



**UNHCR Observations on the  
European Commission Proposal  
for a Council Framework Decision on the  
European arrest warrant and the surrender procedures between member States  
(COM(2001) 522 final - 2001/0215 (CNS))**

1. This proposal aims at enforcing the transfer of a person from one Member State to another for the purpose of criminal prosecution, replacing the existing extradition procedures. UNHCR's interest in this proposal is engaged only in so far as it may affect refugees and asylum-seekers. As the 1951 Convention relating to the Status of Refugees in no way extends immunity from prosecution to refugees who have committed criminal offences, the proposal would apply to asylum-seekers and refugees in one Member State who may be accused of having committed crimes in another Member State, as it would to other persons.

2. Under the proposed scheme a refugee could therefore be transferred from one Member State (which has recognised the person as a refugee) to another Member State for prosecution. As long as the crime for which the refugee is tried, and if convicted, punished, is not of the nature or severity to invoke Article 33(2) of the 1951 Convention, the refugee protection of the person should not be affected by the transfer and prosecution. This means, *inter alia*, that the protection against expulsion and *refoulement* contained in Articles 32 and 33 of the 1951 Convention continue to apply. Appropriate safeguards would therefore have to be built into the Decision which would ensure that the protection of refugees is not undermined by its operation. This would entail suitable measures to be in place to ensure that refugees are properly identified as such, that their protected status would be retained (with the exception of Article 33(2) cases) in the Member State responsible for their protection and that return arrangements to the Member State where they are recognised are in place after prosecution or, at the very least, after serving the sentence.

3. Similarly, the situation of asylum-seekers would require particular attention. UNHCR would suggest that if an asylum-seeker in one Member State is transferred to another Member State pursuant to the Decision, the asylum procedure in the first State should be suspended. Then, after the resolution of the prosecution, whether by acquittal or conviction and sentence, the asylum-seeker should be returned to the State responsible for determining the asylum claim, and consideration of the case resumed to its final conclusion.

4. Consequently, for both refugees and asylum-seekers, the special nature of their situation should be reflected accordingly in additional provisions under Chapter V (Special Cases). Article 36 of the proposal, in an amended form, could also be clarified in that such a return condition could be imposed also in cases of refugees and asylum-seekers. In the absence of such measures, it is conceivable that refugees or asylum-seekers would lose their status and the rights attached thereto, and, in a "worst case" scenario, be expelled by the receiving State after having served a sentence, with the consequent threat of exposure to *refoulement*.

5. The proposal eliminates the “non-persecution” clause, which was incorporated in the 1996 Convention relating to Extradition between the Member States of the European Union by the reference –made in Article 5(3) of that Convention– to Article 5 of the 1977 European Convention on the Suppression of Terrorism and to Article 3 (2) of the 1957 European Convention on Extradition. The 1996 Convention also includes an Annex in which the Member States declare the Extradition Convention is without prejudice to the application of the provisions of the 1951 Convention and its 1967 Protocol. UNHCR would strongly recommend that the above safeguard also be included in the replacement scheme. Moreover, while the explanatory memorandum mentions, for instance, the applicability of the European Convention for the Protection of Human Rights and Fundamental Freedoms, in UNHCR’s view, this point deserves to be made in the Decision itself. This is all the more important since the enlargement process also includes countries (or potential countries) with less developed human rights systems, to which this Decision would also be applicable once they became Members of the Union.

6. The proposal also does away with the “political offence exemption”. It is noted that the possibility of invoking such an exemption had already been curtailed by the 1996 Convention relating to Extradition, in so far as under Article 5 (2) of that instrument States may, at their discretion, decide whether to apply it or not. Although UNHCR has reservations about such a formula (as expressed in the course of the adoption of the 1996 Convention) it considers that the Council Decision should, at the very least, retain the power of Members States to apply the political offence exemption.

7. The European Union is an influential player in the international standard-setting arena, and the instruments adopted in the Union are often used as models in other parts of the world. While in general recognition of and respect for human and refugee rights is high in European Union states, the “export” value of instruments that do not contain explicit legal safeguards to other regions with less well-developed systems of human rights protection is worrisome, since it could have the potential of undermining existing human rights and refugee protection principles. It is also for this reason that UNHCR urges the adoption of appropriate safeguards in the Decision.

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