition of arrest warrants issued in Member States, the Framework Decision aims at expediting the procedure and at facilitating the surrender of persons in cases in which well-established principles of extradition law such as the double criminality principle, the political offense exception or the possibility to refuse the extradition of nationals would hinder or delay extradition. At the same time, the procedure is judicialized. In contrast

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¹ On the European Union's contribution to the fight against terrorism after 11 September 2001 see L. Benoit, *La lutte contre le terrorisme dans le cadre du deuxième pilier: un nouveau volet des relations extérieures de l'Union Européenne*, RDUE 2002, 283 et seq.; C. Churrua Muguruza, *The European Union's Reaction to the Terrorist Attacks on the United States, Humanitères Völkerrecht* 14 (2001), 234 et seq.; M. Den Boer/J. Monar, *Keynote Article: 11 September and the Challenge of Global Terrorism to the EU as a Security Actor*, JCMS 40 (2002), 11 et seq.; S. Duke, *CESDP and the EU Response to 11 September: Identifying the Weakest Link*, EFAR 7 (2002), 153 et seq.; T.-L. Margue, *Les initiatives menées par l'Union dans la lutte antiterroriste dans le cadre du troisième pilier (Justice et affaires intérieures)*, RDUE 2002, 261 et seq.; N. Vennemann, *European Union Law and the Fight against Terrorism*, in: C. Walter/S. Vöneky/V. Röben/F. Schorkopf, *Terrorism as a Challenge for National and International Law – Security versus Liberty?* (forthcoming publication).

² See the Framework Decision on Combating Terrorism of 13 June 2002, OJ L 164 of 22.06.2002, 3 et seq.

³ OJ L 190 of 18.07.2002, 1 et seq.

to traditional extradition law under which the executive of the requested State had the last word, the decision on the arrest and surrender of the requested person under the Framework Decision is taken by judges without interference by the Government.

The European arrest warrant thus constitutes a new qualitative step in the judicial cooperation in criminal matters within the European Union (II). Like all instruments that strengthen transnational cooperation and thereby risk blurring the human rights responsibilities of the participating States, the Framework Decision on the European arrest warrant has been subject to close scrutiny by NGOs who fear a drawback for the protection of human rights. An investigation into the human rights implications of the European arrest warrant, however, reveals that respect for human rights is guaranteed in the procedure introduced by the Framework Decision on the European arrest warrant to the same extent as it was in the traditional extradition procedure (III).

II. The European Arrest Warrant – A New Qualitative Step in the Judicial Cooperation in Criminal Matters within the European Union

The European arrest warrant replaces the traditional extradition mechanism between Member States with the automatic recognition of arrest warrants, thereby completing the gradual departure from traditional extradition law between the Member States of the European Union, which can be said to have its starting point in 1977 (1). Demonstrating the extent of the change of extradition law operated by the Framework Decision on the European arrest warrant will require a brief presentation of the functioning of the European arrest warrant procedure (2) leaving the way for an outline of the traditional extradition principles abolished by the Framework Decision (3) as well as of the explicit human rights related surrender exceptions introduced by it (4).

1. The European Arrest Warrant's Legal Background

The European arrest warrant represents the apex in Europe's gradual departure from the classical principles of international law governing extradition.⁴ This development is based, on the one hand, on the insight that the mutual confidence of European States in their legal systems and their willingness to respect fundamental human rights permits the abandonment of traditional safeguards of extradition law between European States. On the other hand, the awareness of an inherent contra-

⁴ Codified for the Member States of the Council of Europe in the European Convention on Extradition of 13.12.1957, E.T.S. 24. Supplemented by Additional Protocol of 15.10.1975, E.T.S. 86 and Second Additional Protocol of 17.03.1978, E.T.S. 98.

dition of European Union law has been an important factor in this development: The free movement of persons within the European Union had been established without providing for a mechanism by which States could continue to effectively pursue their role of guarantor of internal security. Whereas criminals can in principle move freely from one country to another, the territorial divisions remain relevant for State authorities that want to pursue these criminals – they have to take recourse to the traditional instruments of international law including the extradition procedure.⁵ The “free movement of prosecutions”⁶ as a corollary to the free movement of persons therefore has become one important aim of European Union criminal law.

The gradual departure from the principles of international law governing extradition has its starting point in the Council of Europe. On 27 January 1977, the European Convention on the Suppression of Terrorism was adopted as a Council of Europe Convention.⁷ This Convention aims at removing an important obstacle to the fight against terrorism, namely the political offense exception, of extradition law. For specific enumerated offenses, international law traditionally recognized the possibility of refusing extradition when the offense for which extradition was demanded constituted a political offense. This rule was abolished by the Convention. However, the effectiveness of the Convention on this point is strongly diminished by its art. 13 which permits the contracting States to submit a reservation allowing them to refuse extradition in individual cases because of the political nature of the offense. This reservation significantly compromises the objective of generally excluding the political offense exception. Although the Explanatory Report to the Convention placed strong emphasis on the solidarity of Member States of the Council of Europe and on the mutual confidence in the different legal systems of the contracting States, the counterproductive approach of the Convention on the Suppression of Terrorism seems to have its roots in the feeling of many States that the Member States of the Council of Europe were too heterogeneous to completely abandon traditional prerogatives such as the political offense exception.⁸ The European Economic Community (EEC) Member States, however, considered the precondition of homogeneity and human rights protection fulfilled with regard to the States parties to the Treaty of Rome. They decided to overcome the lacuna of the Council of Europe Convention and to render the essential idea of the abolition of the political offense exception effective. In the context of their political cooperation, but outside of the Community framework, they adopted the Agreement concerning the Application of the European Convention on the Suppression of Terrorism (Dublin Agreement) on 4 December 1979.⁹ This agreement permitted EEC

⁵ In this sense see Churrua Muguruza (note 1), 237.

⁶ S. Peers, *EU Justice and Home Affairs Law*, 2000, 140.

⁷ E.T.S. 90. On this convention see T. Stein, *Die Europäische Konvention zur Bekämpfung des Terrorismus*, *ZaöRV* 37 (1977), 688 et seq.

⁸ See T. Stein, *Die Bekämpfung des Terrorismus im Rahmen der Mitgliedstaaten der Europäischen Gemeinschaften*, *ZaöRV* 40 (1980), 312 (314).

⁹ *ILM* 19 (1980), 325 ff. For a more detailed analysis see Stein, *ibid.*, 314 et seq.

Member States not party to the Council of Europe Convention to apply the substantive provisions of this Convention with regard to the other EEC Member States. Member States party to the Council of Europe Convention which had made a declaration under art. 13 of that Convention were allowed to restrict the application of this reservation to States outside of the EEC.

In the 1990s, the European Union, using the new possibilities opened by the Treaty of Maastricht, which institutionalized cooperation in the field of justice and home affairs, undertook efforts to derogate from traditional extradition law at a larger scale. On 30 March 1995, the Convention on Simplified Extradition Procedures between the Member States of the European Union¹⁰ was adopted, complemented in 1996 by the Convention relating to Extradition between Member States of the European Union.¹¹ Both Conventions have been drawn up as a measure enhancing judicial cooperation in criminal matters¹² on the basis of art. K. 3 para. 2 *lit. c*) of the Maastricht Treaty.¹³ Whereas the first Convention simplifies extradition procedures in cases where the requested person consents to the surrender,¹⁴ the second one brings important substantive changes to traditional extradition law: the abolition of the political offense exception, the abolition of the principle of double criminality and the extension of the obligation to extradite to include the nationals of the extraditing State.¹⁵ However, neither of these Conventions is yet in force.

The Tampere European Council of 15/16 December 1999 gave political impetus to a new qualitative step. Parallel to developments in the field of civil law, the European Council declared the principle of mutual recognition of judicial decisions and judgments to be a cornerstone of judicial cooperation in criminal matters with-

¹⁰ OJ C 78 of 30.03.1995, 2 et seq., not yet in force.

¹¹ OJ C 313 of 23.10.1996, 11 et seq., not yet in force.

¹² See art. K. 1 Maastricht Treaty: "For the purposes of achieving the objectives of the Union, in particular the free movement of persons, and without prejudice to the powers of the European Community, Member States shall regard the following areas as matters of common interest: (7) judicial cooperation in criminal matters."

¹³ Art. K. 3 para. 2 Maastricht Treaty: "The Council may: - on the initiative of any Member State or of the Commission, in the areas referred to in Article K. 1 (1) to (6); - on the initiative of any Member State, in the areas referred to in Article K. 1 (7) to (9)": (*lit. c*) "without prejudice to Article 220 of the Treaty establishing the European Community, draw up conventions which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements. Unless otherwise provided by such conventions, measures implementing them shall be adopted within the Council by a majority of two-thirds of the High Contracting Parties. Such conventions may stipulate that the Court of Justice shall have jurisdiction to interpret their provisions and to rule on any disputes regarding their application, in accordance with such arrangements as they may lay down."

¹⁴ See R. Errera, *Extradition et droits de l'homme*, in: *Collected Courses of the Academy of European Law*, Vol. VI, Book 2 (1995), *The Protection of Human Rights in Europe*, 245 (298 et seq.); M. Mackarel/S. Nash, *Extradition and the European Union*, ICLQ 46 (1997), 948 (953); G. Vermeulen/T. Vander Beken, *New Conventions on Extradition in the European Union: Analysis and Evaluation*, Dickinson Journal of International Law 15 (1997), 265 (278 et seq.).

¹⁵ See Errera (note 14), 301 et seq.; Mackarel/Nash (note 14), 954 et seq.; Margue (note 1), 268; Vermeulen/Vander Beken (note 14), 285 et seq.

in the Union.¹⁶ On the basis of a mandate of this European Council, the Commission elaborated a program of measures to implement the principle of mutual recognition of decisions in criminal matters.¹⁷ According to this program, the principle of mutual recognition could contribute to legal certainty in the European Union by strengthening cooperation between Member States and enhancing at the same time the protection of human rights. Mutual recognition of decisions in criminal matters presupposes that Member States have confidence in each others' criminal justice systems. With respect to Member States of the European Union, this trust is grounded, according to the Commission, on the shared commitment of Member States to the principles of freedom, democracy and respect for human rights, fundamental freedoms and the rule of law. One of the proposed measures was, in line with the call of art. 31 TEU to facilitate extradition between Member States, to seek means of establishing, at least for the most serious offenses in art. 29 TEU, handing-over agreements based on recognition and immediate enforcement of the arrest warrant issued by the requesting judicial authority with a view to creating a single judicial area for extradition. On the basis of the mandate from the Tampere European Council, the Commission, profiting from its co-initiative right introduced into the third pillar by the Amsterdam Treaty (art. 34 para. 2 TEU), started working on the project of a European arrest warrant and had almost finished its work when the events of 11 September occurred. These resulted in the speeding up of the adoption procedure of the Commission's proposal for a European arrest warrant, leading to the adoption on 13 June 2002 of a Council Framework Decision on the European arrest warrant and the surrender procedures between Member States.¹⁸ This binding¹⁹ Framework Decision based on arts. 31, *lit.* a), b) and 34 para. 2, *lit.* b) TEU abolishes the traditional extradition system in force between the Member States, essentially provided by the European Convention on Extradition.

¹⁶ Points 33, 35 – 37 of the Presidency Conclusions, <<http://europa.eu.int/council/off/conclu/index.htm>> visited 17 February 2003.

¹⁷ OJ C 12 of 15.01.2001, 10 et seq. The Treaty between the Italian Republic and the Kingdom of Spain on the prosecution of serious offences without the need for extradition in a common area of justice (Council document 14643/00 of 15 December 2000, <<http://register.consilium.eu.int/pdf/en/00/st14/14643en0.pdf>> visited 17 February 2003) certainly influenced the Commission's proposal. On the bilateral Treaty see J. Vogel, *Abschaffung der Auslieferung? – Kritische Anmerkungen zur Reform des Auslieferungsrechts in der Europäischen Union*, JZ 56 (2001), 937 et seq.

¹⁸ The adoption of this Decision was delayed by Italy, which, with regard to the Prime Minister's own criminal record, demanded a substantial reduction of the offenses capable of giving rise to a European arrest warrant and objected in particular to the inclusion of corruption and money laundering. As all measures adopted within the third pillar still have to be adopted unanimously, the situation could only be solved by political bargaining. Against this background, several authors have identified the intergovernmental method requiring unanimity as a strong impediment to quick and effective action in the field of police and judicial cooperation; see L. Benoit, *Le mandat d'arrêt européen*, RMCUE 2003, 106 (110); E. von Bubnoff, *Terrorismusbekämpfung – eine weltweite Herausforderung*, NJW 55 (2002), 2672 (2673); Margue (note 1), 281.

¹⁹ The Treaty of Amsterdam replaced the non-binding joint action of art. K. 3 para. 2, *lit.* b) TEU by the binding framework decision of art. 34 para. 2, *lit.* b) TEU to enhance the efficiency of measures adopted in the field of police and judicial cooperation in criminal matters. See Benoit (note 18), 107.

tion of 1957²⁰ (the Extradition Conventions of 1995 and 1996 not yet being in force²¹) and replaces it with the mutual recognition of arrest warrants issued by Member States. Member States have to take the necessary measures to comply with the Framework Decision by 31 December 2003 (art. 34 para. 1).

2. The Functioning of the European Arrest Warrant

Two important systemic differences between the European arrest warrant and the traditional extradition system have to be mentioned from the beginning. First, whereas the traditional extradition system followed a two-step approach by distinguishing between the arrest and the surrender,²² both requiring an independent procedure, the European arrest warrant unites these two procedures by requiring only one judicial decision for arrest and surrender. At the same time, the procedure is “judicialized”. The prerogatives of political bodies in the extradition procedure are abolished with the result that judicial bodies decide on the arrest and surrender without any interference by the Government. The arrest and surrender thereby are no longer considered to be political decisions.²³

A judicial authority of a Member State wishing to prosecute a person not present on its own territory or wishing to execute a custodial sentence or detention order with regard to that person can issue an arrest warrant requiring the arrest and surrender of that person by the Member State where the person happens to be. The arrest warrant has to contain specific information contained in a form (which is annexed to the Framework Decision) such as a description of the circumstances in which the offense was committed or the penalty imposed or likely to be imposed (art. 8). The warrant can either be directly transmitted to the competent authority of the State where the requested person is located or an alert can be issued in the Schengen Information System (SIS),²⁴ such an alert being equivalent to a European arrest warrant. The possibility of using the SIS mechanism was considered to be essential by legal practitioners who feared that an element of the extradition system that worked well would be lost in the new system.²⁵ However, the SIS is not capable, at the moment, of transmitting all the information required by art. 8. Therefore, a transitional period is provided during which the alert is considered to be equivalent to an arrest warrant pending the receipt of the original by the executing authority (art. 9).

²⁰ See note 4. See also arts. 59 – 66 of the Convention Applying the Schengen Agreement (OJ L 239 of 22.09.2000, 19 et seq.).

²¹ See notes 10 and 11.

²² Churruca Muguruza (note 1), 239; G. Gilbert *Transnational Fugitive Offenders in International Law*, 1998, 70 et seq.

²³ Churruca Muguruza, (note 1), 239. On the final discretion of the executive in the traditional extradition system see Gilbert (note 22), 78 et seq.

²⁴ Established by the 1990 Convention Applying the Schengen Agreement (note 20).

²⁵ D. Flore, *Le mandat d'arrêt européen: Première mise en œuvre d'un nouveau paradigme de la justice pénale européenne*, *Journal des Tribunaux* 121 (2002), 273 (280).

The arrest warrant having been issued, Member States are bound to execute it, first by arresting the person required and then by surrendering the person (art. 1 para. 2). Once the person is arrested, the executing State has to meet a certain number of requirements designed to fulfill the human rights guarantees as contained in the European Convention on Human Rights (ECHR),²⁶ the jurisprudence of the European Court of Justice (ECJ)²⁷ and the Charter of Fundamental Rights of the European Union²⁸. Among these protections are the following: The person has to be informed of the existence of the European arrest warrant and its content (art. 11 para. 1); he/she is entitled to the assistance of a legal counsel and an interpreter (art. 11 para. 2). If the person does not consent to his/her surrender – a possibility of which the person has to be informed – the person is entitled to a hearing by the executing judicial authority (art. 14). The Framework Decision sets out very strict time limits for the decision on the execution of the arrest warrant (art. 17). Generally, the arrest warrant has to be dealt with as a matter of urgency. More specifically, the final decision on the execution has to be taken within a period of 60 days after the arrest of the concerned person and, in case the person consents to the surrender, within ten days of the consent. If special circumstances hinder the execution of the arrest warrant within that time limit, this limit can be extended by a further 30 days. The absolute maximum time between arrest and decision on the surrender therefore is 90 days – a very short time when compared with the extradition procedure which sometimes stretched over several months and years.²⁹ However, the Framework Decision does not provide for a sanction for the non-respect of these time-limits. It had been proposed that the requested person should have to be set free in case the executing State does not respect the time limit.³⁰ But this sanction, drawn from the traditional extradition procedure at the stage of the provisional arrest, does not fit into the new system. Whereas in the old system, delays in the procedure were caused by the requesting State who did not send the required documents to the requested state in a timely manner and the sanction of freeing the requested person therefore was appropriate, in the new system, delays can only be caused by the executing State. If the executing State fails to fulfill its obligations in the given time, a sanction that is disadvantageous in its consequences for the requesting State, which cannot be blamed for the delay, is not justifiable.³¹ As regards sanctions, the Commission's proposal was not taken up by the Council and the only sanction adopted is political in nature (art. 17 para. 7). Whenever the time lim-

²⁶ E.T.S. 5.

²⁷ On the protection of human rights by the ECJ see D. Ehlers (ed.), *Europäische Grundrechte und Grundfreiheiten*, 2003, 319 et seq.; T. Kingreen, *Die Gemeinschaftsgrundrechte*, JuS 40 (2000), 857 et seq.; H.-W. Rengeling, *Grundrechtsschutz in der Europäischen Gemeinschaft*, 1993; I. Wetter, *Die Grundrechtscharta des Europäischen Gerichtshofes*, 1998.

²⁸ OJ C 364 of 18.12.2000, 1 et seq.

²⁹ Flore (note 25), 274.

³⁰ See art. 23 para 2 of the Commission's proposal (COM (2001) 522 final/2), <http://europa.eu.int/eur-lex/de/search/search_dpi.html> visited on 17 February 2003.

³¹ See Flore (note 25), 275.

it is not respected, Eurojust³² will have to be informed. This procedure is deemed to be efficient not so much because of Eurojust's involvement – given the competences attributed to Eurojust it is unclear what Eurojust is supposed to do in this context – but because of the negative publicity for the State. In the case of repeated delays of one Member State, the requesting State shall inform the Council which will then evaluate the implementation of the Framework Decision in this particular Member State.

Once a positive decision on the execution of the arrest warrant has been taken, the requested person has to be surrendered within a time limit of ten days (art. 23 para. 2). The time limit is extended another ten days in case of special circumstances (art. 23 para. 3). In the case of the time limits expiring without the person having been surrendered, the person has to be released (art. 23 para. 5).³³

In the requesting State the surrendered person generally can only be prosecuted for the offenses listed in the arrest warrant (specialty rule, art. 27 para. 2) save for specifically listed cases (art. 27 para. 3) and depending on the consent of the requested State (art. 27 paras. 1, 4). Periods of detention in the executing Member State in execution of the arrest warrant have to be deducted from the total period of detention to be served in the requesting State (art. 26). Surrender of the person to a Member State other than the requesting State as well as the subsequent extradition of the person is only possible with the consent of the executing State (art. 28).

3. Abandonment of Traditional Principles of Extradition Law

The European arrest warrant puts an end to a number of well-established principles of extradition law. The principle of double criminality of the act in question is at least partly abandoned (a), the political offense exception is abolished (b) and States can no longer refuse the surrender of their own nationals (c).

a) The Principle of Double Criminality

The principle of double criminality is one of the cornerstones of traditional extradition law.³⁴ A person cannot be extradited if the offense for which extradition

³² The European Judicial Cooperation Unit (Eurojust) was established by a Council Decision of 28 February 2002 (OJ L 63 of 06.03.2002, 1 et seq.). It is composed of national prosecutors, magistrates or police officers and has the task of facilitating the coordination of parallel criminal investigations and prosecutions in different Member States. On Eurojust see E. Barbe, *Une triple étape pour le troisième pilier de l'Union Européenne – Mandat d'arrêt européen, terrorisme et Eurojust*, RMCUE 2002, 5 (7 et seq.); E. von Bunnoff, *Institutionelle Kriminalitätsbekämpfung in der EU – Schritte auf dem Weg zu einem europäischen Ermittlungs- und Strafverfolgungsraum*, ZEuS 5 (2002), 185 (204 et seq.).

³³ This provision is in contradiction with the solution adopted in art. 17 para. 7: In art. 23 para. 5, the requesting State is sanctioned for the requested State's failure to fulfill its obligations.

³⁴ On the double criminality principle see Gilbert (note 22), 104 et seq.; G. Gilbert, *Aspects of Extradition Law*, 1991, 48. Independently from the European arrest warrant, the rationale of the

is demanded does not constitute an offense under the law of the extraditing State. The reason for this rule is that States have different cultural attitudes to certain offenses, especially in politically sensitive areas such as abortion or drugs.³⁵ Another aspect is the principle of reciprocity, according to which a State should not be obliged to extradite for an action that would not, in a similar case, give rise to a claim of its own against the other State.³⁶

Relying on the high level of confidence between Member States, the Commission proposed the complete abolition of the principle of double criminality.³⁷ But this proposal encountered fierce objections and the solution adopted by the Framework Decision represents a compromise. The Framework Decision establishes a list of offenses, that, if punishable in the issuing Member State by a custodial sentence or a detention order of at least three years, lead to the surrender of the requested person without verification of the double criminality of the act (art. 2 para. 1). Concerning all other offences, States may continue to rely on the principle of double criminality to refuse the surrender (art. 2 para. 4). The list includes a number of serious crimes, including terrorism, and is essentially based on the offenses mentioned in art. 29 TEU, art. 2 of the Europol Convention and point 48 of the Presidency Conclusions of the Tampere European Council.³⁸ The principle of double criminality is thus abandoned for essential offenses of the criminal law of all Member States and in areas of priority approximation of criminal law by the European Union. As these domains are basically those where the requirement of double criminality was fulfilled practically in every case, the abolition of the principle of double criminality in these domains serves largely as a symbolic declaration of principle than as a change with major practical effects. In addition, the principle of double criminality is in a certain way reintroduced with relation to acts committed on the territory of the executing State: Art. 4 no. 7, *lit. a*) is designed to avoid obliging a State to execute a European arrest warrant for an offense committed entirely on its own territory but not classified as such by its own law. Another exception clause which also runs counter to the abolition of the double criminality principle concerns acts committed outside the territory of the issuing Member State. The executing State can refuse to execute the arrest warrant if its own law does not allow for prosecution of these offenses when committed outside its territory (art. 4 no. 7, *lit. b*). *A fortiori*, the State not allowing prosecution of these offenses at all, can legitimately refrain from executing the arrest warrant if the crime was committed outside of the issuing State's territory.³⁹

requirement of double criminality has been put into question, see T. Weigend, *Grundsätze und Probleme des Deutschen Auslieferungsrechtes*, JuS 40 (2000), 105 (107).

³⁵ See Gilbert (note 34), 47.

³⁶ I. Stanbrook/C. Stanbrook, *Extradition Law and Practice*, 2nd ed., 2000, 16 et seq.; Weigend (note 34), 107.

³⁷ See the Commission's comment of art. 27 of its proposal (note 30).

³⁸ Von Bubnoff (note 32), 226.

³⁹ Flore (note 25), 277.

In contrast to the ambitious proposal of the Commission, the achievement of the Framework Decision with regard to the abolition of the principle of double criminality therefore appears rather weak.

b) Abolition of the Political Offense Exception

The abolition of the political offense exception, traditionally an important loophole especially for terrorist offenses,⁴⁰ has already been partially abandoned by the Dublin Agreement⁴¹ and the 1996 Convention on Extradition.⁴² The Framework Decision now definitively excludes recourse to this principle.

c) The Surrender of Nationals and Residents Made Obligatory

The right of States to refuse the surrender of their own nationals is another well-established principle of extradition law.⁴³ The first step towards the abandonment of this principle was taken with the 1996 Convention on Extradition, but this abandonment has only been totally realized with the Framework Decision on the European arrest warrant. The fact that the person requested is a national of the executing State only gives rise to the possibility that the executing State refuses to execute the arrest warrant if it undertakes to execute the sentence or detention order itself in accordance with its domestic law (art. 4 no. 6). Thereby, the only remainder of the principle of non-extradition of nationals is the possibility offered to States to ensure the preeminence of jurisdiction deriving from the active personality principle over other types of jurisdiction. The nationality of the requested person is also taken into account in another way. The executing State can subject the surrender of its own nationals to the condition that they be returned to the executing State to serve the custodial sentence or detention order issued against them (art. 5 no. 3).

4. Introduction of Human Rights Related Surrender Exceptions and Safeguards

The Framework Decision introduces a number of safeguards into the arrest warrant procedure with the aim of guaranteeing fundamental human rights. This recognition of subjective rights of the individual concerned reflects a modern trend in extradition law that no longer views extradition as a bipolar relationship be-

⁴⁰ See Gilbert (note 22), 203 et seq. On the reasons underlying the political offense exception see Weigend (note 34), 108.

⁴¹ See note 9.

⁴² See note 11.

⁴³ Gilbert (note 22), 175 et seq. For the reasons underlying this right see Weigend (note 34), 107.

tween States, but as a three-dimensional relationship in which the human rights of the concerned person have to be taken into consideration.⁴⁴

The *ne bis in idem* principle is taken into account by obliging States to refuse to execute the arrest warrant if the requested person has been finally judged by a Member State in respect of the same acts (art. 3 no. 2). At the same time, States have the option to refuse the execution of the arrest warrant if the requested person is being prosecuted in the executing Member State for the same act (art. 4 no. 2) or if, under certain conditions, the requested person has been finally adjudged by a third State in respect of the same act (art. 4 no. 5).

In order to fulfill the requirements spelled out by the European Court of Human Rights (ECourtHR) with regard to criminal judgments rendered *in absentia*,⁴⁵ the Framework Decision provides for the possibility of a conditional surrender. It allows States to subject the surrender of the requested person, if this person had not been informed of the date and place of the hearing which led to the decision rendered *in absentia*, to the condition that the issuing judicial authority assures that the requested person will have an opportunity to apply for a retrial of the case in the issuing Member State (art. 5 no. 12).

The protection of juvenile criminals is the aim of art. 4 no. 3 which provides for a mandatory non-execution of the arrest warrant if the requested person may not, owing to his/her age, be held criminally responsible for the acts on which the arrest warrant is based. This case of mandatory non-execution does not apply to criminals, which seem, because of their old age, unfit to serve a custodial sentence or a detention order.

Another human rights safeguard is contained in art. 5 no. 2: Those Member States which consider life imprisonment without the possibility of review as unconstitutional and not compatible with human rights can subject their surrender of the requested person to the condition that the issuing State has provisions in its legal system for a review of the penalty imposed on request or at the latest after 20 years, or in the alternative, provisions for the application of measures of clemency.

⁴⁴ O. Lagodny, Die Rechtsstellung des Auszuliefernden in der Bundesrepublik Deutschland, 1987; Vogel (note 17), 941; Weigend (note 34), 110 et seq.; S. Zühlke/J.-C. Pastille, Extradition and the European Convention – *Soering* revisited, ZaöRV 59 (1999), 749 (752 et seq.).

⁴⁵ Art. 6 para. 1 ECHR requires that, in the case domestic law permits a trial to be held notwithstanding the absence of a person charged with a criminal offense and without that person having been informed about the trial, that person should, once he/she becomes aware of the proceedings, be able to obtain, from a court which has heard him/her, a fresh determination of the merits of the charge. See ECourtHR, A 76, §§ 27 et seq. – *Goddi*; A 89, § 29 – *Colozza and Rubinat*; A 208, § 33 – *F.C.B. v. Italy*; A 245, §§ 45 et seq. – *T. v. Italy*.

III. The European Arrest Warrant – A Threat to Human Rights?

In spite of these explicit human rights safeguards, the European arrest warrant has been criticized for jeopardizing human rights of the persons whose extradition has been requested. For example, the requested State, it has been argued, cannot refuse to execute the arrest warrant because the trial leading to the conviction of the requested person in the issuing State did not meet the requirements of a fair trial as contained in art. 6 ECHR and art. 47 EU Charter of Fundamental Rights. They assert that the lack of human rights protection is particularly demonstrated by the fact that the Framework Decision also abolished the possibility, well-established in extradition law, to refuse the surrender of the person if there are reasons to believe that the arrest warrant (or the extradition request) 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 that that person's position may be prejudiced for any of these reasons.

This criticism is not well-founded. A general, human rights-based exception clause is implied in the Framework Decision (1). Member States therefore continue to be bound by the human rights requirements with regard to extradition as developed by the ECtHR when they surrender a person to another Member State (2) although that State is itself bound to respect the fundamental rights contained in the ECHR (3). The respect of these human rights guarantees in the surrender procedure is subject to review by national and international courts (4).

1. Existence of a General, Human Rights-Based Exception Clause

Art. 6 para. 2 TEU obliges the European Union to respect fundamental rights as guaranteed by the ECHR and as they result from the constitutional traditions common to Member States as general principles of Community law. This obligation also applies to European Union action within the framework of the second and third pillar.⁴⁶ Therefore, the Council was bound to respect these fundamental rights when adopting the Framework Decision, and the Decision, once adopted, will be subject to review with regard to art. 6 para. 2 TEU.⁴⁷ If the Framework Decision obliges Member States to surrender a person, although the surrender is incompati-

⁴⁶ T. Kingreen, in: C. Calliess/M. Ruffert, Kommentar zu EU-Vertrag und EG-Vertrag, 2nd ed., 2002, Art. 6 EU-Vertrag, no. 55; P. Quasdorf, Dogmatik der Grundrechte der Europäischen Union, 2001, 147.

⁴⁷ On the question whether Member States are bound by art. 6 TEU when adopting national laws implementing the Framework Decision see *mutatis mutandis* C.-P. Bienert, Die Kontrolle mitgliedstaatlichen Handelns anhand der Gemeinschaftsgrundrechte, 2001, 112 et seq.; J. Cirkel Die Bindungen der Mitgliedstaaten an die Gemeinschaftsgrundrechte, 2000, 84 et seq.; S. Fries, Die Grundrechtsbindung der Mitgliedstaaten nach dem Gemeinschaftsrecht, 2002, 85 et seq.; Kingreen (note 46), no. 59.

ble with the human rights protected by art. 6 TEU, the Framework Decision violates treaty law and can be declared invalid under certain circumstances.⁴⁸

In this perspective, art. 1 para. 3 of the Framework Decision, which provides that the Framework Decision “shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union” is interesting.⁴⁹ At first sight the provision seems to be superfluous because, as set out above, the respect of fundamental rights already is obligatory by virtue of treaty law. However, this provision can be given an *effet utile* by interpreting it in the sense that it allows Member States to refuse the surrender of the requested person if the surrender would be incompatible with the fundamental rights contained in art. 6 para. 2 TEU, even though none of the explicit exception clauses of the Framework Decision apply.⁵⁰ This interpretation is supported by the preamble of the Framework Decision where it is stated that Member States are not prevented from applying their constitutional rules relating to due process, freedom of association, freedom of the press and freedom of expression in other media (point 12). In addition, the preamble explicitly states that no person shall 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 (point 13), although the operative part of the Framework Decision does not contain an exception of the duty to execute the arrest warrant in such cases. The preamble also recalls the possibility of Member States to refuse the surrender of the requested person where there are reasons to believe that the arrest warrant has been issued for discriminatory reasons (point 12). These examples demonstrate that the Framework Decision implicitly excludes extradition where this extradition would violate fundamental rights as contained in the ECHR and the general principles of Community law. This human rights “reservation” is grounded in art. 1 para. 3 of the Framework Decision. Pursuant to this provision, Member States may specify these human rights exceptions in their legislation when implementing the Framework Decision in their national law.⁵¹ But in any case, they will have to refuse extradition in cases where the extradition would violate fundamental rights.

The draft Extradition Bill of the United Kingdom⁵² which is intended to implement the Framework Decision on the European arrest warrant in national law adheres to this view: It provides in its section 21 for a general human rights exception. The judge seized of the matter “must decide whether the person’s extradition

⁴⁸ See III. 4.

⁴⁹ Such a provision is lacking in the 1995 and 1996 Conventions on extradition, see Mackarell/Nash (note 14), 957.

⁵⁰ See Flore (note 25), 278; A. Weyembergh, *L’Impact du 11 septembre sur l’équilibre sécurité/liberté dans l’espace pénal européen*, in: E. Bribosia/A. Weyembergh (eds.), *Lutte contre le terrorisme et droits fondamentaux*, 2002, 153 (181).

⁵¹ Flore (note 25), 278.

⁵² <<http://www.parliament.the-stationery-office.co.uk/pa/cm200203/cmbills/002/2003002.pdf>> visited on 17 February 2003.

would be compatible with the Convention rights within the meaning of the Human Rights Act 1998".⁵³ If the judge decides this question in the negative, "he must order the person's discharge".

The introduction of the European arrest warrant, therefore, results in the abolition of a certain number of traditional exceptions to the obligation to extradite that are not or only partially linked to human rights.⁵⁴ These traditional exceptions are supplemented by a certain number of explicit human rights exceptions most likely to be relevant in the European context (for example the surrender exceptions based on the *ne bis in idem* principle or the possibility to ask for a guarantee in the cases of trials *in absentia*) and by an implicit, general, human rights-based exception clause.

2. Human Rights Requirements with Regard to Extradition

This leads to the question in what cases an extradition is contrary to fundamental rights as contained in the ECHR and the general principles of Community law. The ECJ has not yet spoken to the issue; the answer will therefore have to be based on the jurisprudence of the ECourtHR in this respect.⁵⁵

In the *Soering* case, the ECourtHR laid down the foundations for a control of extradition according to Convention standards.⁵⁶ *Soering*, a German national suspected of having murdered his girlfriend's parents in Virginia (USA), had fled to the United Kingdom, from which his extradition was requested by the United States. When the United Kingdom ordered his extradition, *Soering* applied to the ECourtHR alleging a violation of art. 3 ECHR. In what has been called a "break-through" for extradition and human rights, the ECourtHR held that the extradition of *Soering* to the United States violated art. 3 ECHR because there was a real risk that *Soering* would be subjected to inhuman and degrading treatment by being kept on death row for a prolonged period in the State of Virginia. The fact that the actual violation of art. 3 ECHR would take place outside the territory of the requested state did not absolve it from responsibility for any foreseeable consequences of extradition suffered outside its jurisdiction.⁵⁷ But in the eyes of the Court, this does not mean, that a Contracting State may not surrender an individual unless satisfied that the conditions awaiting him in the country of destination are in full accord with each of the Convention safeguards, as the beneficial purpose of extradition – preventing fugitive offenders from evading justice – cannot be ig-

⁵³ The Human Rights Act 1998 incorporates the ECHR into British law. See R. Grote, Die Inkorporierung der Europäischen Menschenrechtskonvention in das britische Recht durch den Human Rights Act 1998, ZaöRV 58 (1998), 309 et seq.

⁵⁴ J. Dugard/C. Van den Wyngaert, Reconciling Extradition with Human Rights, AJIL 92 (1998), 187 (188).

⁵⁵ See also art. 19 para.2 of the Charter of Fundamental Rights of the EU.

⁵⁶ ECourtHR, A 161, § 113 – *Soering*.

⁵⁷ ECourtHR, A 161, § 86 – *Soering*.

nored in determining the scope of application of the Convention.⁵⁸ The flagrancy of the denial of Convention rights in the requesting State seems to be a possible criterion.⁵⁹

It has been widely discussed whether this jurisprudence can be extended to other Convention rights such as art. 6 ECHR.⁶⁰ An extensive application of the *Soering* principle seems to be most convincing. All rights contained in the Convention can, in principle, hinder extradition; but whether they do hinder extradition in the individual case has to be determined by balancing the interest of the individual not to be subjected to a treatment contrary to the Convention with the interest of States in extraditing the offender.⁶¹ This approach appears to be in line with the jurisprudence of the ECHR, which has repeatedly stated that an extradition decision might raise an issue under art. 6 of the Convention in circumstances where the fugitive has suffered or risks suffering a flagrant denial of a fair trial in the requesting country.⁶²

3. Extradition to a State Party to the ECHR: Applicability of the *Soering* Jurisprudence?

The fact that the surrender procedure provided by the Framework Decision on the European arrest warrant will only be used by States which are contracting parties of the ECHR raises a pressing question about the applicability of the above-described jurisprudence to extradition or surrender to a State which is itself a contracting party of the ECHR. The Court has never had to deal with this question.

In this case it could be argued that the requested person is sufficiently protected against a violation of his/her human rights in the requesting State and if this State should nevertheless violate his/her human rights, the requested person has the possibility of taking direct recourse to the ECtHR. In cases of extradition of one ECHR Member State to another, the European Commission of Human Rights attached great importance to the fact that “the case concerned extradition to a High Contracting Party to the European Convention on Human Rights, which has recognized the right of individual petition” and this fact has been an important reason for the Commission’s decision that the extradition was in conformity with the Convention.⁶³

⁵⁸ ECtHR, A 161, § 86 – *Soering*.

⁵⁹ See ECtHR, A 161, § 113 – *Soering*, A 240, § 110 – *Drozd and Janousek*.

⁶⁰ See Dugard/Van den Wyngart (note 54), 187 et seq.; Zühlke/Pastille (note 44), 749 et seq.

⁶¹ See the solution adopted by Zühlke/Pastille, *ibid.*, 769 et seq.

⁶² ECtHR, A 161, § 113 – *Soering*; Rep. 2000-V, 489, §1b) – *Naletilic*. Concerning the parallel problem of exequatur of foreign judgments in the field of civil law see ECtHR, No. 30882/96, § 47 – *Pellegrini*, <<http://hudoc.echr.coe.int/hudoc/default.asp?Language=en&Advanced=1>> visited on 17 February 2003; J.-P. Costa, *Le Tribunal de la Rote et l'article 6 de la Convention Européenne des droits de l'homme*, RTDH 13 (2002), 470 et seq.

⁶³ See ECommHR, DR 51, 272 (277) – *K. and F. v. the Netherlands*.

On the other hand, the abstract confidence in the respect of the rule of law and human rights by the requesting State when prosecuting the individual is a condition of every extradition or surrender. The presumption that a specific prosecution in a specific case will respect human rights standards, however, is questionable, if not to say naive, even with respect to the most fundamental rights such as the prohibition of torture.⁶⁴ The number of cases in which the Strasbourg Court has condemned Member States for the violation of art. 3 ECHR convincingly demonstrates that Convention rights are far from being generally respected in the Member States. Another argument against the differentiation between extradition to States parties to the Convention and extradition to States not parties to the Convention is the fact that in none of its decisions on extradition did the Court seek to determine whether a human rights protection equivalent to the Convention system existed in the requesting State. Therefore, it is likely that the Court will not consider it sufficient that human rights are generally guaranteed in the requesting State because it is Member State of the ECHR, but that the Court will require from the extraditing State a mechanism for determining whether the Convention rights have been respected by the requesting State in the specific case.⁶⁵

National Courts have taken the lead in this direction. They consider that the extradition of a person to a State party to the Convention can violate the rights protected by the ECHR if the person establishes that he/she risks treatment contrary to the Convention in the requesting State.⁶⁶

Finally, regard has to be had to a parallel development in the field of recognition and enforcement of judgments in civil and commercial matters. The Council Regulation of 22 December 2000⁶⁷ incorporating the Brussels Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters of 27 September 1968 in Community law provides for the automatic recognition of foreign judgments except where such recognition is manifestly contrary to public policy in the Member State in which recognition is sought (art. 34, no. 1). The public policy argument can be invoked, as decided by the ECJ in its *Krombach*

⁶⁴ See Vogel (note 17), 940.

⁶⁵ This solution would be more protective than what art. 16 para. 2 German Constitution requires for the extradition of nationals: According to this provision it is sufficient that the requesting State generally guarantees fundamental rights and the rule of law. See H. D. Jarass, in: H. D. Jarass/B. Pieroth, Grundgesetz für die Bundesrepublik Deutschland: Kommentar, 6th ed. 2002, Art. 16, no. 17; A. Zimmermann, Die Auslieferung Deutscher an Staaten der EU und internationale Strafgerichte, JZ 56 (2001), 233 (237).

⁶⁶ F. Sudre, Le renouveau jurisprudentiel de la protection des étrangers par l'article 3 de la Convention européenne des droits de l'Homme, in: H. Fulchiron (ed.), Les étrangers et la Convention Européenne de Sauvegarde des Droits de l'Homme et des Libertés Fondamentales, 1999, 61 (65 et seq.) referring to judgments of the French Conseil d'Etat and the Swiss Tribunal Fédéral. See also the judgment of the British High Court in *Ramda v. Secretary of State* of 27 June 2002, §§ 1 – 4, 21 (extradition to France), <<http://www.courtservice.gov.uk/Judgments.do>> visited on 17 February 2003, in which the High Court considered that it was no answer for the Secretary of State to invoke France's status as a signatory to the ECHR as a complete answer to complaints about the fairness of the person's trial.

⁶⁷ OJ L 12 of 16.01.2001, 1 et seq.

decision,⁶⁸ in order to refuse the recognition of a judgment of another Member State if the rights guaranteed by the ECHR have not been respected by this Member State. If a human rights exception clause is necessary in the field of civil law,⁶⁹ then it is *a fortiori* necessary in the field of criminal law, a particularly sensitive field with respect to human rights.⁷⁰

The *Soering* rationale, therefore, does apply to the extradition or surrender to States parties to the ECHR. Hence, EU Member States cannot rely, when acting on the basis of the Framework Decision on the European arrest warrant, on the fact that human rights are guaranteed in the requesting State because it is party to the ECHR; they have to make sure that human rights have been or will be respected in the specific case before them.

4. Review of the Respect of the Human Rights Obligations Inherent in the Framework Decision

The interpretation of art. 1 para. 3 of the Framework Decision suggested above allows the integration of the exposed human rights requirements into the surrender procedure. However, it is not certain that all Member States will adopt this view. This leads to the question: What can the requested person do if he/she considers that his/her impending surrender to another Member State violates his/her human rights?

The national courts seized of the matter are prevented from controlling the national law with regard to the national human rights provisions by the principle of primacy of Community law, a principle which has to be extended to binding European Union law.⁷¹ But they can refer the question to the ECJ according to art. 35 para.1 TEU and claim the violation of art. 6 para. 2 TEU⁷² if the Member State has made a declaration under art. 35 para. 2 accepting the jurisdiction of the Court.⁷³ They are even obliged to do so if they consider the Framework Decision to be contrary to art. 6 TEU. The *ratio* of the *Foto-Frost* jurisprudence, which construed such an obligation in order to ensure the monopoly of the ECJ in declaring EC acts invalid and to guarantee the unity of the European legal order, is relevant also

⁶⁸ ECJ, case C-7/98, ECR 2000-I-1935 – *Krombach*.

⁶⁹ See J. Gündel, *Der einheitliche Grundrechtsraum Europa und seine Grenzen: Zur EMRK-konformen Interpretation des Ordre-public-Vorbehalts des EuGVÜ durch den EuGH*, EWS 11 (2000), 442 (448); F. Matscher, *Der verfahrensrechtliche ordre public im Spannungsfeld von EMRK und Gemeinschaftsrecht*, IPRax 21 (2001), 428 (431 et seq.); G. Stolz, *Die Ordre Public-Klausel des EuGVÜ in der Rechtsprechung des EuGH*, JuS 42 (2002), 541 (543).

⁷⁰ In this direction see *Weyembergh* (note 50), 182 et seq.

⁷¹ From the perspective of the German Constitution this results from art. 23 para. 1 of the Constitution which is not limited to Community law but explicitly applies to the European Union.

⁷² With regard to framework decisions, art. 46, *lit. d*) is superfluous, see M. Pechstein, *Die Justitiabilität des Unionsrechts*, EuR 34 (1999), 1 (13).

⁷³ The ECJ also has jurisdiction to review the legality of framework decisions in actions brought by a Member State or the Commission, see art. 35 para. 6 TEU.

with regard to framework decisions.⁷⁴ If a declaration under art. 35 para. 2 TEU is lacking, the requested person will have to take recourse to the ECtHR, which probably will, in accordance with its case-law on the responsibility of Member States for acts of international organizations,⁷⁵ examine the national law implementing the Framework Decision with regard to the Member State's obligation under the ECHR.⁷⁶ The concerned Member State can prevent this by making the declaration under art. 35 para. 2 TEU. If the ECJ is seized and decides against the existence of a human rights based exception clause, the concerned person can take recourse to the ECtHR which will, according to its case-law, examine the complaint.⁷⁷

IV. Conclusion

The European arrest warrant definitely constitutes a new qualitative step towards a European judicial criminal area and will certainly be a precursor for other instruments in the field of criminal law that are grounded on the principle of mutual recognition.⁷⁸ The call of the Tampere European Council for a predominant role of the principle of mutual recognition of judicial decisions and judgments in

⁷⁴ See V. Rößen, in: E. Grabitz/M. Hilf, *Das Recht der Europäischen Union*, 19. Ergänzungslieferung – Stand Februar 2002, Art. 35 EUV, no. 16.

⁷⁵ ECommHR, DR 64, 138 (144 et seq.) – *M. & Co. v. Germany*; ECtHR, Rep. 1999-I-251, § 32 – *Matthews*; Rep. 1999-I-393, §§ 67, 68 – *Waite and Kennedy*. A. Bultrini, *La responsabilité des Etats membres de l'Union Européenne pour les violations de la Convention Européenne des Droits de l'Homme imputables au système communautaire*, RTDH 13 (2002), 5 (13 et seq., 18 et seq.); T. Giegerich, *Luxemburg, Karlsruhe, Straßburg – Dreistufiger Grundrechtsschutz in Europa?*, ZaöRV 50 (1990), 836 (861 et seq.); R. Harmsen, *National Responsibility for European Community Acts under the European Convention on Human Rights: Recasting the Accession Debate*, EPL 7 (2001), 625 (630 et seq.); T. King, *Ensuring Human Rights Review of Intergovernmental Acts in Europe*, ELR 25 (2000), 79 et seq.; S. Winkler, *Der Beitritt der Europäischen Gemeinschaften zur Europäischen Menschenrechtskonvention*, 2000, 161 et seq. See also ECtHR, No. 43844/98 – *T.I. v. United Kingdom*, <<http://hudoc.echr.coe.int/hudoc/default.asp?Language=en&Advanced=1>> visited on 17 February 2003.

⁷⁶ See Rößen (note 74), Vor Art. 29 EUV, no. 37. The Court's recent judgment in the case of *Seji and Gestoras Pro-Amnistia* (ECtHR, No. 6422/02, <<http://hudoc.echr.coe.int/hudoc/default.asp?Language=en&Advanced=1>> visited on 17 February 2003) can also be understood as an assertion of jurisdiction with regard to European Union acts based on title VI of the TEU.

⁷⁷ Kingreen (note 46), no. 91; S. Peers, *Human Rights and the Third Pillar*, in: P. Alston (ed.), *The EU and Human Rights*, 1999, 167 (175). For a different opinion see Rößen (note 74), no. 37.

⁷⁸ See for example the initiative by the Governments of the French Republic, the Kingdom of Sweden and the Kingdom of Belgium for the adoption by the Council of a Framework Decision on the execution in the European Union of orders freezing assets or evidence (OJ C 75 of 07.03.2001, 3 et seq.) and the initiative of the United Kingdom, the French Republic and the Kingdom of Sweden with a view to adopting a Council Framework Decision on the application of the principle of mutual recognition to financial penalties (OJ C 278 of 02.10.2001, 4 et seq.). Both Framework Decisions were meant to precede the Framework Decision on the European arrest warrant, but in the aftermath of 11 September 2001 priority was given to the Framework Decision on the European arrest warrant, see Weyembergh (note 50), 192 et seq.

the judicial cooperation in criminal matters within the European Union will not remain unanswered.

Concerning the human rights implications of the European arrest warrant, it is certainly true that the concrete repercussions of the new procedure on the rights of the concerned person remain to be seen. However, the safeguards introduced by the *Soering* jurisprudence of the ECtHR into the extradition procedure still apply: States are bound to examine whether the requesting State has or will respect the human rights of the concerned person in the specific case at hand. At the same time, States' human rights obligations normally apply to all of their acts that precede the surrender of the requested person to the issuing State. A threat to human rights by the European arrest warrant is not, therefore, discernible.

