THE APPLICATION OF THE EUROPEAN ARREST WARRANT IN THE EUROPEAN UNION.
A GENERAL ASSESSMENT

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1. Introduction

It has been repeated over and over again that the Council Framework Decision of 13 June 2002, relating to the European Arrest Warrant and Surrender Procedures between Member States (EA W) constitutes the first legal instrument in application of the mutual recognition principle in criminal law, which has been applied, moreover, with notable success. Nevertheless, it is worth recalling that at the outset, the European Commission envisaged something quite different. It had stated that its priority interest lay in the approval of resolutions directed at obtaining evidence and the seizure of assets as is clear from the ‘Programme of Measures to Implement the Principle of Mutual Recognition of Decisions in

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2 The most optimistic view in this case comes from the community institutions themselves; as an example, I. Perignon formerly an administrator at the DG of Justice and C. Daucé, ‘The European Arrest Warrant, A Growing Success Story’. ERA Forum (2007), pp. 203-214, ‘Freedom and Security of the European Commission’. An identical opinion is found in the reports presented by the same institution in an evaluation of the application of this legal instrument, the second and to date the most recent of those presented, COM (2007) 407 final, 11.7.2007, explicitly states that ‘the European arrest warrant is a success’ (p. 2).
Criminal Matters. However, as is also well known, the course of events proved otherwise. The Council Framework Decision, as called for by the Commission, on the European evidence warrant, which was presented almost four years ago, and which for some was destined to failure from the outset, was only formally approved some months ago. The two Framework Decisions on seizure and

3 Official Journal, C 12, 15.1.2001, pp. 10-22, esp. p. 14 where a priority rating of 1 was attributed to such measures relating to the obtaining of evidence and the seizure of assets whereas the enforcement of arrest warrants was given a priority 2 rating. Moreover, the initial provision at the time simply dealt with establishing the said ‘surrender conditions’ of the requested person who was arrested in another Member State ‘for the most serious offences’ among those listed in Art. 29 TEU (that is to say, specifically, terrorism, trafficking in persons and offences against children, illicit drug trafficking and illicit arms trafficking, corruption and fraud).

Additionally: the ‘Programme for the Prevention and Control of Organised Crime’, also known as ‘A European Union Strategy for the Beginning of the New Millennium’, Official Journal, C 124, 3.5.2000, pp. 1-33 stated that the creation of a single European judicial space for extradition at that time was no more than a long-term goal and it set 2010 as a target date (recommendation n. 28, p. 28). The Vienna Action Plan, for its part, ‘on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice’, Official Journal, C 19, 23.1.1999 pp. 1-15, still contemplated, as an objective to be reached within two years, the signing of the two existing extradition agreements agreed in 1995 and 1996, neither of which have been ratified or passed into law throughout the European community, although they were, however, provisionally applied in some Member States, including Spain.


5 See S. Gless, ‘Mutual Recognition, Judicial Inquiries, Due Process and Fundamental Rights’, in J. Vervaele (ed.), op. cit., pp. 121-129, esp. p. 123. It is hardly surprising that one of the main problems derives from the admissibility of evidence presented in another Member State under the rule of locus regit actum, which is the situation that the latter norm seems to contemplate despite the safeguard under Art. 7.b) (‘the objects, documents or data can be obtained under the law of the issuing State in a comparable case if they were available on the territory of the issuing State, even though different procedural measures might be used’) upholding the rule to the contrary, forum regit actum. On this matter and with commentary on both rules see G. Ormazábal Sánchez, ‘La formación del espacio judicial europeo en materia penal y el principio de mutuo reconocimiento. Especial referencia a la extradición y al mutuo reconocimiento de pruebas’, in T. Armenta Deu, op. cit., pp. 37-73, at pp. 46.