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NOTE

from :	Presidency and Incoming Presidency
to :	Working Party on co-operation in Criminal Matters (EAW experts)
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Subject :	Follow-up to the final report on the fourth round of mutual evaluations - The practical application of the European Arrest Warrant and corresponding surrender procedures between Member States

Introduction

On 4–5 June 2009, the Council adopted the final report on the fourth round of mutual evaluations. The report contains 19 substantive recommendations. Recommendations 20 and 21 deal with the procedure for follow-up to the report.

As is stated in the report, one of the key advantages of the system of mutual evaluations is that it constitutes a tool which allows Member States not only to take stock of their situation, but also - further to the recommendations made in the context of these evaluations – to take action in order to improve their system. The text accompanying recommendation 20 states that

"the follow-up to individual evaluations should be envisaged as a request to the Member States to notify either the action taken since the evaluation as regards the recommendations expressly addressed to them, or the reasons for their inaction. Therefore this report should not be considered as the final step, but as a contribution to the continuing monitoring of the practical application of the European arrest warrant. The Commission will play an important role in this ongoing monitoring, *inter alia*, through reports on the implementation of the European arrest warrant."

Two sets of recommendations

The substantive recommendations of the Final report of the fourth round can be divided into two categories of recommendations. The first set of recommendations are addressed to the Member States.

Further to recommendation 20, the Presidency, on 2 July 2009 sent a letter to all Member States asking them to inform the Council by 30 June 2011 on the implementation of the recommendations 1, 2, 3, 4, 5, 6, 8, 11, 13, 16, 17 and 18 and the recommendations of the evaluation reports for each Member State.

The outcome of that exercise should then be passed on to the Council by means of a Presidency report to be submitted by the end of 2011 containing, where appropriate, recommendations. Those recommendations may be either general in nature, or, where appropriate, addressed to specific Member States. In some cases recommendations are also addressed to other EU bodies (e. g. EUROJUST or EJM) or other bodies (EJTN). This is the case of the recommendations 3 and 4.

There is also second set of recommendations, which are addressed to the preparatory bodies of the Council. With regard to recommendations 7, 9, 10, 12, 14, 15, 16 and 19, the text of which is also set out in annex to this note, it is stated that

"focused meetings of the EAW experts should be held in the upcoming period in order to continue the examination of the identified issues and to exchange the practical experiences, with a view to taking concrete action so as to ensure that these issues are dealt with effectively and promptly."

Possible types of action with regard to the second set of recommendations

The Presidency can envisage the following types of solutions with regard to the second set of recommendations.

- With regard to some recommendations, *legislative action* may be envisaged. This could be done following either a Commission proposal or an initiative supported by at least seven Member States, aimed at amending the EAW Framework Decision of 13 June 2002. In either case the ordinary legislative procedure would apply, that is co-decision with the European Parliament. Legislative action is undoubtedly the most binding manner to obtain a change in the way the European arrest warrant functions and therefore, at least in some cases, probably also the most effective course of action.

There are, however, also potential drawbacks to legislative action. The European arrest warrant is, generally speaking, a well-functioning system of arrest and surrender between the Member States. From that point of view, the avenue of amending the EAW Framework Decision should be followed only if it is unavoidable in order to remedy important problems identified in the course of the fourth round of mutual evaluations. It should also be borne in mind that, in the course of the ordinary legislative procedure, amendments may be introduced to articles of the Framework Decision that were not part of the initial Commission proposal or Member States initiative.

- Also *non-legislative action* is possible. With regard to some recommendations, a possibility of going forward could be the development of best practices. These best practices could be laid down in Council conclusions, but could also be integrated into the European arrest warrant Handbook¹.

The Presidency's aim is to initiate discussions between the Member States on the second set of recommendations. These discussions will continue under the Spanish Presidency, as well as the progress achieved on recommendations sent to other bodies.

¹ 8216/2/08 COPEN 70 EJM 26 EUROJUST 31 + COR 1.

The Presidency therefore invites the Working Party on Co-operation in Criminal Matters to consider, with regard to each of the recommendations set out in the annex to this note, which type of action would be preferable and how this recommendation should concretely be taken forward.

**RELEVANT RECOMMENDATION FROM THE FINAL REPORT ON THE FOURTH
ROUND OF MUTUAL EVALUATIONS - THE PRACTICAL APPLICATION OF THE
EUROPEAN ARREST WARRANT AND CORRESPONDING SURRENDER
PROCEDURES BETWEEN MEMBER STATES**

Time limits for the provision of language-compliant EAWs

Recommendation 7: The Council agrees that the possibility of setting up common manageable time limits for the receipt of language-compliant EAWs be addressed by its appropriate preparatory bodies. This issue should be analyzed in the context of the applicable language regime according to part 3.5 and corresponding recommendation 5.

Proportionality check

Recommendation 9: The Council instructs its preparatory bodies to continue discussing the issue of the institution of a proportionality requirement for the issuance of any EAW with a view to reaching a coherent solution at European Union level. The issue of proportionality should be addressed as a matter of priority.

Accessory surrender

Recommendation 10: The Council agrees that its preparatory bodies examine the issue of surrender in respect of accessory offences and submit proposals.

Speciality rule

Recommendation 12: The Council agrees that the possibility of removing the speciality rule in relations between Member States be addressed in its appropriate preparatory bodies.

Article 111 of the Convention implementing the Schengen Agreement

Recommendation 14: The Council agrees that the matter of the impact on the EAW underlying the respective SIS alert of the obligation imposed on Member States by Article 111(2) of the Convention implementing the Schengen Agreement/Article 59 of Council Decision 2007/533/JHA of 12 June 2007 on the SIS II be addressed in its appropriate preparatory bodies. The outcome of the evaluation of the domestic provisions on this subject to be carried out by the Commission shall be taken into account.

"Provisional arrest" under the EAW

Recommendation 15: The Council agrees that the possibility of establishing a mechanism for provisional arrest under the EAW in cases of urgency be examined by its appropriate preparatory bodies.

Information deficits

Recommendation 16: The Council calls on Member States to check their practice when acting as executing Member State and, where necessary, to take measures to ensure that the issuing authority is provided with timely and accurate information on the progress of the EAW procedure, in particular on the final - enforceable - decision, as well as on the period of detention of the requested person, bearing in mind that the length of the EAW procedure should not be extended. To that end, it agrees that the possibility of developing a standard form for providing information be examined by its preparatory bodies.

Seizure and handover of property

Recommendation 19: The Council agrees that the issue of the application of Article 29 of the Framework Decision be addressed in its appropriate preparatory bodies in order to analyse problems that could arise from different practices.