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**NOTE**

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| From:     | Belgian delegation  |
| To:       | Co-operation in Criminal Matters Working Party  |
| Subject : | Decision of the Belgian Constitutional Court on the Framework decision on the European arrest warrant |

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On 22 June 2004, a local NGO "Advocaten voor de wereld" submitted an annulment application of the Belgian legislation on the European arrest warrant to the Belgian Constitutional Court ("Cour d'Arbitrage").

This action is not related to an individual case. Indeed under Belgian law, an annulment action may be brought before the "Cour d'Arbitrage" by any authority designated by statute or by any natural or legal person who has a justifiable interest. This action must be brought within six months of the publication of the challenged regulation. As a general rule, with certain exceptions, the action for annulment does not suspend the application of the challenged regulation until the final decision is issued.

The "Cour d'Arbitrage" has delivered a first judgment on 13 July 2005.

The applicant submitted 5 arguments to the Court. The Court took 3 of them into account, namely:

- The first one: according to the applicant, this matter (international cooperation on criminal matters) should have been regulated by convention instead of a Framework Decision. Indeed, Article 34 of the Treaty on European Union says that Framework Decisions may be adopted for the purpose of approximation of the laws and regulations of the Member States, which is allegedly not the case. Moreover the use of a Framework Decision, which is mandatory for the Member States, would have had the effect of excluding the parliamentary control on the act.
- The fourth and fifth means are related to the issue of dual criminality: According to the applicant, the partial derogation of the dual criminality requirement for a list of 32 offences is contrary to the principle of non-discrimination and equality as there is no objective and reasonable justification for it. Moreover this derogation would be contrary to the principle of legality in criminal matters.

The Court has not decided yet on the substance.

According to the Court, the charges directed against the Belgian legislation actually challenge the Framework Decision itself. Differences of interpretation between judicial authorities among the European Union on the validity of a Framework Decision would compromise the unity of the Community legal order and infringe on the general principle of legal certainty.

According to Article 35 of the Treaty on European Union, the Court of Justice of the European Communities shall have jurisdiction, as it is accepted by Belgium, to render preliminary rulings on the validity and interpretation of Framework Decisions.

As a consequence, 2 preliminary references were made by the "Cour d'Arbitrage" to the Court of Justice:

1. The first one is related to the conformity of the Framework Decision on the European arrest warrant with Article 34 of the TEU, which says that Framework Decision may be adopted for the purpose of approximation of the laws and regulations of the Member States,
  2. The second one is related to the conformity of the partial derogation of the dual criminality requirement with Article 6 of the TEU, and more specifically with general principles of equality and non-discrimination.
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