MINISTRY OF PUBLIC ADMINISTRATION
AND JUSTICE

TIBOR NAVRACSICS
Minister

Mme Viviane Reding
Vice-President

European Commission

Brussels

Budapest, 26 June 2012

Dear Madame Vice-President,

I would like to draw your attention to a European arrest warrant-based surrender proceeding which lasted between Hungary and Ireland from 2004 and has been terminated recently by a ruling allowing for the perpetrator of an offence to evade all the criminal consequences of the act that he committed.

In April 2000 in Leányfalu, Hungary, Francis Ciaran Tobin, an Irish national, was driving his car by exceeding the speed limit and the car mounted a footpath where it struck two siblings, aged 5 and 2, who died on the spot.

Tobin was found guilty by the competent Hungarian court of the misdemeanor of negligent driving causing death for which offence he was sentenced, under a final judgment, for three years imprisonment and was banned from driving for three years. In the judgment the second instance court ruled that after serving half of his sentence Francis Ciaran Tobin could be released on parole.

Francis Ciaran Tobin did not begin to serve his sentence in Hungary. As he was staying in Ireland, the competent Hungarian court issued a European arrest warrant against him for his arrest and surrender for the purpose of executing a custodial sentence.

As a closure of the surrender proceeding lasting from 2004 the Irish Supreme Court did, in a decision adopted on 19 June 2012, refuse to surrender Francis Ciaran Tobin to Hungary.

The Irish central authority, the Department for Justice and Equality provided the information for the Hungarian Ministry of Public Administration and Justice, the designated central authority for European arrest warrant-based surrender procedures, that under Irish law no further legal action can be taken against Tobin: though in the surrender proceedings conducted on the basis of the European arrest warrant issued by the Hungarian court the Hungarian judgment was recognised by the Irish judicial authorities, the sentence of imprisonment inflicted in Hungary can, nevertheless, not be executed in Ireland.

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It is more than regrettable and totally incompatible with the spirit and aim of Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States that in the European Union, in the area of freedom, security and justice where the basis of Member States' criminal cooperation is the mutual recognition of judgments (decisions) based on Member States' unconditional and mutual trust in each others' legal systems, a ruling could be adopted in the course of the execution of a European arrest warrant issued by a Member State court as a result of which the perpetrator of an offence will, finally, escape any criminal disadvantage.

Article 4.6 of the above invoked Council Framework Decision provides that *"the executing judicial authority may refuse to execute the European arrest warrant if the European arrest warrant has been issued for the purposes of execution of a custodial sentence or detention order, where the requested person is staying in, or is a national or a resident of the executing Member State and that State undertakes to execute the sentence or detention order in accordance with its domestic law."*

Where a Member State fails to surrender a national of her own for the purpose of executing a sentence of imprisonment or fails to execute the sentence herself, and her domestic laws do not allow for instituting criminal proceedings for the offence committed by the national abroad, the result will be that the convicted person will evade all the criminal consequences of the serious offence that he committed.

Therefore I would like to ask you to examine all circumstances of this case and consider all possible means available in your competence to take effective steps within the framework of EU law in order to prevent such unfortunate precedents from ever happening again.

Yours sincerely,

Tibor Navracsics
Deputy Prime Minister
Minister of Public Administration and Justice