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Symposium ImprovEAW

Improving the EAW: transposition by the Member States

Vincent Glerum,
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Non-transposition

- Non-transposition: facilitates surrender in accordance with principle of mutual recognition (*Wolzenburg*; *X (European arrest warrant – Ne bis in idem)*)
- With few exceptions (HU, IE), project-MS transposed all grounds for refusal of Art. 4 FD 2002/584/JHA
- Hypothesis: MS were and are more attached to the (possibility of) preserving national sovereignty than to cooperating

Incorrect transposition: optional → mandatory

- When transposing an optional ground for refusal of Art. 4, executing JA must have a margin of discretion whether or not to execute the EAW (*Popławski I*; *X (European arrest warrant – Ne bis in idem)*): *favor extraditionis*
- Except for RO, all project-MS transposed one or more optional grounds for refusal as mandatory grounds for refusal
- Supports hypothesis

Incorrect transposition: distinction nationals/other EU citizens

- Distinctions:
 - Refusal limited to own nationals (HU, Art. 4(6), nationals who are residents)
 - Refusal mandatory for own nationals, optional for others (HU + EL: Art. 4(6) and Art. 5(3); EL: Art. 4(2))
- Limitation of scope: facilitates surrender ([Wolzenburg](#); [Sut](#))
- When transposing FD 2002/584/JHA MS must comply with primary EU law: Art. 18 TFEU ([Lopes Da Silva Jorge](#)); besides, executing JA must have margin of discretion
- Again: this mode of transposition supports hypothesis

Incorrect transposition: additional grounds for refusal

- Apart from ‘exceptional circumstances’, refusal grounds and guarantees of Art. 3-5 FD 2002/584/JHA are exhaustive
- Some project-MS introduced additional grounds for refusal, *e.g.*:
 - EL: discriminatory prosecution/punishment of ‘freedom fighters’
 - NL: manifest innocence
 - PL: political offence committed without violence;
- Again: supports hypothesis



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