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Accompanying document to

the third Report from the Commission to the European Parliament and the Council on the implementation since 2007 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States

{COM(2011) 175 final}

PART I - OVERVIEW OF LEGISLATIVE CHANGES IN THE MEMBER STATES SINCE 1 APRIL 2007

The responses received by the Commission to its requests for information of the 30 June 2009 and 25 June 2010 indicate the following:

- New legislation was adopted in AT, BG, CZ[1], EE, FR, HU, IE, LV, LT, PL PT, RO, SK and SI and legislation is proposed and drafted but is not yet adopted (apart from a minor amendment to one article of its transposing legislation[2]) in LU.

- No legal change had taken place or was announced in BE, CY[3] DK, DE, EL, ES, FI, IT, MT, NL, SE and the UK.

A brief descriptive analysis of the amendments is provided herein for the Member States where new legislation was adopted. The position in respect of all Member States is set out in the Tables, in Part VIII.

AUSTRIA (Part VIII, Table 1)

AT changed its legislation with effect from the 1st of January 2008. The legislation comprises rules governing all forms of cooperation between judicial authorities of Austria and those of the other Member States. The concept of mutual recognition is explicitly mentioned and the law provides for cooperation through Eurojust and EJN.

Relating to EAWs against Austrian nationals on the basis of a conviction, the dual criminality requirement related to list offences came to an end on the 1st of January 2009. However, the execution of an EAW against an Austrian national is prohibited when the acts are subject to the jurisdiction of Austrian criminal law. Furthermore, all optional grounds are implemented as mandatory grounds for refusal for Austrian nationals. Surrender for prosecution is prohibited without the guarantee of Art 5(3). The right not to be surrendered may be waived.

Where there is dual criminality AT will – when refusing to execute an EAW against an Austrian national - take over prosecution in a proceeding that starts on the basis of the EAW. If the act underlying the EAW is a list offence the sentence will be enforced, even if the act is not punishable according to AT law.

It is noted that in keeping with the old extradition regime, AT continues to require verification of the suspicion (if there are considerable doubts in this context, in particular if evidence is available or can be offered, which would dispel the suspicion immediately).

BULGARIA (Part VIII, Table 3)

The implementing legislation was most recently amended on 6 June 2008. Part of the amendment relates to consequences for the EAW procedures in preparation for the Schengen regime.

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1 Further legislative amendments are currently being prepared in CZ

2 Part 9 of the Law of 27.10.2010 "Lutte contre le blanchiment et le financement du terrorisme"

3 The last information received from CY in August 2009 was that new legislation was proposed. No update on the progress, if any, of proposed legislation has been received

The amendment limits the application of optional grounds for refusal of article 4(2) and (3) FD to those cases in which the person was accused or summoned or where the case was closed *before* reception of the EAW.

The application of the ground for refusal of article 4(6) is now limited to those cases in which the judge grants (in the same court procedure) the execution of the foreign penalty. The time limit for receipt of a (translated) EAW is extended to 72 hours.

CZECH REPUBLIC (Part VIII, Table 5)

The law has been amended on three occasions (on 7 June 2007, on 10 December 2008 and on 8 January 2009), mainly to adapt CZ law to "Schengen", which CZ entered on the 21 December 2007. An Act on International Judicial Co-operation is currently being prepared with a view to the parliamentary procedure beginning in early 2011.

It is envisaged that the recommendations addressed to the Czech Republic in the evaluation report will be addressed in this upcoming legislation including the fact that (as highlighted in the Commission implementation report) contrary to the Framework Decision, requests for offences committed by Czech nationals prior to 1 November 2004 are treated by CZ under previous extradition arrangements. The provision of a simplified and speedier procedure for surrender in consent cases is also envisaged.

Other measures that need to be addressed are the removal of the current application of the principle of reciprocity to the surrender of Czech nationals and the removal of the grounds of refusal identified in the evaluation report as not having a basis in the Framework Decision.

ESTONIA (Part VIII, Table 7)

On 23 May 2008 new legislation was enacted expressly asserting that surrender in respect of FD list offences is to occur without verification of the double criminality of the act.

The amending legislation designates the competent issuing judicial authority in EAW cases arising in respect of persons who abscond during the course of criminal proceedings. It also makes provision for humanitarian grounds as a permissible basis for the postponement of surrender in appropriate cases.

The Commission's 2007 report mentioned that although not provided for in national legislation, as a consequence of the EE system (in which all arguments can brought before the Judge) a Judicial Authority may refuse surrender purely on merit grounds rather than pursuant to any of the grounds stated in Article 3 and Article 4 of the Framework Decision. No refusals, however, are reported on other grounds than grounds included in the FD.

FRANCE (Part VIII, Table 9)

The law of 12 May 2009 introduced several improvements.

In respect of temporary surrender, the French Ministry of Justice has indicated to the national courts that the decision of temporary surrender has to be decided by the judicial authorities of both states concerned. The French Ministry must not intervene.

Also, due to legislative changes, in case of refusal of the execution of a foreign sentence in accordance with paragraph 4(6) of the Framework Decision, the "chambre d'accusation" can

now immediately proceed to take over the execution of the foreign custodial sentence or detention order ("mise à execution directe"). A further amendment allows the applicability of the measure of conditional release when executing a foreign sentence in these cases.

The Code of Criminal Procedure has also been amended regarding the execution of the EAW: the General Prosecutor may now also apply alternative measures to detention. In addition, the speciality rules are now in conformity with paragraph 27(3) (g) of the FD. It seems however that the transposition of the exception to the speciality rule in Article 27(3) (c) remains outstanding.

Concerning the issue of accessory surrender, the legislation envisages inclusion of accessory offenses (that do not meet the thresholds) when issuing an EAW for offenses that meet the criteria. Relating to the seizure and handover of property, a provision has been added to allow seizure and handover on own initiative of the executing authority.

HUNGARY (Part VIII, Table 12)

Amendments to the law came into force on 8 January 2009.

HU reiterates that all EAWs are issued by a judge and are also considered as national arrest warrants. For EAWs replacing pre-existing international arrest warrants the date of issue will be clearly indicated. HU also guarantees that surrender can only be refused on grounds expressly provided in the implementing law.

Amendments relating to refusal on the grounds of prescription and deduction of detention served abroad pursuant to the execution of the EAW from the total custodial sentence brings the HU law now in line with respectively articles 4(4) and 26 of the FD.

However, HU did not amend its legislation protecting HU nationals residing in HU from being surrendered for *in absentia* sentences, even when re-trial is guaranteed, nor did it introduce a possibility for executing sentences for offences not punishable under HU law, passed against Hungarian nationals that are not surrendered.

IRELAND (Part VIII, Table 13)

New legislation which took effect on 25 August 2009 anticipates requirements relating to SIS II and has reduced the need for correction/re-issue of warrants in case of technical and minor errors in EAWs to those absolutely necessary. It also reduced the time spent on checking incoming warrants and provides that fingerprints, palm prints and photographs may be taken for identification purposes.

The provision of an optional ground for refusal in relation to lapse of time has now been deleted. The possibilities of appeal to the Supreme Court on points of law of exceptional public importance are limited. Where surrender is subject to the condition that the person be returned to the executing state to serve any sentence imposed in the issuing state, and where the person consents to his return, the new legislation empowers the Minister to issue a warrant for the transfer of that person to the executing state following final determination of the proceedings. Ireland, therefore, no longer relies on the Transfer of Sentenced Persons regime.

However, Irish legislation continues to require that an incoming warrant be endorsed by the High Court before execution. In addition, Ireland as an issuing state has not explicitly

transposed Article 24(2) on temporary surrender and Articles 27(3) (g) and 27(4) on consent for prosecution for other offences.

LATVIA (Part VIII, Table 15)

Four amendments to the law were made in 2008, 2009 and 2010 (29 July 2008, 1 and 9 July 2009 and 21 October 2010). The law is now in line with Articles 2(4) and 4(6) of the Framework Decision as regards respectively the abolition of the dual criminality check for list offences and the undertaking that LV will execute the sentence passed in the issuing State.

Legislative gaps have been filled relating to Article 20(2) and 29(2) of the FD, as regards respectively time limits in case of privileges and immunities and the handing over of properties in case surrender is impossible due to the escape or the death of the requested person. A provision for temporary surrender according to Article 24(2) FD was introduced. The amended legislation is furthermore brought in conformity with the Articles 27(3) b and c and 28(2) and (3) and the form contains a possibility to include aliases. Pursuant to the law of 21 October 2010, the Prosecutor-General's Office will be the competent authority in respect of the issue of EAWs.

Some small gaps in transposition remain in respect of Article 17(7), informing Eurojust of breach of time limits and Article 29(4), return of property seized to the executing Member State at the conclusion of criminal proceedings.

LITHUANIA (Part VIII, Table 16)

Since 1 April 2007, Lithuania has made several amendments to the law relating to the implementation of the EAW. In particular, Article 70(2) of the Criminal Code of the Republic of Lithuania has been amended by Law No X-1236 of 28 June 2008.

The amendments relate to the competence of regional or district courts to decide on issues relating to detention in EAW cases and to the consent of the executing state to re-extradition or surrender of a person from LT to a third state, the latter bringing the implementing law into line with Article 28(4) of the FD. In addition, Lithuania has made amendments to the law relating to the Rules for issuing EAWs, setting out criteria to apply when issuing an EAW taking into account the principle of proportionality.

Outstanding issues include the transpostions of Articles 27(3) c and d and the reconsideration of the inclusion of a breach of fundametnal rights and (or) liberty as an express mandatory ground of refusal.

POLAND (Part VIII, Table 20)

PL has modified its legislation on the EAW on 5 November 2009 and the legislation took effect on 8 June 2010.

The new legislation makes provision for the competent Court to issue an EAW on its own initiative in trial and post-trial cases and extended the possibility to issue an EAW in cases where the Court has jurisdiction over the case even though the offence was not committed in Poland. Provisions have been made for provisional arrest up to seven days before receipt of an EAW (where there is final custodial sentence and detention order in place), for temporary surrender based on agreement between issuing and executing authorities and for a final decision on surrender within 60 days.

Poland has not however addressed the fact that its legislation contains a number of mandatory grounds for refusal not provided for in the Framework Decision. In addition, the partial abolition of double criminality check in the FD continues not to apply to Polish nationals and refusal of the execution of the EAW on the basis of territoriality remains mandatory.

PORTUGAL (Part VIII, Table 21)

A Penal Code amendment of September 2007 provided that PT nationals and persons customarily resident in PT will be subject to PT jurisdiction for certain crimes committed outside the national territory.

However there have been no amendments to the EAW law to address the fact that Articles in relation to mandatory non-execution grounds and the decision in respect of competing EAWs have been transposed contrary to the Framework Decision and that a number of transposed provisions lack legal certainty including the provisions on temporary surrender, speciality, optional non-execution grounds, competing international obligatons, time limits for final surrender decision, and time limits for appeals.

ROMANIA (Part VIII, Table 22)

New legislation was adopted in Romania with effect from 10 November 2008 (Law no. 222/2008). The amending legislation (which also implemented three other framework decisions) was introduced in respect of the EAW to adjust some procedural aspects and did not amend the substance of the original implementing law on the EAW.

This amendment prepares RO for entering the Schengen area and brings the RO law almost fully in line with the FD. It furthermore takes stock of good practices and streamlines domestic procedures.

The amendments to the law in 2008 addresses previous defects in the transposition of the list provided for in Article 2(2) of the Framework Decision. In addition the 2008 amendment provides that in case of refusal on the ground of Article 4(6) FD, the court will proceed (in the same court procedure) to the execution of the foreign penalty.

SLOVAK REPUBLIC (Part VIII, Table 23)

The Slovak Republic has adopted Act No 154/2010 on the EAW, due to enter into force on 1 September 2010. This Act repeals the original transposing legislation on the EAW, as amended.

The new Act includes a legislative provision to ensure proportionality in issuing EAWs. It addresses previous defects in the transposition of Article 2 of the FD; sets a time limit of 40 days for the receipt of a language-complaint EAW; converts the previously-mandatory ground for refusal based on territoriality into an optional ground; makes provision for temporary surrender in accordance with Article 24(2) and provides for additional consent and consent to subsequent surrender pursuant to Article 28.

The new legislation thus adresses almost all of the Council and Commisson recommendations. Matters outstanding include provision of a deadline for decisions in the highest court of appeal (Supreme Court) and provision for transit from a third state in accordance with Article 25(5).

SLOVENIA (Part VIII, Table 24)

In February 2008 a new single act came into force, comprising all instruments of cooperation in the field of criminal law within the EU.

The new legislation addresses previous transposition defects by implementing the penalty threshold and entire list of criminal offences referred to in Article 2(2) of the Framework Decision; providing for the enforceability of sentences passed in the issuing Member State against nationals and residents of SI for offences not punishable under SI law; making additional provisions on the seizure and handing over of property in accordance with Article 29; and making provision for transit from third states to another Member State.

In addition Article 26 on deducting the period of detention served in the executing Member State is now transposed and Slovenia has removed any limitation on the operation of the EAW (previously only for offences committed after 7 August 2002) regarding the date of the commission of the alleged offence.

PART II - COUNCIL RECOMMENDATIONS

General information in relation to the practical application of the EAW is set out in the "General Information" Table in respect of each Member State in Part VIII, drawing largely on the issues raised in the Council Recommendations[4] and including some other EAW issues. Given the variation in content and quality of replies from Member States, the information is not fully comprehensive but it is hoped that the collation and presentation in table format of this material will be a useful tool for practitioners and of assistance to Member States in the follow up to the recommendations to be submitted to the Council by mid 2011.[5] An overview of some of the detail in the individual Member State tables in the context of the Council recommendation follows.

The Council has recommended that Member States adopt a flexible approach to language requirements.[6] The Commission endorses this recommendation in the light of Article 8(2) of the Framework Decision. Where EAWs and additional information in languages other than the Member State's own official languages are accepted the procedure is speeded up and the need for translation and attendant costs are reduced. Replies from Member States on this issue show that there is some limited element of language flexibility in most Member States with the norm being that EAWs are accepted in the language of the executing state and either one or two other languages. Language flexibility is based on reciprocity in a number of States (AT, CZ, DE, SK). It is regrettable that in six Member States (BG, FR, IE, IT, PL, UK) there is no flexibility in relation to the language accepted.

The fourteen responses on time limits for receipt of a language-compliant EAW indicate that where time limits exist, they range from 48 hours to 40 days. The Council has recommended a time limit of around 6 working days[7] and the Commission finds this acceptable.

In respect of provisional arrest, the Commission agrees with the recommendation of the Council that Member States should take legislative action at national level insofar as this creates particular difficulties in practice[8]. It appears that provisional arrest is possible in all Member States except CY and IE and the time limits for receipt of the EAW range from 24 hours to 40 days (SK). However apart from NL (22 days) and Poland (7 days) the time limits in all other Member States are 24, 48 or 72 hours.

In respect of the issue of surrender for accessory offences, the Council has indicated that action, if needed, should be taken at national level[9]. The Commission is also in favour of this approach. The twenty four replies indicate that such surrender is possible in 11 Member States and not possible in 8. It is possible in 4 Member States (HU, IE, LT, RO) only as executing states and in one Member State (NL) as an issuing state only.

In respect of flagging in the Schengen Information System, the Commission endorses the Council recommendation that Member States apply the practice of flagging EAW-based SIS

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4 8302/4/09 COPEN 68, 7361/10 COPEN 59, 8436/2/10 COPEN 95
5 8302/4/09 GOPEN 68 p.23 - Recommendation 20
6 8302/4/09 COPEN 68 p.11, 7361/10 COPEN 59, p.3, 8436/2/10 COPEN p.3
7 8302/4/09 COPEN 68 p.12, 7361/10 COPEN 59, p.4, 8436/2/10 COPEN p.3
8 8302/4/09 COPEN 68 p.19, 7361/10 COPEN 59, p.11, 8436/2/10 COPEN p.6
9 8302/4/09 COPEN 68 p.16, 7361/10 COPEN 59, p.7, 8436/2/10 COPEN p.5

alerts according to the criteria in Council Decision 2007/533/JHA[10] on the second generation Schengen Information System (effectively that the flagging decision is taken by a competent judicial authority). The content of the sixteen replies on this issue from Schengen participants indicate that in 9 Member States the decision on flagging is solely within the competence of the judicial authority, in 4 member states the decision is within the province of the Sirene Bureaux/International Police Co-operation Units and in 3 Member States the Judicial Authority is consulted by the Sirene Office where deemed necessary.

A questionnaire on the application of Article 29 on the seizure and handover of property is envisaged by the Council. The twenty five brief replies on this issue indicate that all Member States that replied have some provision on seizure and handover of property. However, Article 29 is stated to be only partly transposed in 4 Member States (FI, LV, SI, SW), limited to property found in the possession of the requested person upon arrest in one Member State (NL) and reliant on mutual legal assistance provisions in three Member States (LU, SK, UK).

The Council has recommended that Member States take measures to promote direct communication between judicial authorities and the Commission endorses this recommendation with a view to promoting the development of a European judicial culture based on dialogue between judicial authorities. Of the 26 Member States that provided a reply, all but three (CY, IE and UK) indicated that the principle of direct contact is operated. However a number of Member States alluded to the importance of their Central Authorities and it appears from the evaluations that in practice much work remains to be done on promoting direct communication between judicial authorities.

The majority of Member States (14) cite the 1983 Council of Europe Convention of the Transfer of Sentenced Persons and its protocol[11]as their mechanism for the transfer of a sentenced person pursuant to Article 5(3) FD. Two Member States (IE, UK) referred to having specific domestic provisions based on the Framework Decision on the European arrest warrant. Only one Member State (FI) referred to pending legislation implementing FD 2008/909/JHA[12] on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union, which makes specific provision for the enforcement of sentences in cases under Articles 4(6) and 5(3) of the FD on the EAW, and has an implementation date of 5 December 2011.

Where surrender for the execution of a sentence is refused pursuant to Article 4(6) on the grounds that the sought person has nationality or is a resident of the executing State, 4 Member States (AT, LU, SI, SE) indicated that there is the possibility of executing a sentence where there is no dual criminality and in 6 Member States (HU, LV, NL, PL, PT, RO) this is not possible. BE indicated that surrender would be authorised in such a case as it would not be a ground for refusal. The remaining Member States that furnished replies on this issue (16 replies in all) either have not transposed Article 4(6) as a ground of refusal (IE, SK) or had no experience of such a scenario (CZ, EE, ES).

21 Member States have accepted the jurisdiction of the European Court of Justice in respect of police and judicial cooperation in criminal matters pursuant to Article 35 of the Treaty on

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10 OJ L 205, 7.8.2007, p.63

11 European Treaty Series no. 112

12 OJ L 327, 5.12.2008, p.27

European Union. The Member States that have not made a declaration accepting the jurisdiction of the European Court of Justice are BG, DK, EE, IE, PL and UK.

In addition to the above issues, the General Information Table also sets out information in respect of each Member State (subject to replies received) on a number of other matters including the existence of a proportionality test (see comments on proportionality below); the availability of state-funded legal assistance in EAW cases; the respective competent authorities for requests pursuant to Article 111 of the Schengen Convention; the integration of recital 12 FD in the respective implementation laws; the abolition of dual criminality in respect of the offences listed in Article 2(2) FD for attempt and complicity[13]; the existence of a 24 hour/seven day presence for EAW issues; the respective ages of criminal liability;[14] and provision of statistics and a website by Member States.

Arising from the Council Recommendations, the ES Presidency drafted a form for communicating the final decision on the EAW to the issuing authority[15]. The idea of using such a form is endorsed by the Commission. It will facilitate the flow of information, promoting cooperation between judicial authorities and ensuring compliance with Article 26 FD on the deduction of the period of detention served in the executing Member State.

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13 Dual criminality for attempt and complicity appears to be abolished expressly or in practice in all but three Member States (BG, DK, PL)

14 While some Member States have specific regimes for age brackets over or under the designated age of criminal liability, in general from the 24 replies the age of criminal liability ranges from 9 to 18, with the majority - ten Member states (AT, CY, DK, EE, DE, HU, LV, RO, SK, SI) – having a designated age of 14. In three Member States it is 15 (CZ, FI, SW) and 16 (BE, LT, PT). In two Member States 12 (IE, NL) and 18 (LU, ES). The ages 9 (MT), 10(UK), 13(FR) and 17(PL) are the designated age in one Member State.

15 7361/10, COPEN 59 and 8436/1/10 COPEN 95

PART III - THE IMPLEMENTATION SINCE 2007 OF OTHER INSTRUMENTS AMENDING/COMPLMENTING THE FRAMEWORK DECISION ON THE EUROPEAN ARREST WARRANT

Council Framework Decision 2008/909/JHA[16] *of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union*. This instrument contains specific provision for the enforcement of custodial sentences in the executing state in respect of cases under Articles 4(6) and 5(3) of the Framework Decision on the EAW. The consent of the sentenced person to transfer will no longer be a pre-requisite in all cases and this Framework Decision will replace the current reliance for the transfer of sentenced persons of a majority of Member States (see tables in Part VIII) on the 1983 Council of Europe Convention for the Transfer of sentenced Persons and its additional Protocol.[17] Framework Decision 2008/909/JHA entered into force on the 5 December 2008 and has an implementation date of 5 December 2011.

Council Framework Decision 2009/299/JHA[18] *of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA* and *2008/947/JHA* thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial. This Framework Decision inserts a new Article 4(a) in relation to decisions rendered in the absence of the requested person into the Framework Decision on the EAW, deletes Article 5(1) and amends the EAW form. It aims to provide clear and common grounds for non-recognition of decisions rendered following a trial at which the person concerned did not appear in person. It entered into force on 28 March 2009 and has an implementation date of 28 March 2011.

Council Framework Decision 2009/829/JHA[19] *of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention*, introduces the possibility of transferring a non-custodial supervision measure from the Member State where a non resident is suspected of having committed an offence, to the Member State where he/she is normally resident. This will allow a suspected person to be subject to a supervision measure in his or her normal environment until the trial takes place in the foreign Member State. It entered into force on 1 December 2009 and has an implementation date of 1 December 2012.

Council Framework Decision 2009/948/JHA[20] of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings provides a mechanism for consultation and co-operation between judicial authorities when a person is the subject of parallel criminal proceedings in different Member States in respect of the same

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16 Official Journal L 327, 5.12.2008, p.27

17 European Treaty Series - No.112. Council of Europe Convention on the Transfer of Sentenced Persons, Strasbourg 21.III.1983. European Treaty Series- No. 167. Additional Protocol to the Convention on the Transfer of Sentenced Persons, Strasbourg 18.XII.1997

18 Official Journal L 81, 27.3.2009, p.24

19 Official Journal L 294, 11.11.2009, p. 20

20 Official Journal L 328, 15.12.2009, p. 42

facts. It entered into force on 15 December 2009 and has an implementation date of 15 June 2012.

PART IV - THE EUROPEAN ARREST WARRANT AND THE SCHENGEN INFORMATION SYSTEM

An EAW cannot be executed if the person being sought is not located. The Schengen Information System (SIS) contains a database used by authorities of the Schengen member countries to exchange data on certain categories of people and objects including persons wanted for arrest for extradition. Member States supply information (which becomes an "alert") from their national systems to the central system via a common, secure network. Searches in SIS produce a "hit" when the details of a person or object sought match those of an existing alert. This IT system is supplemented by a network bureaux known as SIRENE (Supplementary Information Request at the National Entry), which is the human interface of the SIS. Between January 2008 and 2010 the total number of SIS alerts, in all categories, rose from 22.9 million to 31.6 million.[21] Given this increasing volume and as the SIS has been operational since 1995, work is in progress on the second generation of the system with enhanced functionalities and based on new technology. This new system (SIS II) is currently undergoing extensive tests in cooperation with Member States.

The possibility of creating an alert in the Schengen Information System has proved a very useful tool in locating and facilitating the arrest of persons who are the subject of an EAW. 25 Member States and Schengen associated countries (excluding BG, CY, IE, RO, UK) currently participate fully in the Schengen Information System[22]. Statistics from the central system show that the number of alerts in the Schengen Information System for the purpose of the arrest for extradition purposes (including EAWs) is rising steadily, with 19,199 in 2007, 24,560 in 2008 and 28,666 in 2009[23] EAW statistical data indicate that in 2009 82.5% (10,012) of the 12,111 EAWs issued by Schengen participating states were transmitted via the Schengen Information System[24].

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21 Council documents 6162/10 COMIX 103, 5441/08 COMIX 3

22 At the time of writing BG and RO are using the system but their membership has not been fully ratified. The participation of Liechtenstein is envisaged in 2011.

23 Council documents 6162/10 COMIX 103; 5764/09 COMIX 75; 5441/08 COMIX 38

24 Council document 751/4/10 COPEN 64

PART V - THE EUROPEAN ARREST WARRANT AND EUROJUST

EAW cases represent a consistent 19% of the total case load of Eurojust over the past two years. (267 of the 1193 cases registered with Eurojust in 2008 and 256 of 1,372 cases in 2009)[25]. As all but two cases in 2008 and one in 2009 concerned operational issues, it is clear that Eurojust plays an important role in the efficient operation of the EAW system and is well placed to identify the recurring issues in its practical application[26] The issues highlighted by Eurojust include reluctance to surrender own-nationals; issues with the legal basis for the return of nationals to serve a sentence after conviction; problems related to the absence of a proportionality check in some issuing Member States; problems with the speciality rule when a person was charged with other offences after surrender; the issue of a person having been aware of proceedings where convicted *in abstentia* and the availability of re-trials in such cases; differences in legal systems with respect to life imprisonment; missing information; translation problems and delays in provision of original and translated EAWs; lack of information on periods of detention that a surrendered person is entitled to have deducted from a sentence; and issues arising from the differences in legal systems, in particular between common law and civil law systems.

In both 2008 and 2009, Eurojust dealt with 4 cases referred to them pursuant to Article 16 of the Framework Decision on the EAW in respect of conflicting EAWs (where the same person is requested by two Member States). In addition, there were 28 cases of breaches of time limits reported to Eurojust pursuant to Article 17 of the Framework Decision on the EAW in 2008 and 30 such cases in 2009[27]. The main reason for time limits not being respected was identified by Eurojust as due to delays arising from requests for further information[28]. The replies of Member States on respecting time limits[29] indicate that there are considerably more cases where the time limits in the Decision are not met and the relatively low Eurojust figures are therefore likely to be indicative of under-reporting, despite the obligation to report breaches of time limits to Eurojust in the Framework Decision.

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25 Eurojust annual reports 2008 and 2009

26 Eurojust annual report 2009 p.32-34

27 Eurojust annual report 2008 p.20 and 2009 p.31-32

28 Eurojust annual report 2008 p.21

29 Council document 7551/7/10 COPEN 64

PART VI - DECISIONS OF THE EUROPEAN COURT OF JUSTICE

C-105/03, Pupino (Judgment of 16 June 2005)

The Court held that national law should be interpreted in accordance with the wording and purpose of a Framework Decision (Although this case arose in respect of Framework Decision 2001/220/JHA on the Standing of Victims in Criminal Proceedings, it is relevant to the Decision on the Warrant as it concerned the effect of a Framework Decision).

Decisions in order of judgment date in relation to the Framework Decision on the European arrest warrant

C-303/05, Advocaten voor de Wereld (Judgment of 3 May 2007)

1. Under Article 35(1) EU, the Court has jurisdiction, subject to the conditions laid down in that article, to give preliminary rulings on the interpretation and validity of, inter alia, framework decisions, which necessarily implies that it can, even if there is no express power to that effect, be called upon to interpret provisions of primary law, such as Article 34(2)(b) EU where the Court is being asked to examine whether a framework decision has been properly adopted on the basis of that latter provision.

2. Framework Decision 2002/584 on the European arrest warrant and the surrender procedures between Member States, which provides for the approximation of the laws and regulations of the Member States with regard to judicial cooperation in criminal matters and, more specifically, of the rules relating to the conditions, procedures and effects of surrender as between national authorities convicted persons or suspects for the purpose of enforcing judgments or of criminal proceedings, was not adopted in breach of Article 34(2)(b) EU.

In so far as it lists and defines, in general terms, the different types of legal instruments which may be used in the pursuit of the objectives of the Union set out in Title VI of the EU Treaty, Article 34(2) EU cannot be construed as meaning that the approximation of the laws and regulations of the Member States by the adoption of a framework decision under Article 34(2)(b) EU cannot relate to areas other than those mentioned in Article 31(1)(e) EU and, in particular, the matter of the European arrest warrant.

Furthermore, Article 34(2) EU also does not establish any order of priority between the different instruments listed in that provision. While it is true that the European arrest warrant could equally have been the subject of a convention, it is within the Council's discretion to give preference to the legal instrument of the framework decision in the case where the conditions governing the adoption of such a measure are satisfied.

This latter conclusion is not invalidated by the fact that, in accordance with Article 31(1) of the Framework Decision, the latter was to replace from 1 January 2004, only in relations between Member States, the corresponding provisions of the earlier conventions on extradition set out in that provision. Any other interpretation unsupported by either Article 34(2) EU or by any other provision of the EU Treaty would risk depriving of its essential

effectiveness the Council's recognised power to adopt framework decisions in fields previously governed by international conventions.

3. The principle of the legality of criminal offences and penalties (*nullum crimen, nulla poena sine lege*), which is one of the general legal principles underlying the constitutional traditions common to the Member States, has also been enshrined in various international treaties, in particular in Article 7(1) of the European Convention on Human Rights. This principle implies that legislation must define clearly offences and the penalties which they attract. That condition is met in the case where the individual concerned is in a position, on the basis of the wording of the relevant provision and with the help of the interpretative assistance given by the courts, to know which acts or omissions will make him criminally liable.

In so far as it dispenses with verification of the requirement of double criminality in respect of the offences listed in that provision, Article 2(2) of Framework Decision 2002/584 on the European arrest warrant and the surrender procedures between Member States is not invalid on the ground that it infringes the principle of the legality of criminal offences and penalties. The Framework Decision does not seek to harmonise the criminal offences in question in respect of their constituent elements or of the penalties which they attract. While Article 2(2) of the Framework Decision dispenses with verification of double criminality for the categories of offences mentioned therein, the definition of those offences and of the penalties applicable continue to be matters determined by the law of the issuing Member State, which, as is, moreover, stated in Article 1(3) of the Framework Decision, must respect fundamental rights and fundamental legal principles as enshrined in Article 6 EU, and, consequently, the principle of the legality of criminal offences and penalties.

4. In so far as it dispenses with verification of double criminality in respect of the offences listed therein, Article 2(2) of Framework Decision 2002/584 on the European arrest warrant and the surrender procedures between Member States is not invalid inasmuch as it does not breach the principle of equality and non-discrimination.

With regard, first, to the choice of the 32 categories of offences listed in that provision, the Council was able to form the view, on the basis of the principle of mutual recognition and in the light of the high degree of trust and solidarity between the Member States, that, whether by reason of their inherent nature or by reason of the punishment incurred of a maximum of at least three years, the categories of offences in question feature among those the seriousness of which in terms of adversely affecting public order and public safety justifies dispensing with the verification of double criminality. Consequently, even if one were to assume that the situation of persons suspected of having committed offences featuring on the list set out in Article 2(2) of the Framework Decision or convicted of having committed such offences is comparable to the situation of persons suspected of having committed, or convicted of having committed, offences other than those listed in that provision, the distinction is, in any event, objectively justified.

With regard, second, to the fact that the lack of precision in the definition of the categories of offences in question risks giving rise to disparate implementation of the Framework Decision within the various national legal orders, suffice it to point out that it is not the objective of the Framework Decision to harmonise the substantive criminal law of the Member States and that nothing in Title VI of the EU Treaty makes the application of the European arrest warrant conditional on harmonisation of the criminal laws of the Member States within the area of the offences in question.

C-66/08 Kozlowski (Judgment of 17 July 2008)

1. Article 4(6) of Framework Decision 2002/584 on the European arrest warrant and the surrender procedures between Member States, which authorises the executing judicial authority to refuse to execute such a warrant issued for the purposes of execution of a sentence where the requested person 'is staying in, or is a national or a resident of, the executing Member State', and where that State undertakes to execute that sentence in accordance with its domestic law, must be interpreted as meaning that a requested person is 'resident' in the executing Member State when he has established his actual place of residence there and he is 'staying' there when, following a stable period of presence in that State, he has acquired connections with that State which are of a similar degree to those resulting from residence.

Since the objective of the Framework Decision is to put in place a system of surrender, as between judicial authorities, of convicted persons or suspects for the purpose of enforcing judgments or of criminal proceedings, based on the principle of mutual recognition – a surrender which the executing judicial authority can oppose only on one of the grounds for refusal provided for by the Framework Decision – the terms 'staying' and 'resident', which determine the scope of Article 4(6), must be defined uniformly, since they concern autonomous concepts of Union law. Therefore, in their national law transposing Article 4(6), the Member States are not entitled to give those terms a broader meaning than that which derives from such a uniform interpretation.

2. In order to ascertain, when interpreting Article 4(6) of Framework Decision 2002/584 on the European arrest warrant and the surrender procedures between Member States, whether there are connections between the requested person and the executing Member State which lead to the conclusion that that person is covered by the term 'staying' within the meaning of that provision, which authorises the executing judicial authority to refuse to execute such a warrant issued for the purposes of execution of a sentence where the requested person is staying in the executing Member State, it is for that authority to make an overall assessment of various objective factors characterising the situation of that person, including, in particular, the length, nature and conditions of his presence and the family and economic connections which that person has with the executing Member State.

C-296/08 PPU, Santesteban Goicoechea (Judgment of 12 August 2008)

1. The fact that an order for reference concerning the interpretation of a framework decision adopted under Title VI of the EU Treaty does not mention Article 35 EU but refers to Article 234 EC cannot of itself make the reference for a preliminary ruling inadmissible. That conclusion is reinforced by the fact that the EU Treaty neither expressly nor by implication lays down the form in which the national court must present its reference for a preliminary ruling.

2. Since, under Article 35 EU, it is for the national court or tribunal, not the parties to the main proceedings, to bring a matter before the Court, the right to determine the questions to be put to the Court devolves on the national court alone and the parties may not change their tenor. To answer questions formulated by the parties to the main proceedings would moreover be incompatible with the function given to the Court by that article and with its duty to ensure

that the governments of the Member States and the parties concerned are given the opportunity to submit observations in accordance with Article 23 of the Statute of the Court of Justice, bearing in mind that under that provision only the order of the referring court is notified to the interested parties.

3. Article 31 of Framework Decision 2002/584 on the European arrest warrant and the surrender procedures between Member States must be interpreted as referring only to the situation in which the European arrest warrant system is applicable, which is not the case where a request for extradition relates to acts committed before a date specified by a Member State in a statement made pursuant to Article 32 of the framework decision.

4. Article 32 of Framework Decision 2002/584 on the European arrest warrant and the surrender procedures between Member States must be interpreted as not precluding the application by an executing Member State of the Convention relating to extradition between the Member States of the European Union drawn up by Council Act of 27 September 1996 and signed on that date by all the Member States, even where that convention became applicable in that Member State only after 1 January 2004.

Making conventions such as that convention relating to extradition between the Member States of the European Union applicable does not interfere with the European arrest warrant system laid down by the framework decision, since, in accordance with Article 31(1) of that decision, such a convention can be used only where the European arrest warrant system does not apply. The purpose of making conventions in the field of extradition applicable after 1 January 2004 can therefore only be to improve the extradition system in circumstances in which the European arrest warrant system does not apply.

C-388/08 PPU, Leymann and Pustovarov (Judgment of 1 December 2008)

1. A request for a reference for a preliminary ruling concerning the interpretation of Framework Decision 2002/584 on the European arrest warrant and the surrender procedures between Member States to be dealt with under an urgent procedure can be granted on the basis of an indication by the referring court that if prosecution for the offence is ruled out, the length of the sentence imposed on the person concerned would be reduced and his release brought forward.

2. Article 27(2) of Framework Decision 2002/584 on the European arrest warrant and the surrender procedures between Member States lays down the specialty rule, according to which a person who has been surrendered may not be prosecuted, sentenced or otherwise deprived of liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered. The surrender request is based on information which reflects the state of investigations at the time of issue of the European arrest warrant. It is therefore possible that, in the course of the proceedings, the description of the offence no longer corresponds in all respects to the original description. The evidence which has been gathered can lead to a clarification or even a modification of the constituent elements of the offence which initially justified the issue of the European arrest warrant.

The terms ‘prosecuted’, ‘sentenced’ or ‘deprived of liberty’ in Article 27(2) indicate that the concept of an ‘offence other’ than that for which the person was surrendered must be assessed with regard to the different stages of the proceedings and in the light of any procedural document capable of altering the legal classification of the offence. In order to assess, in the light of the consent requirement contained in Article 27(3)(g) of the Framework Decision,

whether it is possible to infer from a procedural document an 'offence other' than that referred to in the European arrest warrant, the description of the offence in the European arrest warrant must be compared with that in the later procedural document. To require the consent of the executing Member State for every modification of the description of the offence would go beyond what is implied by the specialty rule and interfere with the objective of speeding up and simplifying judicial cooperation of the kind referred to in the Framework Decision between the Member States.

In order to establish whether the offence under consideration is an 'offence other' than that for which the person was surrendered within the meaning of Article 27(2) of Framework Decision 2002/584, requiring the implementation of the consent procedure referred to in Article 27(3)(g) and 27(4) of that Framework Decision, it must be ascertained whether the constituent elements of the offence, according to the legal description given by the issuing State, are those in respect of which the person was surrendered and whether there is a sufficient correspondence between the information given in the arrest warrant and that contained in the later procedural document. Modifications concerning the time or place of the offence are allowed, in so far as they derive from evidence gathered in the course of the proceedings conducted in the issuing State concerning the conduct described in the arrest warrant, do not alter the nature of the offence and do not lead to grounds for non-execution under Articles 3 and 4 of the Framework Decision.

3. A modification of the description of the offence, concerning only the kind of narcotics in question and not changing the legal classification of the offence, is not such, of itself, as to define an 'offence other' than that for which the person was surrendered within the meaning of Article 27(2) of Framework Decision 2002/584 on the European arrest warrant and the surrender procedures between Member States, since it is an offence still punishable according to the same scale of penalties and comes under the rubric 'illegal trafficking in narcotic drugs' in Article 2(2) of that Framework Decision.

4. The exception in Article 27(3)(c) of Framework Decision 2002/584 on the European arrest warrant and the surrender procedures between Member States, according to which the specialty rule provided for in Article 27(2) does not apply where the criminal proceedings do not give rise to the application of a measure restricting personal liberty, must be interpreted as meaning that, where there is an 'offence other' than that for which the person was surrendered, consent must be requested, in accordance with Article 27(4) of the Framework Decision, and obtained if a penalty or a measure involving the deprivation of liberty is to be executed. The person surrendered can be prosecuted and sentenced for such an offence before that consent has been obtained, provided that no measure restricting liberty is applied during the prosecution or when judgment is given for that offence. The exception in Article 27(3)(c) does not, however, preclude a measure restricting liberty from being imposed on the person surrendered before consent has been obtained, where that restriction is lawful on the basis of other charges which appear in the European arrest warrant.

C-123/08 Wolzenburg (Judgment of 6 October 2009)

1. A national of one Member State who is lawfully resident in another Member State is entitled to rely on the first paragraph of Article 12 EC against national legislation which lays down the conditions on which the competent judicial authority can refuse to execute a European arrest warrant issued with a view to the enforcement of a custodial sentence. The Member States cannot, in the context of the implementation of a framework decision adopted

on the basis of the EU Treaty, infringe Community law, in particular the provisions of the EC Treaty relating to the freedom accorded to every citizen of the Union to move and reside freely within the territory of the Member States.

2. Article 4(6) of Framework Decision 2002/584 on the European arrest warrant and the surrender procedures between Member States must be interpreted as meaning that, in the case of a citizen of the Union, the Member State of execution cannot, in addition to a condition as to the duration of residence in that State, make application of the ground for optional non-execution of a European arrest warrant laid down in that provision subject to supplementary administrative requirements, such as possession of a residence permit of indefinite duration. Articles 16(1) and 19 of Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States do not provide, with regard to Union citizens who have been lawfully resident in another Member State for a continuous period of five years, for the issue, upon application, of a document attesting to the permanence of their residence, without requiring that formality. Such a document has only declaratory and probative force but does not give rise to any right.

3. The first paragraph of Article 12 EC is to be interpreted as not precluding the legislation of a Member State of execution under which the competent judicial authority of that State is to refuse to execute a European arrest warrant issued against one of its nationals with a view to the enforcement of a custodial sentence, when such a refusal is, in the case of a national of another Member State having a right of residence on the basis of Article 18(1) EC, subject to the condition that that person should have lawfully resided for a continuous period of five years in that Member State of execution.

In that regard, the principle of mutual recognition, which underpins Framework Decision 2002/584 on the European arrest warrant and the surrender procedures between Member States, means that, in accordance with Article 1(2) of the latter, the Member States are in principle obliged to act upon a European arrest warrant. Apart from the cases of mandatory non-execution laid down in Article 3 of the Framework Decision, the Member States may refuse to execute such a warrant only in the cases listed in Article 4 thereof. It follows that a national legislature which, by virtue of the options afforded it by Article 4 of the Framework Decision, chooses to limit the situations in which its executing judicial authority may refuse to surrender a requested person merely reinforces the system of surrender introduced by that Framework Decision to the advantage of an area of freedom, security and justice. In that context, when implementing Article 4 of Framework Decision 2004/584 and in particular paragraph 6 thereof, referred to in the decision for reference, the Member States have, of necessity, a certain margin of discretion.

The ground for optional non-execution set out in Article 4(6) of the Framework Decision has in particular the objective of enabling the executing judicial authority to give particular weight to the possibility of increasing the requested person’s chances of reintegrating into society when the sentence imposed on him expires. The Member State of execution is therefore entitled to pursue such an objective only in respect of persons who have demonstrated a certain degree of integration in the society of that Member State. The single condition based on nationality for its own nationals, on the one hand, and the condition of residence of a continuous period of five years for nationals of other Member States, on the other, may be regarded as being such as to ensure that the requested person is sufficiently integrated in the Member State of execution. That requirement for residence for a continuous period of five years does not go beyond what is necessary to attain the objective of ensuring that requested

persons who are nationals of other Member States achieve a degree of actual integration in the Member State of execution.

C-306/09 I.B. v Conseil des ministres (Judgment 21 October 2010)

Articles 4(6) and 5(3) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States must be interpreted as meaning that, where the executing Member State has implemented Articles 5(1) and Article 5(3) of that framework decision in its domestic legal system, the execution of a European arrest warrant issued for the purposes of execution of a sentence imposed *in absentia* within the meaning of Article 5(1) of the framework decision, may be subject to the condition that the person concerned, a national or resident of the executing Member State, should be returned to the executing State in order, as the case may be, to serve there the sentence passed against him, following a new trial organised in his presence in the issuing Member State.

C-261/09 Mantello (Judgment 16 November 2010)

For the purposes of the issue and execution of a European arrest warrant, the concept of 'same acts' in Article 3(2) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States constitutes an autonomous concept of European Union law.

In circumstances such as those at issue in the main proceedings where, in response to a request for information within the meaning of Article 15(2) of that Framework Decision made by the executing judicial authority, the issuing judicial authority, applying its national law and in compliance with the requirements deriving from the concept of 'same acts' as enshrined in Article 3(2) of the Framework Decision, expressly stated that the earlier judgment delivered under its legal system did not constitute a final judgment covering the acts referred to in the arrest warrant issued by it and therefore did not preclude the criminal proceedings referred to in that arrest warrant, the executing judicial authority has no reason to apply, in connection with such a judgment, the ground for mandatory non-execution provided for in Article 3(2) of the Framework Decision.

Decisions in order of judgment date on interpretation of ne bis in idem in relation to Article 54 of the Convention Implementing the Schengen Agreement (CISA)[30] (applicable to the Framework Decision on the European arrest warrant by virtue of the judgment in C-261/09 Mantello)

Article 54 CISA"*A person who has been finally judged by a Contracting Party may not be prosecuted by another Contracting party for the same offences provided that, where he is*

[30] Official Journal L 239, 22.09.2000 p.0019-0062. Convention of 19 June 1990 implementing the Schengen agreement (CISA) of 14 June 1985

sentenced, the sentence has been served or is currently being served or can no longer be carried out under the sentencing law of the Contracting party."

Article 3(2) Framework Decision on the European arrest warrant: "*The judicial authority of the Member State of execution shall refuse to execute the European arrest warrant if the executing judicial authority is informed that the requested person has been finally judged by a Member State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State*."

C187/01 & C385/01 (joined cases) Gozutok and Brugge (Judgment 11 February 2003)

The ne bis in idem principle, laid down in Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed on 19 June 1990 at Schengen, also applies to procedures whereby further prosecution is barred, such as the procedures at issue in the main actions, by which the Public Prosecutor of a Member State discontinues criminal proceedings brought in that State, without the involvement of a court, once the accused has fulfilled certain obligations and, in particular, has paid a certain sum of money determined by the Public Prosecutor.

C-469/03 Miraglia (Judgment 10 March 2005)

The principle *ne bis in idem*, enshrined in Article 54 of the Convention implementing the Schengen Agreement, the purpose of which is to ensure that no one is prosecuted on the same facts in several Member States on account of his having exercised his right to freedom of movement, does not fall to be applied to a decision of the judicial authorities of one Member State declaring a case to be closed, after the Public Prosecutor has decided not to pursue the prosecution on the sole ground that criminal proceedings have been started in another Member State against the same defendant and for the same acts, without any determination whatsoever as to the merits of the case. Such a decision cannot in fact constitute a decision finally disposing of the case against that person within the meaning of Article 54.

The consequence of applying that principle to such a decision to close criminal proceedings would be to make it more difficult, indeed impossible, actually to penalise in the Member States concerned the unlawful conduct with which the defendant is charged. Such a consequence would clearly run counter to the very purpose of the provisions of Title VI of the Treaty on European Union, as set out in the fourth indent of the first subparagraph of Article 2 EU.

C-436/04 Van Esbroeck (Judgment 9 March 2006)

1. The *ne bis in idem* principle, enshrined in Article 54 of the Convention implementing the Schengen Agreement, must be applied to criminal proceedings brought in a Contracting State for acts for which a person has already been convicted in another Contracting State even though the Convention was not yet in force in the latter State at the time at which that person was convicted, in so far as the Convention was in force in the Contracting States in question at the time of the assessment, by the court before which the second proceedings were brought, of the conditions of applicability of the *ne bis in idem* principle.

2. Contrary to Article 14(7) of the International Covenant on Civil and Political Rights and Article 4 of Protocol No 7 to the European Convention of Human Rights, which enshrine the *ne bis in idem* principle by using the term 'offence', Article 54 of the Convention implementing the Schengen Agreement (CISA) must be interpreted as meaning that the relevant criterion for the purposes of the application of that article is identity of the material acts, understood as the existence of a set of facts which are inextricably linked together, irrespective of the legal classification given to them or the legal interest protected.

Nowhere in Title VI of the Treaty on European Union relating to police and judicial cooperation in criminal matters, or in the Schengen Agreement or the CISA itself, is the application of Article 54 of the CISA made conditional upon harmonisation, or at the least approximation, of the criminal laws of the Member States. The *ne bis in idem* principle thus necessarily implies that the Contracting States have mutual trust in their criminal justice systems and that, since there is no harmonisation of national criminal laws, each of them recognises the criminal law in force in the other Contracting States even when the outcome would be different if its own national law were applied.

The definitive assessment of the identity of the material acts belongs to the competent national courts which are charged with the task of determining whether the material acts at issue constitute a set of facts which are inextricably linked together in time, in space and by their subject-matter.

It follows that punishable acts consisting of exporting and importing the same narcotic drugs and which are prosecuted in different Contracting States to the CISA are, in principle, to be regarded as 'the same acts' for the purposes of Article 54, the definitive assessment in that respect being the task of the competent national courts.

C-467/04 Gasparini and others (Judgment 28 September 2006)

1. The *ne bis in idem* principle, enshrined in Article 54 of the Convention implementing the Schengen Agreement, applies in respect of a decision of a court of a Contracting State, made after criminal proceedings have been brought, by which the accused is acquitted finally because prosecution of the offence is time-barred.

The main clause of the single sentence comprising Article 54 of the Convention makes no reference to the content of the judgment that has become final. It is not applicable solely to judgments convicting the accused.

Furthermore, not to apply Article 54 where the accused is finally acquitted because prosecution for the offence is time-barred would undermine the implementation of the objective of that provision which is to ensure that no one is prosecuted for the same acts in several Contracting States on account of the fact that he exercises his right to freedom of movement. Such a person must therefore be regarded as having had his trial finally disposed of for the purposes of that provision.

It is true that the laws of the Contracting States on limitation periods have not been harmonised. However, nowhere in Title VI of the EU Treaty, relating to police and judicial cooperation in criminal matters, or in the Schengen Agreement or the Convention implementing the latter is the application of Article 54 made conditional upon harmonisation, or at the least approximation, of the criminal laws of the Member States relating to procedures whereby further prosecution is barred or, more generally, upon harmonisation or

approximation of their criminal laws. There is a necessary implication in the *ne bis in idem* principle that the Contracting States have mutual trust in their criminal justice systems and that each of them recognises the criminal law in force in the other Contracting States even when the outcome would be different if its own national law were applied.

Finally, Framework Decision 2002/584 on the European arrest warrant and the surrender procedures between Member States does not preclude the *ne bis in idem* principle from applying in the case of a final acquittal because prosecution of the offence is time-barred. Exercise of the power, provided for in Article 4(4) of the framework decision, to refuse to execute a European arrest warrant inter alia where the criminal prosecution of the requested person is time-barred according to the law of the executing Member State and the acts fall within the jurisdiction of that State under its own criminal law is not conditional on the existence of a judgment whose basis is that a prosecution is time-barred. The situation where the requested person has been finally judged by a Member State in respect of the same acts is governed by Article 3(2) of the framework decision, a provision which lays down a mandatory ground for non-execution of a European arrest warrant.

2. The *ne bis in idem* principle, enshrined in Article 54 of the Convention implementing the Schengen Agreement, does not apply to persons other than those whose trial has been finally disposed of in a Contracting State. This interpretation, based on the wording of Article 54 of the Convention, is borne out by the purpose of the provisions of Title VI of the Treaty on European Union, as set out in the fourth indent of the first paragraph of Article 2 EU.

3. A criminal court of a Contracting State cannot hold goods to be in free circulation in national territory solely because a criminal court of another Contracting State has found, in relation to the same goods, that prosecution for the offence of smuggling is time-barred.

In order for products coming from a third country to be considered to be in free circulation in a Member State the three conditions laid down in Article 24 EC must be met. A finding by a court of a Member State that prosecution of a defendant for the offence of smuggling is time-barred does not alter the legal classification of the products in question, since the *ne bis in idem* principle, enshrined in Article 54 of the Convention implementing the Schengen Agreement, binds the courts of a Contracting State only in so far as it precludes a defendant who has already had his case finally disposed of in another Contracting State from being prosecuted a second time for the same acts.

4. The only relevant criterion for applying the concept of 'the same acts' within the meaning of Article 54 of the Convention implementing the Schengen Agreement is identity of the material acts, understood as the existence of a set of concrete circumstances which are inextricably linked together. Accordingly, the marketing of goods in another Member State, after their importation into the Member State where the accused was acquitted because prosecution for the offence of smuggling was time-barred, constitutes conduct which may form part of the 'same acts' within the meaning of Article 54 of the Convention. However, the definitive assessment in this regard is a matter for the competent national courts which are charged with the task of determining whether the material acts at issue constitute a set of facts which are inextricably linked together in time, in space and by their subject-matter.

C- 150/05 Van Straaten and others (Judgment 28 September 2006)

1. In the context of the cooperation between the Court of Justice and national courts that is provided for by Article 234 EC, it is solely for the national court before which the dispute has

been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of Community law, the Court is, in principle, bound to give a ruling.

The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of Community law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it.

2. Although the Court has no jurisdiction under Article 234 EC to apply a rule of Community law to a particular case and thus to judge a provision of national law by reference to such a rule, it may, in the framework of the judicial cooperation provided for by that article and on the basis of the material presented to it, provide the national court with an interpretation of Community law which may be useful to it in assessing the effects of the provision in question.

3. Article 54 of the Convention implementing the Schengen Agreement must be interpreted as meaning that the relevant criterion for the purposes of the application of that article is identity of the material acts, understood as the existence of a set of facts which are inextricably linked together, irrespective of the legal classification given to them or the legal interest protected.

In the case of offences relating to narcotic drugs, first, the quantities of the drug that are at issue in the two Contracting States concerned or the persons alleged to have been party to the acts in the two States are not required to be identical. It is therefore possible that a situation in which such identity is lacking involves a set of facts which, by their very nature, are inextricably linked. Second, punishable acts consisting of exporting and of importing the same narcotic drugs and which are prosecuted in different Contracting States party to the Convention are, in principle, to be regarded as 'the same acts' for the purposes of Article 54 of the Convention, the definitive assessment in that respect being the task of the competent national courts.

4. The *ne bis in idem* principle, enshrined in Article 54 of the Convention implementing the Schengen Agreement, a provision which has the objective of ensuring that no one is prosecuted for the same acts in several Contracting States on account of the fact that he exercises his right to freedom of movement, falls to be applied in respect of a decision of the judicial authorities of a Contracting State by which the accused is acquitted finally for lack of evidence.

The main clause of the single sentence comprising Article 54 of the Convention makes no reference to the content of the judgment that has become final. It is only in the subordinate clause that Article 54 refers to the case of a conviction by stating that, in that situation, the prohibition of a prosecution is subject to a specific condition. If the general rule laid down in the main clause were applicable only to judgments convicting the accused, it would be superfluous to provide that the special rule is applicable in the event of conviction.

Furthermore, not to apply Article 54 of the Convention to a final decision acquitting the accused for lack of evidence would have the effect of jeopardising exercise of the right to freedom of movement.

Finally, in the case of a final acquittal for lack of evidence, the bringing of criminal proceedings in another Contracting State for the same acts would undermine the principles of legal certainty and of the protection of legitimate expectations. The accused would have to fear a fresh prosecution in another Contracting State although a case in respect of the same acts has been finally disposed of.

C-288/05 Kretzinger (Judgment 18 July 2007)

1. Article 54 of the Convention implementing the Schengen Agreement must be interpreted as meaning that:

– The relevant criterion for the purposes of the application of that article is identity of the material acts, understood as the existence of a set of facts which are inextricably linked together, irrespective of the legal classification given to them or the legal interest protected;

– Acts consisting in receiving contraband foreign tobacco in one Contracting State and of importing that tobacco into another Contracting State and being in possession of it there, characterised by the fact that the defendant, who was prosecuted in two Contracting States, had intended from the outset to transport the tobacco, after first taking possession of it, to a final destination, passing through several Contracting States in the process, constitute conduct which may be covered by the notion of 'same acts' within the meaning of Article 54. It is for the competent national courts to make the final assessment in that respect.

2. For the purposes of Article 54 of the Convention implementing the Schengen Agreement (CISA), a penalty imposed by a court of a Contracting State 'has been enforced' or is 'actually in the process of being enforced' if the defendant has been given a suspended custodial sentence.

A suspended custodial sentence, which penalises the unlawful conduct of a convicted person, constitutes a penalty within the meaning of Article 54 of the CISA. That penalty must be regarded as 'actually in the process of being enforced' as soon as the sentence has become enforceable and during the probation period. Subsequently, once the probation period has come to an end, the penalty must be regarded as 'having been enforced' within the meaning of that provision.

3. For the purposes of Article 54 of the CISA, a penalty imposed by a court of a Contracting State is not to be regarded as 'having been enforced' or 'actually in the process of being enforced' where the defendant was for a short time taken into police custody and/or held on remand pending trial and that detention would count towards any subsequent enforcement of the custodial sentence under the law of the State in which judgment was given.

The purpose of detention on remand pending trial is very different from that underlying the enforcement condition laid down in Article 54 of the CISA. Although the purpose of the first is of a preventative nature, that of the second is to avoid a situation in which a person whose trial has been finally disposed of in the first State can no longer be prosecuted for the same acts and therefore ultimately remains unpunished if the State in which sentence was first passed did not enforce the sentence imposed.

4. The fact that a Member State in which a person has been sentenced by a final and binding judgment under its national law may issue a European arrest warrant for the arrest of that person in order to enforce the sentence under Framework Decision 2002/584 on the European

arrest warrant and the surrender procedures between Member States cannot affect the interpretation of the notion of 'enforcement' within the meaning of Article 54 of the CISA.

That enforcement condition could not, by definition, be satisfied where a European arrest warrant were to be issued after trial and conviction in a first Member State precisely in order to ensure the execution of a custodial sentence which had not yet been enforced within the meaning of Article 54 of the CISA.

That is confirmed by the Framework Decision itself which, in Article 3(2), requires the Member State addressed to refuse to execute a European arrest warrant if the executing judicial authority is informed that the requested person has been finally judged by a Member State in respect of the same acts and that, where there has been sentence, the enforcement condition has been satisfied.

That outcome is supported by the fact that the interpretation of Article 54 of the CISA cannot depend on the provisions of the Framework Decision without giving rise to legal uncertainty that would result, first, from the fact that the Member States bound by the Framework Decision are not all bound by the CISA which, moreover, applies to certain non-Member States and, second, from the fact that the scope of the European arrest warrant is limited, which is not case in respect of Article 54 of the CISA, which applies to all offences punished by the States which have acceded to that agreement.

Accordingly, the fact that a final and binding custodial sentence could possibly be enforced in the sentencing State following the surrender by another State of the convicted person cannot affect the interpretation of the notion of 'enforcement' within the meaning of Article 54 of the CISA.

C-367/05 Kraaijenbrink (Judgment 18 July 2007)

1. Article 54 of the Convention implementing the Schengen Agreement must be interpreted as meaning that:

– The relevant criterion for the purposes of the application of that article is identity of the material acts, understood as the existence of a set of facts which are inextricably linked together, irrespective of the legal classification given to them or the legal interest protected;

– Different acts consisting, in particular, first, in holding in one Contracting State the proceeds of drug trafficking and, second, in the exchanging at exchange bureaux in another Contracting State of sums of money also originating from such trafficking should not be regarded as 'the same acts' within the meaning of that article merely because the competent national court finds that those acts are linked together by the same criminal intention;

– It is for that national court to assess whether the degree of identity and connection between all the facts to be compared is such that it is possible, in the light of the said relevant abovementioned criterion, to find that they are 'the same acts' within the meaning of the said Article 54.

(see para. 36, operative part)

2. It is apparent from Article 58 of the Convention implementing the Schengen Agreement (CISA) that the Contracting States are entitled to apply broader national provisions on the *ne*

bis in idem principle with regard to judicial decisions taken abroad. However, that article does not in any way authorise a Contracting State to refrain from trying a drugs offence, in breach of its obligations under Article 71 of the CISA, read in conjunction with Article 36 of the Single Convention on Narcotic Drugs, concluded in New York on 30 March 1961 under the aegis of the United Nations, on the sole ground that the person charged has already been convicted in another Contracting State in respect of other offences motivated by the same criminal intention. On the other hand, those provisions do not mean that in national law the competent courts before which a second set of proceedings is brought are precluded from taking account, when fixing the sentence, of penalties which may have already been imposed in the first set of proceedings.

C-297/07 Bourquain (Judgment 11 December 2008)

1. Since Article 54 of the Convention implementing the Schengen Agreement (CISA) does not provide that the person concerned must necessarily have been tried in the territory of the Contracting Parties, that provision, the purpose of which is to protect a person whose trial has been finally disposed of against further prosecution in respect of the same acts, cannot be interpreted as meaning that Articles 54 to 58 of the CISA are never applicable to persons who have been tried by a Contracting Party exercising its jurisdiction beyond the territory to which that Convention applies.

2. Article 54 of the Convention implementing the Schengen Agreement (CISA), applied to a judgment in absentia delivered in accordance with the national legislation of a Contracting State or to an ordinary judgment, necessarily implies that the Contracting States have mutual trust in their criminal justice systems and that each of them recognises the criminal law in force in the other Contracting States even when the outcome would be different if its own national law were applied.

According to the actual wording of Article 54 of the CISA, judgments rendered in absentia are not excluded from its scope of application, the sole condition being that there has been a final disposal of the trial by a Contracting Party.

However, the sole fact that the proceedings in absentia would, under the national law governing the proceedings in question, have necessitated the reopening of the proceedings if the person concerned had been apprehended while time was running in the limitation period applicable to the penalty, does not, in itself, mean that the conviction in absentia cannot be regarded as a final decision within the meaning of Article 54 of the CISA.

3. The *ne bis in idem* principle, enshrined in Article 54 of the Convention implementing the Schengen Agreement (CISA), is applicable to criminal proceedings instituted in a Contracting State against an accused whose trial for the same acts as those for which he faces prosecution was finally disposed of in another Contracting State, even though, under the law of the State in which he was convicted, the sentence which was imposed on him could never, on account of specific features of procedure of the law of that State, have been directly enforced.

In that regard, the condition regarding enforcement referred to in that article is satisfied when it is established that, at the time when the second criminal proceedings were instituted against the same person in respect of the same acts as those which led to a conviction in the first Contracting State, the penalty imposed in that first State can no longer be enforced according to the laws of that State.

C-491/07 Turansky (Judgment 22 December 2008)

The *ne bis in idem* principle enshrined in Article 54 of the Convention implementing the Schengen Agreement, which aims to ensure that a person is not prosecuted for the same acts in the territory of several Contracting States on account of his having exercised his right to freedom of movement, does not fall to be applied to a decision by which an authority of a Contracting State, after examining the merits of the case brought before it, makes an order, at a stage before the charging of a person suspected of a crime, suspending the criminal proceedings, where the suspension decision does not, under the national law of that State, definitively bar further prosecution and therefore does not preclude new criminal proceedings, in respect of the same acts, in that State.

Therefore, a decision of a police authority which, while suspending criminal proceedings, does not under the national law concerned definitively bring the prosecution to an end, cannot constitute a decision which would make it possible to conclude that the trial of that person has been 'finally disposed of' within the meaning of Article 54 of the abovementioned Convention.

PART VII - REFERENCE NUMBERS OF THE INDIVIDUAL COUNCIL EVALUATION REPORTS OF THE MEMBER STATES CONCERNING THE APPLICATION OF THE EAW FD

Austria (7024/08 COR 1 REV 1 CRIMORG 41 + COR 1)

Belgium (16454/2/06 REV 2 CRIMORG 196)

Bulgaria (8265/09 CRIMORG 52)

Cyprus (14135/2/07 REV 2 CRIMORG 155)

Czech Republic (15691/2/08 REV 2 CRIMORG 194)

Denmark (13801/2/06 REV 2 CRIMORG 149)

Estonia (5301/2/07 REV 2 CRIMORG 9)

Finland (11787/2/07 REV 2 CRIMORG 125)

France (9972/2/07 REV 2 CRIMORG 95)

Germany (7058/1/09 REV 1 CRIMORG 32)

Greece (13416/1/08 REV 2 CRIMORG 146)

Hungary (15317/2/07 REV 2 CRIMORG 174)

Ireland (11843/2/06 REV 2 CRIMORG 129 + COR 1)

Italy (5832/2/09 REV 2 CRIMORG 19)

Latvia (17220/1/08 REV 1 CRIMORG 213)

Lithuania (12399/2/07 REV 2 CRIMORG 134)

Luxemburg (10086/1/07 REV 1 CRIMORG 101)

Malta (9617/2/08 REV 2 CRIMORG 75)

Netherlands (15370/2/08 REV 2 CRIMORG 185)

Poland (14240/2/07 REV 2 CRIMORG 158)

Portugal (7593/2/07 REV 2 CRIMORG 59)

Romania (8267/09 CRIMORG 53)

Slovak Republic (7060/1/09 CRIMORG 33)

Slovenia (7301/2/08 REV 2 CRIMORG 44)

Spain (5085/2/07 REV 2 CRIMORG 5)

Sweden (9927/2/08 REV 2 CRIMORG 79)

United Kingdom (9974/2/07 REV 2 EXT 1 CRIMORG 96)

PART VIII - TABLES OF ALL THE MEMBER STATES SETTING OUT THE FOLLOWING INFORMATION (WHERE RECEIVED)

- The responses of the Member States to the recommendations of the individual evaluation reports of the Council (for the reference numbers of the individual reports, see Part VII) with the comments 2.2.1. of this report included therein.

- General information on the application of the FD in each Member State, with reference to issues raised in the general recommendations of the Council made in the fourth round of mutual evaluations in 2009.

- The responses of the Member States to the observations set out in the implementation report of the Commission from 2007.

- Where available, they also give an insight in the case law of interest in the country or in the preliminary questions asked to the European Court of Justice.

- Content

1. AUSTRIA

Recommendations EAW report 29-2-2008 (7024/08 COR 1 REV 1 CRIMORG 41 + COR 1)	***Follow up report 3-8-2009***
New developments	AT changed its legislation with the introduction of legislation, entitled: "*Federal law on judicial cooperation in criminal matters with Member States of the European Union*" which took effect from 1st January 2008
1 - To adopt measures to ensure that appropriate training programmes are put in place, so that extensive and regular training on EAW is provided to judges, public prosecutors and defence lawyers (see 7.1.7).	It should be noted that there are already sufficient national training programmes dealing with the cooperation in criminal matters with the Member States of the EU including the legal bases and the practical application of the FD on the EAW and its implementation by AT. The following seminars, which took place over the last months and inter alia dealt with the cooperation in criminal matters with the EU-MS, should be mentioned: - topical questions of penal law (organized by the Linz Court of Appeal); - training seminar for public prosecutors (organized by the Linz Senior Public Prosecution office); - seminar on penal law (organized by the association of Austrian judges); - forum of public prosecutors (organized by the Innsbruck Senior Public Prosecution office); and - seminar on penal law (organized by the Graz Court of Appeal together with the Graz Senior Public Prosecution office). Furthermore, Austrian judges and public prosecutors are offered the possibility to participate in international conferences and seminars dedicated to international criminal law, including the FD on the EAW, on a regular basis. The following conferences and seminars, which took place over the last months, should be mentioned:

	- “using EU-criminal justice instruments” (organized by the European Law Academy, ERA); - forum on mutual recognition of judicial decisions in criminal matters in the EU (organized by the European Law Academy, ERA); - conference on international cooperation in criminal matters (Sarajevo); and - exchange of views on international criminal law with DE, CZ and SK. As far as defence counsels are concerned, it has to be emphasized that their training does not fall within the responsibility of the Austrian Ministry of Justice but rather of the Austrian Chamber of Defence Counsels, due to the self-administration of Austrian defence counsels.
2 - To take measures to promote further use by judges and prosecutors of the possibility of communicating and exchanging information directly with the judicial authorities of other Member States, while continuing to provide appropriate support to current communication channels (SIRENE, Eurojust). (see 7.1.9).	To the knowledge of the Austrian Ministry of Justice, AT judicial authorities do make use of the possibility of communicating and exchanging information directly with the judicial authorities of other MS. However, such direct contacts may be hampered by language problems (by either side) or by the impossibility to find out and/or reach the foreign counterpart. In such case, it seems acceptable to use the current communication channels (SIRENE, Eurojust) instead.
3 - To promote, in a manner considered appropriate (e.g., by producing written guidelines, or by including specific provisions in the implementing law), uniform practice as regards criteria to be applied when deciding on issuing an EAW (see 7.2.1.1).	The production of written guidelines or the inclusion of specific provisions in the AT implementing law in order to promote uniform practice as regards criteria to be applied when deciding on issuing an EAW is not possible as the decision on the issuance of an arrest warrant, including a EAW, depends on the particular circumstances of the individual case. To the knowledge of the AT Ministry of Justice, there is no proportionality problem with regard to EAW issued by AT authorities.

4 - To produce written guidelines providing updated and practical guidance to assist judicial authorities when issuing an EAW (see 7.2.1.2).	Written guidelines on the AT legislation implementing the FD on the EAW were given to the AT judicial authorities at the time of the entering into force of that legislation. An update of those guidelines does not seem necessary as that legislation has not been amended yet, with the exception of the provision of Article 4 para. 2 EU-JZG, of which the competent AT authorities were informed.
5 To promote the practice that, when available, the information on the description or the ID materials of the requested person are provided with the EAW, or, at least, the mention "available on request" is made in box a) of the EAW form (see 7.2.1.3).	ID material of the requested person is usually taken and kept by the police authorities. Consequently, the AT judicial authorities are in general not aware of the fact that such material exists.
6 - To take the necessary steps to complete the process of converting the existing SIS alerts based on International Arrest Warrants into SIS alerts based on EAWs (See 7.2.2.4).	From the beginning of 2008 EAWs have been issued for all existing international arrest warrant alerts.
7- To amend the implementing law so that it conforms to the Framework Decision as regards the scope of application of the EAW in conviction cases (see 7.3.1.1). (AT's legislation required not only that the sentence be for at least 4 months but simultaneously that the related offence be punishable by at least 12 months. AT has changed its legislation as from 1-1-2008 on. The requirement that that the related offence be punishable by at least 12 months has been deleted. However, the requirement that a minimum of 4 months still has to be executed remains. Several custodial sentences or their remaining terms requiring execution shall be added up))	We do believe that the AT implementation of Art. 2 para. 1 of the FD is in line with the spirit of the FD on the EAW as in our view it would be disproportionate to grant surrender of a person if, taking into account the time spent in pre-trial detention as well as the time of the surrender proceedings, the sentence to be served would be less than 4 months. In this context, it should be mentioned that it is currently being discussed at EU-level how the well known and acknowledged proportionality principle could best be integrated into the FD on the EAW.
8 - To amend the legislation regarding the surrender of Austrian nationals so that, as from 1 January 2009, the same grounds for refusal as for non-Austrian nationals apply, with the only specialties of Article 4(6) and Article 5(3) of the Framework Decision (see 7.3.1.6). (Relating to EAWs against Austrian nationals on the basis of a conviction, the dual criminality requirement related to listed offences has come to an end from 1-1-2009 on. However the execution of an EAW against an Austrian national is inadmissible when the acts are subject to the	In the case of Wolzenburg, the ECJ decided that a justified discrimination between nationals and non-nationals is acceptable. We are of the opinion that the fact that in case of Austrian jurisdiction Austrian nationals cannot be surrendered but will be prosecuted in Austria, whereas the surrender of non-nationals is admissible, is such a justified discrimination because of the close ties of Austrian nationals to Austria which in general do not exist regarding non-nationals.

jurisdiction of Austrian criminal law*)* (All optional grounds are implemented as mandatory grounds for refusal for Austrian nationals).	The question whether the grounds for refusal contained in the FD on the EAW can be implemented as mandatory grounds for refusal is controversial. So far, no decision of the EJC has been taken with regard to that question.
9 - To amend the legislation in order to abolish, in EAW procedures, any possibility of verification based on suspicion (see 7.3.1.5).	According to the relevant AT legislation, a verification of the suspicion is, in general, not admissible in extradition or surrender proceedings. However, surrender (or extradition) cannot be granted if evidence is available or offered by the accused which dispels the suspicion against him or her immediately. This is stated in Section 19 para. 1 EU-JZG (by reference to Section 33 para. 2 of the Austrian Extradition and Mutual Legal Assistance Act; ARHG).
10 - To amend the implementing legislation, so that once the requested person has been surrendered, any assessment of new facts that might have an impact on the decision to surrender is referred to the authorities of the issuing Member State (see 7.3.1.7).	A re-opening of the surrender proceedings is possible if there are new facts which could lead to the necessity of changing the surrender decision. Such a decision on changing the surrender decision can only be taken by the competent authorities of the executing State and not by the competent authorities of the issuing State which have no competence whatsoever regarding the taking of the surrender decision. Consequently, we see no reason for amending the AT implementing legislation in this regard.
11 - To amend the legislation so that the time-limit for the foreign judicial authority to whom the surrender is offered to issue an EAW, and that imposed on the Austrian judicial authorities to decide on surrender in standard EAW procedures, are consistent (see 7.3.1.8).	At the outset, it should be emphasized that no provision concerning the offer of surrender to a foreign judicial authority is contained in the FD on the EAW. Consequently, we are of the view that AT cannot be criticized for providing such an offer. Furthermore, the time-limit to be given for the transmission of an EAW by the competent foreign judicial authority depends on the time-limit for provisional detention. It is something completely different as the time-limit imposed on Austrian judicial authorities to decide on surrender in standard EAW-proceedings, which depends on the relevant provisions of the FD on the EAW. Consequently, we do not see any need for consistency between those time-limits.

12 - To take the necessary measures to ensure that the decision not to launch a surrender procedure following the arrest of the requested person is communicated directly to the issuing judicial authority, explaining the reasons for such a decision (see 7.3.1.2).	In accordance with the AT declaration to Art. 32 of the FD on the EAW, surrender proceedings are not being initiated if the offences underlying an EAW were committed before 7 August 2002. As that declaration has been published in the OJ, the other MS should be aware of it and of its consequences.
13 - To consider amending the legislation so that in all EAW procedures, even for less serious crimes, detention pending surrender may be ordered in view of the circumstances of the case and giving appropriate consideration to the fact that the requested person absconded from the issuing Member State (see 7.3.1.3).	We are of the view that such an amendment is not feasible with regard to very minor offences as in such cases ordering of detention pending surrender would not be proportionate.
14 - To take the necessary measures to ensure that, at the time of the apprehension, the person arrested on the basis of an EAW is informed, in a language that he understands, of the reasons for the arrest (see 6)1.	Pursuant to the new Code of Criminal Procedure, in force since 1 January 2008, the person arrested on the basis of an EAW has the right to be informed on the grounds of the arrest at the first hearing by the police, which has to be conducted with the help of an interpreter if necessary. The Austrian Federal Ministry of Justice, together with the Austrian Ministry of Interior, has issued an "Information Sheet for Detainees" to be handed out by Police when apprehending a person, available in 33 languages.

General information **General Council recommendations 2009**	
Language flexibility	On the basis of reciprocity (CZ and SK)
Time limit for translated EAW	
Provisional arrest	Yes, 48 hours
Proportionality test	Yes, however, no or uniform practice (active EAW entries around 10% of active domestic arrest warrant entries)
Is it possible for a sought person to get (state paid) legal assistance provided by X in the following situations: (1) in X for the underlying X criminal proceedings when he is arrested in another Member State on the	

basis of a X EAW and (2) in another Member State, for the underlying criminal proceedings when he is arrested in X on the basis of an EAW of the other state? (X = state in the head of the relevant column)	
Accessory surrender	Yes
Flagging	Sirene office, where appropriate after consultation with the central authority (that includes staff from the prosecuting office, MoJ and Ministry for the Interior)
Competent authority for Art 111 Schengen requests	Data Protection Commission
Seizure and handover of property	Yes
Principle of direct contacts	Mainly via Sirene /Interpol
Integration of recital 12 in implementation law	Yes (also 13)
Dual criminality abolished for attempt and complicity	Yes
4 months requirement	4 months to be executed See above (recommendation 7)
Regime for transfer back	1983 CoE convention
24/7 rota?	Yes
In case of refusal of surrender for the execution of a sentence on the ground that the sought person has the nationality, or is a resident of the executing State, is execution of that sentence possible in the executing state when there is no dual criminality?	Yes, see above recommendation 8
Age of criminal liability	14 years
Statistics	Yes
Website	Intranet Federal MoJ.
Jurisdiction ECJ	Yes

Case law/preliminary questions

Regarding the speciality principle, the AT 'Oberste Gerichtshof' (7-11-2007, GZ 13Os 109/07i) has stated that revocation of a conditional sentence is possible, even if the specific underlying offence was not contained in the EAW on which the person was surrendered to AT.

COM Implementation Report of 2007	
Art 17.7 - No legislation relating to reporting breach of time limits to Eurojust	
Art 18.1 (b) - Temporary transfer possible? (On the basis of domestic legislation and the 2000 EU MLA convention a judicial authority will decide on a mutual legal assistance request for temporary surrender, without any interference of the Ministry of Justice. Although this procedure is based on mutual recognition, it is not on the basis of the EAW FD. Temporary surrender cannot be asked on the basis of the EAW, but has to be requested by means of a MLA request. The strict time limits for the execution of an EAW do not apply to MLA requests)	We are of the view that the Austrian approach is not in contradiction with the obligations resulting from the FD on the EAW, as there is the possibility of a temporary transfer of the person concerned as provided for in Article 18 para. 1 b of the FD on the EAW.

2. BELGIUM

Recommendations EAW report 19-3-2007 (16454/2/06 REV 2 CRIMORG 196)	***Follow up report 23 October 2009 and 30 July 2010***
New Developments	- No amendments to the law since 1-4-2007.
1 - Establish a reliable statistical method of storing European Arrest Warrants issued, executed or rejected by the Belgian authorities (see 7.2.1.1.).	Work onging
2 - In this context, pursue the aim of developing the PHENIX system or establishing a database accessible to all courts concerned by the European Arrest Warrant in order to share the main information items relating to, inter alia, current investigations and arrest warrants already issued. Ensure that case law on the European Arrest Warrant is circulated by means of a computer system accessible to all judicial authorities. The introduction of the internet system as suggested by the Federal Prosecutor would ensure that all information is disseminated (see 7.2.1.2).	Work ongoing Information on case law is already ensured through the dissemination of MLA newsletters (MEMOs) within the recently created national network of experts on international cooperation. Those notes are available on the intranet of the public prosecution.
3 - Consider the possibility of pursuing a reasonably flexible policy of executing sentences which would take account of the thresholds referred to by the Framework Decision, to ensure consistent treatment within the European Union (see 7.2.1.3).	Taking into account the capacities available at national level for the execution of sentences Belgium has no intention to modify its policy in this regard for the time being
4 - Make maximum use of the potential of the instruments available to courts to facilitate application of the European Arrest Warrant, mainly by reference to the ministerial circular containing the directives to be followed in completing the form and by organising regular meetings of reference magistrates and of the multidisciplinary working group (see 7.2.2.1).	- regular coordinating meetings of the federal MoJ, prosecutors and police. - regular MLA newsletter for prosecutors including advices and case law on EAW (in Dutch).
5 - Ensure that Belgian law on the EAW conforms to the Framework Decision in cases where the law re-establishes verification of double criminality for certain offences listed in Article 2 of the Framework Decision (see 7.3.1.1.).	The limitation of the list of offences with regard to euthanasia and abortion was made at the time of the legislative adoption of the Belgian implementing legislation. There is no political will to change it.
6 - Amend the provisions of Article 13 of the Belgian law transposing the EAW to make consent to surrender and renunciation of the speciality rule the subject of two separate questions requiring two separate replies, so that consent to surrender does not necessarily involve renunciation of entitlement to the speciality rule. Consider the introduction of a fixed period for revocation both of consent to surrender and of renunciation of the speciality rule (see	Under consideration

7.3.1.2).	
7 - Be satisfied as far as possible with the information contained in the European Arrest Warrant and avoid a proliferation of requests for additional information concerning description of the acts and legal qualification by different authorities and at various stages of the procedure (see 7.3.1.3).	This recommendation is in line with the position of Belgian authorities on this point. Special attention to this recommendation will be given during the training of magistrates.
8 - Clarify the criteria to be taken into consideration by the court in taking a decision on allowing the wanted person to remain at liberty (possibly by requiring him to comply with one or more conditions) or placing him in custody within the framework of the EAW procedure (see 7.3.1.4).	Under consideration
9 - Clarify or supplement the internal instrument by identifying the legal basis on which the person whose surrender has been granted but who has been left at liberty may be imprisoned the day before surrender (see 7.3.1.5).	Under consideration
10 - Simplify the procedure for return of nationals and ensure that the principles set out in Article 5(3) of the Framework Decision are observed, in particular by eliminating the prior request of the person concerned (see 7.3.1.6).	Under consideration
11 - Clarify the scope of the European Arrest Warrant for the purposes of arrest (see 7.3.1.7).	Under consideration
12 - Encourage and develop communications with the issuing State throughout the execution procedure in order to optimise coordination at all stages (see 7.3.1.8).	Special attention to this recommendation will be given during training of magistrates.
13 - Consider the possibility of integrating further surrender into national legislation on the European Arrest Warrant (see 7.3.1.9).	Under consideration
14 - Re-examine transposition into national law with regard to the time-limits referred to in Article 17(7) of the Framework Decision (see 7.3.1.10).	The delays set up in the implementing legislation are in conformity with the Belgian procedural law. Overrunning of the time limit fixed by the framework decision may only occur in exceptional circumstances

General information **General Council recommendations 2009**	

Language flexibility	FR, NL, DE (official national languages)
Time limit for translated EAW	10 days time limit for translation
Provisional arrest	Yes, 24 hours (10 days time limit for translation)
Proportionality test	Yes The principle of opportunity of prosecution is a general fundamental principle of Belgian criminal procedural law
Is it possible for a sought person to get (state paid) legal assistance provided by X in the following situations: (1) in X for the underlying X criminal proceedings when he is arrested in another Member State on the basis of a X EAW and (2) in another Member State, for the underlying criminal proceedings when he is arrested in X on the basis of an EAW of the other state? (X = state in the head of the relevant column)	(1) Yes (2) Yes
Accessory surrender	No
Flagging	Sirene bureau
Competent authority for Art. 111 Schengen requests	Belgian Privacy Commission or Belgian Court
Seizure and handover of property	Yes
Principle of direct contacts	Yes
Integration of recital 12 in implementation law	Yes
Dual criminality abolished for attempt and complicity	Yes
4 months requirement	Yes
Regime for transfer back	Domestic law based on the 1983 CoE convention
24/7 rota?	Yes
In case of refusal of surrender for the execution of a sentence on the ground that the sought person has the nationality, or is a resident of the executing State, is execution of that sentence possible in the executing state when there is no dual criminality?	No In case of impossibility to execute the sentence in Belgium, the surrender will be authorised. In our view, there is no possibility to apply a ground for refusal in that case.

Age of criminal liability	16, exceptions for 16-18 yrs
Statistics	No
Website	Yes (Intranet site of the public prosecution OMPTRANET)
Jurisdiction ECJ	Yes

Case law/preliminary questions

- *ECJ C-303/05 – Advocaten van de wereld- Judgment 3 May 2007*

- *Preliminary question addressed to the ECJ on 24-7-2009 (C-306/09*)

COM Implementation Report of 2007	
Art 2 FD: BE legislation provides that abortion and euthanasia are not covered by "murder or grievous bodily harm". This is contrary to the Framework Decision since it is the law of the issuing state and not the executing state which determines whether an offence is within the list	
Art 17.3 FD: BE legislation provides that the initial decision on surrender must be taken within 15 days of arrest. However, there are two possibilities of appeal, which will, if granted, mean that the deadline of 60 days cannot be met (with appeals, the deadline is 64 days). Although this is still less than the full 90 day limit, the opinion of the Belgian "Conseil d'Etat" was that the use of appeal proceedings could not be regarded as "specific cases" in line with Art 7(4).	

3. BULGARIA

Recommendations EAW report 27-4-2009 (visit October 2008) (8265/09 CRIMORG 52)	***Follow up report 3-8-09***
New Developments	The implementing legislation, entitled the Law on Extradition and European Arrest Warrant was amended with effect from 6 June 2008. Parts of the amendments relate to consequences for the EAW procedures in preparation of the Schengen regime.
1.- Take measures to ensure systematic coordination and flow of information among all the authorities involved in the processing of EAWs (see 7.1.4).	A circular has been issued to all courts to systematically notify the International Operative Police Cooperation Directorate of the Ministry of Interior (IOPCD) when issuing a EAW. All courts are advised to consult IOPCD on the existence of other EAWs concerning the same person before issuing. NB: According to the statement made by BG in the context of the implementation of the EAW, the MoJ is designated as the central authority to assist the judicial authorities
2.- Set up appropriate mechanisms for monitoring EAW proceedings (see 7.1.5)	
3.- Ensure the availability of comprehensive statistics (see 7.1.5).	
4.- Consider making a declaration according to Article 35(1) TEU, recognising the jurisdiction of the European Court of Justice to give preliminary rulings as regards police and judicial co-operation in criminal matters (see 2).	
5.- Introduce the possibility for accessory surrender in national practice/legislation (see 3.14 and 4.16).	
6.- Ensure that the Fiche Française is available on the Council's website (see 7.3.4).	
7.- Consider providing judges, prosecutors and judicial staff with language training free of costs (see 7.1.8).	
8.- Consider developing common criteria regarding proportionality to guide judicial authorities when issuing an EAW (see 7.2.1).	
9.- Ensure that the Interpol NCB is informed of all	See 1. and 2.

EAWs issued by the Bulgarian authorities (see 7.1.4).	
10.- Ensure the effective application of Article 49(2) of the implementing law, regarding the obligation to report delays to Eurojust (see 4.7).	
11.- Consider amending the implementing law in order that the court is informed and provided with the relevant documents as soon as possible after the arrest of the person concerned (see 7.1.4 and 7.3.1).	
12.- Reconsider the role of the prosecutor prior to the initiation of proceedings by the court, in particular as regards the possibility to request additional information and the advisability of detention (see 7.1.4 and 7.3.1).	
13.- Set up appropriate mechanisms for the harmonization of court practice (see 7.1.6).	
14.- Consider developing a practise of including one or more specialised judges in panels dealing with EAW cases (see 7.1.6).	
15.- Consider introducing the possibility of lodging a complaint against 24+72-hour detention orders and a procedure for handling such complaints within a very short period (see 7.3.2).	

General information **General Council recommendations 2009**	
Language flexibility	No
Time limit for translated EAW	72 hours
Provisional arrest	Yes, 24 hrs (amendment 6 June 2008)
Proportionality test	Not explicitly in law or guidelines; EAWs are scarcely issued for prosecuting offenses punishable with less than 5 years of imprisonment.
Is it possible for a sought person to get (state paid) legal assistance provided by X in the following situations: (1) in X for the underlying X criminal proceedings when he is arrested in another Member State on the basis of a X EAW and (2) in another Member State, for the underlying	

criminal proceedings when he is arrested in X on the basis of an EAW of the other state? (X = state in the head of the relevant column)	
Accessory surrender	Not possible (issuing); For executing, no specific provision exists, however, in practice case by case approach
Flagging	-
Competent authority for Art 111 Schengen requests	-
Seizure and handover of property	Yes
Principle of direct contacts	Yes
Integration of recital 12 in implementation law	No
Dual criminality abolished for attempt and complicity	
4 months requirement	Yes
Regime for transfer back	1983 CoE convention
24/7 rota?	Yes
In case of refusal of surrender for the execution of a sentence on the ground that the sought person has the nationality, or is a resident of the executing State, is execution of that sentence possible in the executing state when there is no dual criminality?	
Age of criminal liability	
Statistics	No
Website	National institute of justice. Handbook and vademecum: http://www.nij.bg/Articles/Articles.aspx?lang=bg-BG&pageid=551 Domestic and ECJ case law: http://www.nij.bg/Articles/Articles.aspx?lang=bg-BG&pageid=553
Jurisdiction ECJ	No

Case law/preliminary questions: -

COM Implementation Report of 2007	
BG requires the Article 5(2) guarantee. Such a review may only be done ex officio, and not on request for the first 20 years of serving a sentence. This appears to be contrary to the provision of Article 5(2) of the Framework Decision.	

4. CYPRUS

Recommendations EAW report 13-11-2007 (14135/2/07 REV 2 CRIMORG 155)	*Follow up report 31-8-09*
New Developments	*- New, comprehensive bill expected to be submitted to the parliament in September 2009*
1 - To amend the Constitution in order to abolish the limitation to the surrender of nationals (See 7.2.). NB: Art 32 of the FD does not allow the exclusion of acts committed after 7 August 2002. CY legislation is still not in conformity with the FD on this point	From case law of the Supreme Court follows that – on the basis of the amended constitution - surrender of Cypriot nationals for offences committed after 1-5-04 is lawful.
2 - To ensure that the police investigator is fully informed of the criteria applied by the Attorney General to authorise the issuing of an EAW, possibly through written guidelines of the Attorney General. (See 7.3.1.1.).	- To increase standardisation of procedures, new circulars with guidelines have been drafted.
3 - To ensure simplification of the procedures, for example by reconsidering the need for the police investigator to go repeatedly before the Attorney General before presenting a draft EAW to the District Judge (See 7.3.1.1.).	
4 - To initiate discussions at national level, especially among the judiciary, on the best way to allow a more active role in practice for the District Judge for example with regards to additional requests for information sent by the executing authority (See 7.3.1.2.).	
5 - To consider setting up a working group at national level, composed of representatives of all authorities involved (including the Attorney General, the CA, the Police and the Judges), which would meet regularly in order to discuss general EAW issues and which could draft general guidelines on EAW procedures (See 7.3.1.4.).	
6 - To increase standardisation of procedures, through appropriate training as well as specific guidelines, among the lawyers in the section dealing with the EAW and extradition at the Office of the Attorney General (See 7.3.1.5.).	- To increase standardisation of procedures, new circulars with guidelines have been drafted
7 - To increase training measures focusing on EAW procedures, especially among the judiciary (See 7.3.1.6.)	A number of seminars on applying the EAW law have been organised for the authorities involved.

8 - To enhance the coordination offered by Eurojust especially where the cooperation with a specific Member State proves to be difficult, and to consider the opportunity of sending to the national member of Eurojust a copy of all EAWs issued by Cyprus (See 7.3.1.7.).	
9 - To consider limiting the role of the CA to the administrative receipt of EAWs and leave the checking of EAWs to the executing judicial authority (See 7.4.1.1.).	
10 - To amend the legislation in so far as it requires a certificate issued by the CA and, in the meantime, to consider whether such a requirement may be abolished in practice based on the fact that it does not comply with EU legislation (See 7.4.1.1.).	
11 - To enable all law enforcement authorities to access the STOP-LIST database directly (See 7.4.1.2.).	
12 - To merge the Sirene Bureau with the Europol National Unit and Interpol Nicosia (See 7.4.1.4.).	
13 - In the context of the future connection of Cyprus to the SIS, to amend the EAW Law to insert a provision indicating that the judicial authority which has refused the execution of an EAW may require that a flag be added regarding the relevant SIS alert in order to prevent the arrest of the person for the same acts (See 7.4.1.4.).	
14 - To ensure that the Sirene Bureau, for tasks related to the EAW, especially regarding the issue of flagging, is given the support of legal advice by an independent authority, either a judicial authority or the Attorney General (See 7.4.1.4.).	
15 - To create a clear legal basis allowing for the immediate detention of a person mentioned in the STOP-LIST on the basis of an EAW (See 7.4.1.5.).	
16 - To amend the EAW Law in so far as it requires a domestic arrest warrant (See 7.3.1.3.).	
17 - To enhance the coordination offered by Eurojust especially in cases of competing EAWs and to raise awareness among the judiciary regarding the role and nature of Eurojust (See 7.4.1.6.).	
18 - To finalise the discussion, currently taking place	

in Parliament, of the legislation amending the EAW Law and to consider adding new amendments suggested in this report (See 7.4.1.7.).	
19 - To amend the EAW Law to make it clear that the Police must bring the arrested person before the District Judge as soon as possible and in any case within 24 hours (See 7.4.1.8.).	
20 - To consider making the declaration mentioned in Article 35(2) of the EU Treaty enabling Cypriot courts to submit a request for preliminary ruling to the ECJ regarding the interpretation of instruments adopted in the framework of Title VI of the EU Treaty, including Framework Decisions (See 7.4.1.9.).	The courts law has been amended as to enable national courts to submit a request for a preliminary ruling to the ECJ (law 119(l)/2008. On 20 July 2009 Cyprus acknowledged the jurisdiction of the European Court of Justice to give preliminary rulings as it is stipulated by Article 35, paragraph 1 of the Treaty on the European Union.
21 - To submit to the General Secretariat of the Council the "fiches françaises" relating to the practical implementation of the EAW in Cyprus (See 7.4.1.10.).	

General information **General Council recommendations 2009**	
Language flexibility	Greek, Turkish, English.
Time limit for translated EAW	
Provisional arrest	No (will be introduced with Schengen)
Proportionality test	Yes
Is it possible for a sought person to get (state paid) legal assistance provided by X in the following situations: (1) in X for the underlying X criminal proceedings when he is arrested in another Member State on the basis of a X EAW and (2) in another Member State, for the underlying criminal proceedings when he is arrested in X on the basis of an EAW of the other state? (X = state in the head of the relevant column)	
Accessory surrender	Not allowed
Flagging	-

Competent authority for Art.111 Schengen requests	-
Seizure and handover of property	Yes
Principle of direct contacts	All contacts via central authority ((MoJ)
Integration of recital 12 in implementation law	Yes, and 13
Dual criminality abolished for attempt and complicity	Yes
4 months requirement	Yes
Regime for transfer back	1983CoE convention
24/7 rota?	
In case of refusal of surrender for the execution of a sentence on the ground that the sought person has the nationality, or is a resident of the executing State, is execution of that sentence possible in the executing state when there is no dual criminality?	
Age of criminal liability	14 yrs
Statistics	2007 and 2008: yes
Jurisdiction ECJ	Yes, since 20-7-09

Case law/preliminary questions: -

COM Implementation Report of 2007	
CY has transposed the text of recitals 12 and 13 into the legislation in such a way that it goes beyond the Framework Decision and therefore creates the risk that a EAW will be refused on the basis of grounds not envisaged in the Framework Decision (activity for the cause of freedom).	At the time of the 4th round evaluation report a draft amendment had was intended to delete the reference
Whilst CY has indicated that the Office of the Attorney General is neither a political, judicial nor an administrative authority, the Commission is concerned by the role it plays in the issuing of an EAW. Indeed, for a EAW to be issued in a prosecution case, the consent of the Attorney General must be given in writing prior to the EAW being produced before the competent judicial authority. The Commission has not been informed of what would happen to a EAW if the consent by the Attorney General is refused and as a consequence the Commission fears that the Attorney General, in practice, will endorse the role of a judicial authority.	

CY seem to send back an incomplete form and to require almost systematically that a new EAW is issued which cause great difficulties to some MS which cannot reissue EAW and cause delays in any event.	

5. CZECH REPUBLIC

Recommendations EAW report 2-12-2008 (15691/2/08 REV 2 CRIMORG 194)	***Follow up report 4-8-09***
New developments	- Law has been amended: 07-06-07 10-12-08 08-01-09 - CZ entered Schengen 21-12-2007 The International Judicial Cooperation issue is currently regulated in the Czech Criminal Proceedings Code (CCP). A working group, which is in charge of preparation of a new Act on International Judicial Cooperation in Criminal Matters, has been established within the Ministry of Justice (MoJ). This Act is to regulate the matter (including the EAW issue) separately from the current Criminal Proceedings Code. The working group consists from the MoJ representatives, public prosecutors, judges and a Police Presidium representative. A draft of this Act is currently being finalized, so it could be published in the beginning of 2011 when a comment procedure within the ministries, the Government and the Parliament should begin. Much of the recommendations addressed to the Czech Republic in the evaluation report should be included in the above mentioned Act on International Judicial Cooperation in Criminal Matters.
1.- Consider making a clear distinction in the domestic legislation between the provisions applicable to extradition and those applicable to surrender on the basis of an EAW (see 7.1.2).	Although no cases have been noticed in practice where public prosecutors or courts would be unsure on difference between extradition and surrender (EAW) procedure (provisions of the CCP related to extradition procedure are being followed within the surrender (EAW) procedure without any impact on EAW procedure), the new Act on International Judicial Cooperation in Criminal Matters, which is currently being prepared, shall bring separate regulations of these two procedures taking into account their specifics.

2.- Adopt measures to upgrade the linguistic capacities of judges and prosecutors, as a means to enhance direct contacts with their foreign counterparts (see 7.1.10).	The linguistic courses for judges, public prosecutors, trainees for judges and public prosecutors are organised regularly by the Judicial Academy. The courses are aimed at English, French and German language skills
3.- Consider amending the legislation with a view to simplifying the procedure for issuing an EAW as to the requirement of personally serving the indictment to the person concerned beforehand (see 7.2.1.1).	A new legislation in order to eliminate this deficiency is being prepared.
4.- Take the necessary measures (e.g. by setting up appropriate databases) to allow the Czech authorities to check the conditions of the surrender, irrespective of whether the person has been surrendered for prosecution or for conviction purposes, with a view to respecting the specialty rule (see 7.2.1.3).	The measures are being discussed together with the General Directorate of Prison Service and the Public Prosecution Office in order to find an appropriate solution.
5.- Amend the implementing legislation so that the condition of reciprocity does not apply to surrender of Czech nationals (see 7.3.1.1).	This issue is currently being discussed within the working group for preparation of a new Act on International Judicial Cooperation in Criminal Matters. The reciprocity principle is considered by the working group to be one of the basic principles of international cooperation. The FD on the EAW is based on mutual recognition principle. With regard to the fact, that the term „reciprocity“ is de facto synonym of the term „mutuality“, it can be derived, that the principle of mutual recognition is based on reciprocal procedure of the Member States. Exactly this mutuality / reciprocity is one of the cornerstones of the mutual trust between the Member States. Removal of this principle has not been resolved yet.
6.- Amend the implementing legislation so that no limitation applies to surrender of Czech nationals based on the date of the offence underlying the EAW (see 7.3.1.1). (In 2007 4 cases refusal to surrender of CZ national for offences committed before 1-11-2004)	This deficiency should be eliminated by a new Act on International Judicial Cooperation in Criminal Matters, which is currently being prepared.
7.- Consider rewording Section 377 of the CCP* in conformity with the Framework Decision (see 7.3.1.2). (*(a)violation of CZ constitution or any provision of CZ law that applies unconditionally and (b) if it would damage some other significant protected interest of CZ))	This issue has been discussed within the working group for preparation of a new Act on International Judicial Cooperation in Criminal Matters. According to the recommendations of the evaluation report, the rewording of Section 377 of the CCP has been thoroughly considered. Section 377 of the CCP has to be interpreted with regard to the

	Art. 1 par. 2 of the Czech Constitution, which provides that: „ The Czech Republic is bound by obligations resulting from the international law.“ After detailed and comprehensive discussion, the working group decided that the Section 377 of the CCP should be remained.
8.- Amend the implementing legislation in order to bring Section 409(3) of the CCP, namely as regards paragraph (h), into line with the Framework Decision (see 7.3.1.3).	This deficiency should be eliminated by a new Act on International Judicial Cooperation in Criminal Matters, which is currently being prepared.
9.- Consider amending the legislation in order to simplify/speed up the procedure to be followed when the requested person consents to surrender (see 7.3.1.4).	This deficiency should be eliminated by a new Act on International Judicial Cooperation in Criminal Matters, which is currently being prepared.
10.- Consider amending the implementing legislation in order to introduce clear strict time limits for the public prosecutor's preliminary investigation and court proceedings (including proceedings before the appeal court and the Constitutional Court), thereby ensuring that the time limits prescribed in the Framework Decision are met (see 7.3.1.4).	This issue is currently being discussed within the working group for preparation of a new Act on International Judicial Cooperation in Criminal Matters.
11.- Take the necessary measures to ensure that the possibility of extending the time limit for a decision on surrender envisaged in Article 17(4) of the Framework Decision is used only as an exception (see 7.3.1.4).	Time-limits for decision on surrender are to be regulated by the new Act on International Judicial Cooperation in Criminal Matters.
12.- Amend the implementing legislation so that all grounds for non-execution of EAWs regarded as mandatory in the Framework Decision are examined in summary transfer proceedings (see 7.3.1.5).	This deficiency should be eliminated by a new Act on International Judicial Cooperation in Criminal Matters, which is currently being prepared.
13.- Revise the current practice of requiring the original of the EAW for the court decision on surrender, and accept for that purpose a copy of the EAW sent by any secure means able to produce written records under conditions allowing authenticity to be established (e.g. scanned copies sent by verifiable e-mail) (see 7.3.1.7).	This issue is currently being discussed within the working group for preparation of a new Act on International Judicial Cooperation in Criminal Matters.
Prevention of double prosecution: although art 4(2) of the FD has been transposed as a mandatory ground for refusal, CZ authorities will seek bilaterally or via Eurojust for a solution. The CZ Constitutional Court decided that the relevant article in CZ law does not prevent a EAW from being executed when the crime has been committed partly abroad an partly in the CZ Republic, and the issuing state is in a better position to prosecute (PL.ÚS 66/04)	1 § 110 of Decision of the Constitutional Court No. Pl. US 66/04, of 3 May 2006 reads: "…When a crime has been committed partly abroad and partly in the Czech Republic, the criminal prosecution would take place in the Czech Republic. This creates an obstacle to the surrender of a person for criminal proceedings abroad {compare Section 411 Paragraph 6 letter d) of the Penal Procedure Code] unless, in view of the nature of the

	conducts in question, it would be more efficient to mount a prosecution in the other member State, for example because the decisive material evidence is in that State, or because the deed took place mostly in that State, etc.". N.B.: Section 411(6)(d) corresponds to Article 4(2) of the Framework Decision.
Legality principle	Yes

General information **General Council recommendations 2009**	
Language flexibility	On the basis of reciprocity with AT (German) and SK (Slovakian)
Time limit for translated EAW	The CCP provides that the translated EAW from the requesting state should be delivered to the Czech court within the time-limit of 40 days. Currently being prepared new Act on International Judicial Cooperation in Criminal Matters envisages to short this time-limit to 20 days.
Provisional arrest	Yes, 48 hours.
Proportionality test	Yes, (an EAW shall not be issued if surrender "would entail costs or consequences for the Czech Republic that are manifestly disproportionate to the public interest in the person in question being criminally prosecuted or serving a custodial sentence" or "would be disproportionally detrimental to the person concerned compared with the advantage to be gained by criminal proceedings or the repercussions of the criminal offence, particularly in view of the person's age or social or family circumstances"). Furthermore an EAW can only be delivered against a person that has been personally served with the accusation or has been declared to be a fugitive. Staying abroad does not in itself constitute a basis for being qualified as a fugitive.
Is it possible for a sought person to get (state paid) legal assistance provided by X in the following situations: (1) in X for the underlying X criminal proceedings	1) NO 2) YES.

when he is arrested in another Member State on the basis of a X EAW and (2) in another Member State, for the underlying criminal proceedings when he is arrested in X on the basis of an EAW of the other state? (X = state in the head of the relevant column)	Person whose surrender from the Czech Republic in another MS is requested must be represented by the legal representative (counsel) during the surrender procedure.
Accessory surrender	Not possible. Accessory surrender is envisaged to be regulated by the new Act on International Judicial Cooperation in Criminal Matters.
Flagging	On instruction of Supreme Public prosecutor's office
Competent authority for Art 111 Schengen requests	Courts
Seizure and handover of property	Yes
Principle of direct contacts	**Czech Republic – the state issuing the EAW -** In the exercise of the European Arrest Warrant direct contact with judicial bodies in other EU Member States is applied. The Czech Republic has not determined the central authority (Ministry of Justice) as the authority determined for sending/receiving of EAW`s. **Czech Republic – the state executing the EAW -** The original of the EAW shall be delivered to the locally competent regional public prosecution office directly by the authority of the issuing state. The Czech Republic has not determined the central authority (Ministry of Justice) as the authority determined for sending/receiving of EAW`s.
Integration of recital 12 in implementation law	Not explicit, but indirect via section 377 CCP
Dual criminality abolished for attempt and complicity	No.. An attempt and complicity are judged in the same way as completed crimes or crimes committed by a single offender.
4 months requirement	Yes
Regime for transfer back	**Czech Republic – the state issuing the EAW** 1/ EAW for surrender of a person for criminal prosecution If the accused (a national a resident of an executing state) was surrendered to the Czech Republic with the reservation that in case he does not give consent with serving imprisonment or

	protective measure connected with a detention (hereinafter only "protective measure") in the Czech Republic, he/she must be surrendered back to that Member State. The court has an obligation to respect this reservation based on Sections 403(3) and 388(1) of the CPP. In such a case the presiding judge will deliver the judgment to the executing Member State as soon as possible. If the executing Member State requires (with regard to its internal legal arrangement) to have the European Convention on the Transfer of the Sentenced Persons as base for returning procedure, the Czech Republic is ready to meet such a requirement. 2/ EAW for surrender of a person for execution of punishment In case the surrender is requested for the purpose of execution of imprisonment or protective measure in the Czech Republic and the executing Member State refuses the surrender of its inhabitant or a resident, the Czech Republic asks such a Member State to recognise and execute an imprisonment or protective measure according to its national legal order. For this purpose the court of the Czech Republic will provide a judgement and all other necessary materials for such a procedure. **Czech Republic – the state executing the EAW** 1/ EAW for surrender of a person for criminal prosecution If a national or resident of the Czech Republic is to be surrendered to the issuing Member State for criminal prosecution and such a person does not agree to serve a possible sentence abroad, the court will decide on the surrender only under the condition that the person will be returned for execution of imprisonment or protective measure to the Czech Republic (if such kind of punishment or protective measure will be imposed and the person, after the rendering of judgment in the issuing Member State does not agree to serve imprisonment or protective measure there). It means that the court surrenders such a person only in the case when the issuing Member State provides a guarantee that it would surrender the person back to the Czech Republic for execution of imprisonment or protective measure. Unless the guarantee is granted by the requesting state, the court will refuse the surrender of the person. It is the task of a public prosecutor in the preliminary inquiry concerning EAW to request the guarantee of the issuing Member State if such

	a guarantee is not a part or an enclosure of the EAW already. The guarantee must be provided by the issuing Member State before decision-making of the court. The court of the issuing Member State shall inform according to its national legislation implementing the EAW Framework Decision the court of the Czech Republic about its final decision imposing imprisonment or protective measure on the surrendered person. After the court in the Czech Republic is informed about it, it will ask the relevant authority of the issuing Member State for delivery of enforceable judgement with translation into the Czech language. After that the court will recognise the decision and order its execution. The adequate procedure is followed also in case of imposition of protective measure. In case the issuing Member State requires (with regard to its national legal arrangement) that the procedure is followed on the basis of the European Convention on the Transfer of the Sentenced Persons, the Czech Republic would be ready to meet that request. 2/ <u>EAW for surrender of a person for execution of punishment</u> In case the surrender of the Czech national or resident is requested for the purpose of execution of imprisonment or protective measure in the issuing Member State and if such a person does not agree to service them abroad, the court of the Czech Republic refuses the EAW and asks the issuing Member State to deliver within 30 days the final judgement with a translation into the Czech language. The court shall recognise the judgement of the issuing Member State and order its execution. This adequate procedure is followed also in case of imposition of protective measure.
24/7 rota?	24/7 system is applied by SIRENE. As far as judicial authorities, there always a prosecutors and judges on duty.
In case of refusal of surrender for the execution of a sentence on the ground that the sought person has the nationality, or is a resident of the executing State, is execution of that sentence possible in the executing state when there is no dual criminality?	No. The courts in the Czech Republic have not experienced such a case so far.
Age of criminal liability	15 yrs
Statistics	Yes: 2007, 2008: and 2009

Website	Yes, website MoJ - Guidance notes (Instruction) of the MoJ (for judges) - Guidance notes of the Public Prosecution Office (for public prosecutors) - Sirene office's written guidance for issuing EAWs
Jurisdiction ECJ	Yes

Case law/preliminary questions

The CZ Constitutional Court decided that the relevant article in CZ law does not prevent a EAW from being executed when the crime has been committed partly abroad and partly in the CZ Republic, and the issuing state is in a better position to prosecute (PL.ÚS 66/04).

COM Implementation Report of 2007	
CZ legislation does not respect the absolute limit provided in the Framework Decision of 7 August 2002. Instead it sets its own date of application of the EAW of 1st November 2004. Since the amending act of 19 April 2006 that entered into force on 1 July 2006, this time-limit applies for Czech nationals only. Furthermore, contrary to the Framework Decision, requests for offences committed by Czech nationals prior to 1 November 2004 will be treated by CZ under previous extradition arrangements.	A new legislation in order to eliminate this deficiency is being prepared.

6. DENMARK

Recommendations EAW report 6-12-2006 (13801/2/06 REV 2 CRIMORG 149)	***Follow up report 21-9-09***
New developments	No change in legislation since 01-04-2007.
1 - To examine what electronic flagging/cross referencing may be put in place to improve the ease by which police and prosecutorial users may reference EAW forms and procedures on the police POLNET system. (See 7.2.1.1)	
2 - To post electronic EAW forms in all languages, and in their unedited entirety, onto the police POLNET IT system, together with a standing instruction that the forms must be utilised in all cases. (See 7.2.1.1)	
3 - To implement a simple referencing system whereby the POLNET archive (or other such case management IT system as may be appropriate) can be interrogated by users to deliver listings of all cases in which EAWs have been utilised. Given the low volume of historical cases, all existing EAWs matters should be cross-referenced accordingly. (See 7.2.1.2)	
4 - To reassess police district EAW training requirements once the new structures of the forthcoming police reform are in place. (See 7.2.1.3)	
5 - To reconsider the competence of the Minister of Justice, or to put equivalent measures into place, so as to ensure that concrete EAW files may not be referred for consideration/decision making.[1] (See 7.3.1.1) [1] In accordance with the principles of transparency which led to the reorganisation of the Danish court system in 1990.	
6 - To underline in a manner felt appropriate, for example at judicial/MOJ training seminars, the primacy of the positive list set as out in Article 2 paragraph 2 of the FD. (See 7.3.1.2)	
7 - To consider measures by which the formulation of requests for information may be further streamlined so that all domestic participants are afforded the opportunity to coordinate, if possible, to a single unified communication issued by the JA. (7.3.1.3)	

General information **General Council recommendations 2009**	
Language flexibility	Danish, Swedish, English
Time limit for translated EAW	No
Provisional arrest	Yes (24 hours)
Proportionality test ?	Issuing : Yes
Is it possible for a sought person to get (state paid) legal assistance provided by X in the following situations: (1) in X for the underlying X criminal proceedings when he is arrested in another Member State on the basis of a X EAW and (2) in another Member State, for the underlying criminal proceedings when he is arrested in X on the basis of an EAW of the other state? (X = state in the head of the relevant column)	Legal assistance follows the general rules in the Danish legislation by which a person gets state-paid legal assistance during the trial. In cases where the person is convicted of the crime the person is sentenced to pay the expenses of the case including the expenses for legal assistance
Accessory surrender	Yes
Flagging	communication centre of the National Police
Competent authority for Art. 111 Schengen requests	
Seizure and handover of property	Yes
Principle of direct contacts	- Ministry of Justice is designated as competent judicial authority - Judges play no role in issuing EAW's. However, whilst the Danish system is frequently misunderstood, it seems important to reiterate that a Danish EAW, although issued by the Ministry of Justice, is always based on a sentence issued by a judge or a judicial remand decision. - In executing cases the initial decision is taken by the MoJ. Judges play a role when a remedy is lodged against the decision of MoJ
Integration of recital 12 in implementation law	Yes, and 13
Dual criminality abolished for attempt and complicity	No

4 months requirement	In general EAWs are only issued when there remains a minimum of 4 months of the sentence to be served
Regime for transfer back	1983 CoE convention
24/7 rota?	Yes
In case of refusal of surrender for the execution of a sentence on the ground that the sought person has the nationality, or is a resident of the executing State, is execution of that sentence possible in the executing state when there is no dual criminality?	
Age of criminal liability	14 years as of 1 July 2010
Statistics	Yes: 2007and 2008
Website	Police and prosecutor's intranet, POLNET, contains handbook/guidelines on EAW (no public access)
Jurisdiction ECJ	No

Case law/preliminary questions: -

COM Implementation Report of 2007	
DK shall refuse surrender on the ground of a danger that, after surrender, the requested person will suffer persecution for political reasons, possible threat with torture, degrading treatment, and violation of due process as well as if the surrender appears to be unreasonable on humanitarian grounds. Such grounds for mandatory refusal go beyond the Framework Decision.	
The Framework Decision does not define what a judicial authority is, this question being left to the national law of Member States. Whilst it is understood that the Minister of Justice is designated by national Danish law as being a judicial authority, it is difficult to view such a designation as being in the spirit of the Framework Decision.	
Article 20 FD– Privileges and immunities DK has stated that there is no implementing legislation on this matter and that they consider this issue to be regulated between Member States. This is not considered sufficient in particular	

since national measures are necessary to transpose time limits, as Framework Decisions are not directly applicable.	
Article 21 – Competing international obligations DK has not transposed this provision as there is no specific legislation on this matter and though it has stated that it will carry this out in accordance with the Framework Decision on a case by case basis this is not in line with the Framework Decision.	

7. ESTONIA

Recommendations EAW report 20-2-2007 (5301/2/07 REV 2 CRIMORG 9)	***Follow up report 3-8-09***
New developments	Amendment to the Estonian Criminal Procedure Code in respect of the European Arrest Warrant came into effect from 23 May 2008 It is envisaged that by the end of 2010, Estonian legislation in international judicial cooperation (Chapter 19 of the Estonian Criminal Procedure Code) will be revised and redrafted and may include amendments in respect of EAW provisions
1. – That domestic legislation is put in place designating the competent issuing JA in EAW cases arising in respect of persons who abscond during the course of criminal proceedings (see 7.2.1.1)1.	An amendment to article 507 CPC fills the gap
2. – That a study be undertaken of the translation capacity available to Estonia's CA in EAW matters so that areas of weakness may be clearly identified and, if possible, rectified (see 7.2.1.2.).	The translation issue is not a case any more
3. – That consideration be given to clarifying which Estonian authority would be best placed to provide guarantees which may be required by executing Member States pursuant to Article 5(3) of the FD (see 7.2.1.4.).	Authorities for providing guarantees pursuant to Article 5(3) of the FD are Courts responsible for EAW issues
4. – That domestic legislation be put in place to permit surrendered persons to cross Estonia's borders in the absence of international travel documents (see 7.2.1.5.)	Relevant legislation (The Border Act° has been amended as from 23 May 2008
5. – That domestic legislation be put in place to permit EAWs to be withdrawn where the basis for the issue of the EAW no longer exists but the need to preserve domestic criminal proceedings remains (see 7.2.1.6.).	This issue has been regulated without amending the legislation
6. – That an examination of Estonia's CID resources be undertaken to ascertain if increased staffing would contribute to increased screening of Interpol Red Notices/diffusions (see 7.3.1.1.).	
7. – That the practice of police obtained consents be	The practice is in place and up to July 2010

examined with a view to clarifying the process by which the requested person may grant or refuse their consent to surrender before the executing JA (see 7.3.1.2).	no real problems have arisen
8. – That Estonia's Fiche Française be reviewed by the relevant EAW authorities to verify its accuracy, and that any errors and/or omissions discovered be remedied as soon as practicable (see 7.3.1.3)	The Fiche Française has been reviewed
9. – That domestic legislation be put in place to clarify the precise criteria applicable to the issue of bail/release in EAW proceedings (see 7.3.1.4).	Estonian legislation allows to issue the bail release in EAW cases but in practice it has never been used. No need for amending the legislation
10. – That mechanisms be established to ensure the timely release of requested persons in keeping with mandatory release provisions established by the Criminal Procedure Code (see 7.3.1.5.).	This issue is regulated by police regulations, no need for amending legislation
11. – That domestic legislation be amended to provide for the possibility that a requested person may elect not to be represented by a defence advocate during the surrender proceedings (see. 7.3.1.6.).	The legislation has not been amended since the representation by a defence advocate is in our understanding one of the guarantees of citizen rights. Legal representation is free for the person concerned
12. – That domestic legislation be put in place to expressly assert that surrender in respect of FD list offences is to occur without verification of the double criminality of the act (see 7.3.1.7.).	The legislation is now in conformity with the Framework Decision (new wording of art 491)
13. – That domestic legislation be put in place to clearly define and limit the precise legal grounds by which Estonia's executing JAs may refuse surrender (see 7.3.1.8)	The legislation has been amended from 23 May 2008
14. – That domestic legislation be considered whereby Estonia's executing JAs are designated as the body competent to authorise temporary or conditional surrenders and onwards surrenders (see 7.3.1.9.).	The legislation has been amended from 23 May 2008
15. – That domestic legislation be put in place to ensure that humanitarian grounds are established as a permissible basis for the postponement of surrender of the requested person in appropriate cases (see 7.3.1.10.).	The legislation has been amended from 23 May 2008
16. – That the Estonian Law Centre review the various legislative amendments made pursuant to this report, together with their concrete consequences, and submit an appropriate training programme to Estonia's Training Council to ensure that the necessary training regimes are put in place as soon as	There are every year at least two training courses for judges on the EAW issue and at least one for defence lawyers. As at July 2010, the Estonian Law Centre no longer exists

practicable (see 5.8.1.).	
	- Estonia has so far no “own” guidelines on the application of the EAW and all practitioners use the common guidelines made by the Council (the common Handbook).

General information **General Council recommendations 2009**	
Language flexibility	Yes, Estonian and English. In communication English is mostly used as vehicular language.
Time limit for translated EAW	3 working days
Provisional arrest	Yes 48 hours
Proportionality test	Yes, on issuing EAWs; uniformity is ensured by review by the Chief State Prosecutor's team
Is it possible for a sought person to get (state paid) legal assistance provided by X in the following situations: (1) in X for the underlying X criminal proceedings when he is arrested in another Member State on the basis of a X EAW and (2) in another Member State, for the underlying criminal proceedings when he is arrested in X on the basis of an EAW of the other state? (X = state in the head of the relevant column)	
Accessory surrender	Not possible
Flagging	SIRENE office, after consultation with the Prosecutor General's Office
Competent authority for Art. 111 Schengen requests	
Seizure and handover of property	Yes
Principle of direct contacts	Yes On various points the central authority is decision making body rather than the Judicial authority (e.g. temporary/conditional surrender, onward surrender)

Integration of recital 12 in implementation law	Indirect via constitutional provision.
Dual criminality abolished for attempt and complicity	Yes
4 months requirement	
Regime for transfer back	Mandatory concerning Estonian citizens to be surrendered to the other MS
24/7 rota?	Yes
In case of refusal of surrender for the execution of a sentence on the ground that the sought person has the nationality, or is a resident of the executing State, is execution of that sentence possible in the executing state when there is no dual criminality?	Possibly yes, but has not occurred in practice so far
Age of criminal liability	14 yrs
Statistics	Yes: 2007, 2008and 2009
Website	Yes, mainly summaries of Supreme Court decisions
Jurisdiction ECJ	No

Case law/preliminary questions: -

COM Implementation Report of 2007	
Though not provided for by the national legislation, the judicial authorities in EE consider the merit of each case, applying a proportionality test in coming to a decision in respect of the surrender application. As a consequence, a Judicial Authority may refuse surrender purely on merit grounds rather than pursuant to any of the grounds stated in Article 3 and Article 4 of the Framework Decision. Such a practice is clearly contrary to the Framework Decision.	This situation is inherent to the EE criminal procedural system in which all arguments can be brought before the judge. No refusals, however, are reported on other grounds than grounds included in the FD.
EE has not transposed Art 4 paragraph 1 FD but has stated it will apply it in practice, though this cannot be viewed as full transposition.	

8. FINLAND

Recommendations EAW report 28-9-2007 (11787/2/07 REV 2 CRIMORG 125)	***Follow up report 27-7-2009***
New developments	Implementation of the Nordic Extradition Convention 01-01-2008
Recommendation 1 - That the prosecutors EAW handbook be amended so that prosecutors are directed to liaise with the Criminal Sanctions Agency prior to the issue of all prosecution EAWs (see 7.2.1.1).	- Improved coordination and development of proceedings between EAW authorities and Sirene bureau - Handbook for prosecutors updated on a regular basis (and available on the prosecutors' intranet).
Recommendation 2 - That section 23 of the EU Extradition Act be redrafted without reference to the police (see 7.3.1.2).	
Recommendation 3 - That the expansion of the mandatory refusal grounds to include situations not foreseen in the FD be reconsidered at a political level (see 7.3.1.3).	
Recommendation 4 – That section 5 (1)(5) be redrafted so that the scope of the territoriality ground for refusal is made clear and limited as intended by Finland (see 7.3.1.3)	
Recommendation 5 - That Finland designate a competent authority/authorities to superintend all undertakings, given by Finland or by other Member States, in respect of EAW proceedings (see 7.3.1.4).	Prosecutor (when Finland is issuing state) must check whether executing state has set a condition to return the person or other conditions. Prosecutors should on their part make sure that the condition set in accordance with Art5(3) FD on EAW is followed. Detailed advice about this has been added to the handbook Before the EAW is issued, the prosecutor must check whether the same person has other cases pending where the EAW would also be needed. Prosecutors should act in a way that that all offences be included in the one single

	EAW.
Recommendation 6 - That legislative clarity be established in respect of the translation provisions set out in sections 15(1) and 15(3) of Finland's EU Extradition Act (see 7.3.1.5).	Section 15(1) contains a provision under which FI accepts requests in Finnish, Swedish or English languages (and on a discretionary basis, in situations meant in section 15(2) also in other languages). In other words, as an executing State, purpose was to facilitate sending requests to FI by other MS, by accepting requests also in other languages than in our own. On the other hand, section 15(3) is meant to be applied in domestic surrender procedure, in other words, due to domestic legislation on languages to be used in criminal proceedings and linguistical rights, when surrender procedure starts, the request has to be translated into Finnish or Swedish (in case it has been sent in English) and it is the responsibility of the Central Bureau of Investigation to translate the request. Therefore in our view the relationship between section 15(1) and 15(3) is clear, and these two provisions do not contradict with each other.
Recommendation 7 - That legislative clarity be applied to the objectives of section 34(2) of Finland's EU Extradition Act (see 7.3.1.6).	In the context of drafting legislation on Nordic Arrest Warrant, section 34(2) of Finlands EU Extradition Act was repealed (1385/2007), since it was not regarded as being in conformity with obligations of the FD on EAW That amendment came into force on 1 January 2008
Recommendation 8 - That, in respect of associated surrenders of property and of requested persons, jurisdictional competence between the Coercive Measures Act and the EU Extradition Act is aligned (see 7.3.1.8).	
Recommendation 9 - That consideration be given to establishing regular judicial refresher training courses on the EAW (see 7.3.1.9).	- Training organised by the General Prosecutor's Office on a regular basis. - Team of experts

General information **General Council recommendations 2009**	
Language flexibility	Issuing: all EAWs are translated in English Executing: Start possible in English

	Separate regime for the Nordic countries
Time limit for translated EAW	
Provisional arrest	Possible
Proportionality test	Yes - level over and above the bare statutory criteria, including the EAW history of experience with the executing MS (e.g. for countries with long surrender delays)
Is it possible for a sought person to get (state paid) legal assistance provided by X in the following situations: (1) in X for the underlying X criminal proceedings when he is arrested in another Member State on the basis of a X EAW and (2) in another Member State, for the underlying criminal proceedings when he is arrested in X on the basis of an EAW of the other state? (X = state in the head of the relevant column)	
Accessory surrender	Possible
Flagging	FI does not issue prohibitions/validity flags other than – on the basis of guidelines of the prosecutor general's office - in cases where mandatory grounds for refusal apply (e.g. minors under the age of 15 years)
Competent authority for Art 111 Schengen requests	
Seizure and handover of property	Partly transposed, separate procedures
Principle of direct contacts	Yes
Integration of recital 12 in implementation law	Fully and 13
Dual criminality abolished for attempt and complicity	Yes
4 months requirement	
Regime for transfer back	The working group has prepared a proposal for a government bill on the implementation of the FD on transfer of prisoners, which mutatis mutandis is meant to be applied also in situations where transfer is based on Articles 4(6) or 5(3) of the FD on EAW. Purpose is to prepare and submit the

	Government Bill to the Parliament, so that the implementing legislation would come into force in deadline required in the FD, in other words, by 5 December 2011.
24/7 rota?	Yes for police services, partly for prosecutors (only regular office hours and week ends)
In case of refusal of surrender for the execution of a sentence on the ground that the sought person has the nationality, or is a resident of the executing State, is execution of that sentence possible in the executing state when there is no dual criminality?	
Age of criminal liability	15 yrs, specific regime for 15-18 yrs
Statistics	2007 and 2008: yes
Website	Prosecutor's intranet contains i.e. regularly updated handbook/guidelines on EAW
Jurisdiction ECJ	Yes, 35.3.b

Case law/preliminary questions

C-388/08 Lyemann and Pustarov (judgment of 01/12/2008:

In 2008 the Finnish Supreme Court gave a significant decision (KKO 2008:118) in a case concerning the EAW and the application of specialty principle (art. 27). The legal question was as follows: in a case concerning a drug offence the final charge no longer corresponded in all respects to the original description of the criminal act described in the arrest warrant. In the final description of the criminal act there was a large amount (25 kilograms) of hashish whereas in the arrest warrant it was informed that the defendants had imported a large amount of amphetamine. Also the time of commission of the offence differed partly from the arrest warrant. The Finnish Supreme Court asked the Court of Justice of the European Communities for a preliminary ruling, which was given on 1 December 2008 (C-388/08 Lyemann and Pustarov (judgment of 01/12/2008)The ECJ held as follows:

In order to establish whether the offence under consideration is an 'offence other' than that for which the person was surrendered within the meaning of Article 27(2) of Framework Decision 2002/584, requiring the implementation of the consent procedure referred to in Article 27(3)(g) and 27(4) of that Framework Decision, it must be ascertained whether the constituent elements of the offence, according to the legal description given by the issuing State, are those in respect of which the person was surrendered and whether there is a sufficient correspondence between the information given in the arrest warrant and that contained in the later procedural document. Modifications concerning the time or place of the offence are allowed, in so far as they derive from evidence gathered in the course of the proceedings conducted in the issuing State concerning the conduct described in the arrest warrant, do not alter the nature of the offence and do not lead to grounds for non-execution under Articles 3 and 4 of the Framework Decision.

A modification of the description of the offence, concerning only the kind of narcotics in question and not changing the legal classification of the offence, is not such, of itself, as to define an 'offence other' than that for which the person was surrendered within the meaning of Article 27(2) of Framework Decision 2002/584 on the European arrest warrant and the surrender procedures between Member States, since it is an offence still punishable according to the same scale of penalties and comes under the rubric 'illegal trafficking in narcotic drugs' in Article 2(2) of that Framework Decision.

After this the Finnish Supreme Court gave its decision. It considered that the constituent elements of the offence mentioned in the arrest warrant and in the final charge were the same as those on which grounds the defendants were surrendered. The descriptions of the criminal act were similar enough and Finland was not obliged to request the extraditing Member State a consent mentioned in article 27 (3g) in order to decide on the amended charge.

COM Implementation Report of 2007: no remarks stem from the 2007 COM report.

9. FRANCE

Recommendations EAW report 20-7-2007 (9972/2/07 REV 2 CRIMORG 95)	***Follow up report 29 July 2009***
New developments	- Amending law: 12 May 2009 - "Circulaire" of 13 July 2009 (on the new law) - "Circulaire" of 20 July 2009 (on new instruments created with a view to a more efficient application of the EAW)
1- Consider the possibility - while respecting freedom to assess individual situations - of pursuing a policy on the execution of sentences which is reasonably homogenous, so as to ensure uniformity of treatment (see 7.2.1.1.).	Following the "circulaire" of 11 March 2004, the "circulaire" of 20 July 2009 gives guidance with a view to reduce the number of EAWs based on an in absentia judgement by means of a better use of other mutual legal assistance instruments. See also: recommendation 4
2 - As soon as possible, abide by the provisions in the Framework Decision relating to the standard form, and avoid introducing practices which condone the particular legal requirements of certain States, but which are not laid down in the Framework Decision and which go beyond the principle of mutual recognition (see 7.2.1.2).	The Ministry of Justice has suppressed the UK EAW form that was available on its website, drawing the attention of the courts on the fact that the EAW form must not be modified. It has been replaced by guidance addressed to the French courts who want to issue a EAW to UK to stress the most important points at issue.
3 - Exploit to the maximum the potential of the support tools available to magistrates to facilitate the application of the EAW, particularly by carefully updating the departmental circular, distributing a consolidated version of that circular, and updating BEPI's intranet site in the light of the development of case-law in this area. Create a section on the intranet site including the case-law of the Court of Justice of the European Union. Encourage regular meetings of the monitoring group and distribute the results of its discussions to all national courts and to interested bar associations (see 7.2.2.1 and 7.2.2.2).	- New "circulaires" have been issued in 2009. - Relevant case law of the Cour de cassation and the European Court of Justice has been published on the website of the Ministry of Justice and is up to date - Furthermore, some case law collection has been made on certain themes such as "droits de la défense" and "le statut de réfugié" in the EAW procedure.
4 - Improve the system for compiling information at the Ministry of Justice on EAWs dealt with directly by the French judicial authorities (see 7.2.2.3).	A central mailbox has been introduced at the "Mission Justice" (specialised service of the Ministry of Justice) where all EAW's issued by French judicial authorities are gathered and processed for electronic delivery. A judicial authority attached to this service may recommend changes in the text to the issuing authority. A mailbox is also created at the Ministry of Justice to receive reports on all EAW's executed by French

	judicial authorities.
5 – Consider a more flexible approach involving agreeing to surrender the wanted person on the basis of an EAW drawn up in a language other than French, in line with some Member States' practice (see 7.3.1.2).	
6 – Consider the possibility of amending or clarifying the Code of Criminal Procedure as regards the arrangements (acceptance of an EAW in a form other than the original or a certified copy of the original) and time limit (six-day rule) for receipt of an EAW, as allowed under the case-law of the Supreme Court of Appeal (Cour de cassation) (see 7.3.1.3).	
7 – Keep to the information supplied by the issuing judicial authority in the EAW form and as far as possible avoid making any requests concerning the substance of the case, which are liable to interfere with criminal proceedings pending in the issuing State, with the possible result of refusal to surrender the wanted person to the requesting authorities (see 7.3.1.4).	Different decisions of the Cour de cassation have clarified the role of the executing authority, emphasizing the character of mutual recognition of the EAW. These decisions limit the cases in which dual criminality can be checked and additional information will be asked and give a strict interpretation of the grounds for refusal.
8 – Encourage coordination between the French authorities involved in the process of executing an EAW, so as to limit the number and extent of requests to the issuing authority for additional information (see 7.3.1.5).	
9 – Consider amending the Code of Criminal Procedure as regards execution of an EAW, so as to enable the principal public prosecutor also to place a person under judicial supervision (see 7.3.1.7).	The General Prosecutor may now apply alternative measures to detention ("contrôle judiciaire") on the basis of Article 695-28 and 138 CPP.
10 - Clarify and delineate precisely the powers of the principal public prosecutor and of the examining chamber as regards a stay of surrender, for serious humanitarian reasons see 7.3.1.8).	
11 - Consider the possibility of amending the Code of Criminal Procedure with regard to discrimination as a ground for non-execution (see 7.3.1.9).	
12 - Consider the possibility of reviewing the domestic implementing legislation as regards the time-limits in Article 17(7) of the Framework Decision (see 7.3.1.10).	
13 - Go ahead with the planned amendment of Article 695-46 of the Code of Criminal Procedure as regards speciality (see 7.3.1.12).	Article 695-46 CCP has been changed. It is now in complete conformity with paragraph 27(3)(g) of the Framework Decision.

14 - Standardise practice on extension of the terms of surrender, by amending Article 695-46 of the Code of Criminal Procedure (see 7.3.1.13).	
15 - Clarify the domestic provision governing temporary surrender (see 7.3.1.15).	This practice has improved. The French Ministry of Justice has indicated to the courts that the decision of temporary surrender has to be decided between the judicial authorities of both states concerned. The French Ministry must not intervene.
16 - Amend the Code of Criminal Procedure to introduce coercive powers ensuring that the wanted person is actually surrendered to the requesting authorities (see 7.3.1.16).	Article 695-26 and 695-37 CPP have been changed. The prosecution service may now apply coercive measures in conformity with article 74-2 CPP.
17 - Take the necessary measures to guarantee, in practice, that lawyers have access to information concerning an EAW in time to ensure that they are best able to put up an effective defence for their client (see 7.3.1.17).	Different decisions of the Cour de cassation have clarified the position of the defence, including legal representation, access to the file, a possibility to study the file and free communication between lawyer and client
	Articles 728-2 and 728-3 CCP have been changed. In case of refusal of the execution of a foreign sentence in accordance with paragraph 4(6) of the Framework Decision, the "chambre d'accusation" can now immediately carry on with proceedings to take over the execution of the foreign custodial sentence or detention order ("mise à execution directe"). A further amendment (to Article 729-2) allows the applicability of the measure of conditional release when executing a foreign sentence in these cases.
	The coordinates of the competent service for the factual surrender will be mentioned in all EAWs.

General information **General Council recommendations 2009**	
Language flexibility	No
Time limit for translated EAW	
Provisional arrest	Yes 48 hours
Proportionality test	Yes, on case by case basis. In average effective imprisonment to be executed or to be expected for a minimum of one year.

Is it possible for a sought person to get (state paid) legal assistance provided by X in the following situations: (1) in X for the underlying X criminal proceedings when he is arrested in another Member State on the basis of a X EAW and (2) in another Member State, for the underlying criminal proceedings when he is arrested in X on the basis of an EAW of the other state? (X = state in the head of the relevant column)	
Accessory surrender	A new subparagraph has been introduced in article 695-16 CPP, giving the prosecution service the opportunity to ask, in the form of an EAW, on the basis of a "mandat d'amener" for additional permission from the executing State for facts that were not comprised in the EAW in case the person that had been surrendered did not waive speciality. (France as issuing state)
Flagging	
Competent authority for Art 111 Schengen requests	
Seizure and handover of property	Article 695-41 CPP has been changed; seizure is now possible not only on request of the issuing authority but also on the initiative of the executing authority.
Principle of direct contacts	
Integration of recital 12 in implementation law	Yes
Dual criminality abolished for attempt and complicity	Yes
4 months requirement	
Regime for transfer back	1983 CoE convention
24/7 rota?	Yes
In case of refusal of surrender for the execution of a sentence on the ground that the sought person has the nationality, or is a resident of the executing State, is execution of that sentence possible in the executing state when there is no dual criminality?	
Age of criminal liability	13 years
Statistics	Yes: 2007 and 2008

Website	Yes, regularly updated intranet MoJ with comprehensive EAW info (case law, handbook, circular letters, FAQ, forms and instructions how they have to be used, list of translators. On-line assistance for judges and prosecutors
Jurisdiction ECJ	Yes

Case law/preliminary questions

See above, recommendation 7 and 17.

COM Implementation Report of 2007	
FR provides that a final decision must be taken within 30 days of arrest. However where an appeal in cassation leads to a referral to another Court, which FR considers as an exceptional case, the deadlines mentioned total 90 days.	
The transposition of the series of exceptions to the specialty rule laid down in article 27(3) a) to g): FR has not transposed exception c).	

10. GERMANY

Recommendations EAW report 31-3-2009 (7058/1/09 REV 1 CRIMORG 32)	***Follow up report 24-9-09***
New developments	No new legislative developments since the evaluation report (on-the spot visit September 2008)
1.- Take the necessary measures at legislative level to draw a clear distinction between traditional extradition and the new EAW regimes (see 7.1.1).	
2.- Take the measures considered appropriate to promote a common procedural approach in EAW cases in the different Länder (see 7.1.3).	New guidelines as from 1-1-09 on, applicable in all Länder.
3.- Update the Fiche Française to reflect current law and practice (see 7.1.8).	Fiche française updated 18-9-09.
4.- Modify the law with a view to vesting the surrender decision in a judicial authority acting in its own right (see 7.3.1.1).	
5.- Ensure that the requested person is heard by the OLG in cases where he or she does not consent to surrender (see 7.3.1.2).	
6.- Take measures as considered appropriate to ensure that legal assistance is provided to the requested person throughout the procedure (see 7.3.1.3).	
7.- As regards conviction EAWs, take the necessary measures (e.g. redrafting the implementing law or producing guidelines on this particular issue) to ensure that the outstanding sentence to be served is not used as a ground for refusal of surrender (see 7.3.1.4).	
8.- Amend the implementing legislation so that no limitation applies to the surrender of own nationals and habitual residents based on their "legitimate expectation" that they would not be surrendered, or, in cases of listed offences, on the fact that the act does not constitute an offence under German law (see 7.3.1.5).	
9.- In those cases where the German authorities refuse to execute a conviction EAW because the subject is a German national or a permanent resident in Germany and does not consent to surrender, and until rules adopted pursuant to the Framework	

Decision 2008/909/JHA apply, consider accepting the EAW itself as the request required to initiate proceedings for execution of the sentence (see 7.3.1.5).	
10.- Reconsider the practice of considering the lack of proportionality as a ground to refuse to execute an EAW (see 7.3.1.6).	
11.- Amend the implementing legislation so that the condition of reciprocity does not apply in EAW procedures (see 7.3.1.7).	
12.- Consider a rethink of the logistical procedures for the physical surrender of requested persons (see 7.3.1.8).	

General information **General Council recommendations 2009**	
Language flexibility	- On the basis of reciprocity - In urgent cases a start can be made on the basis of a EAW in the language of the issuing State if the language is sufficiently understood by the competent public prosecutor (in practice: English)
Time limit for translated EAW	40 days
Provisional arrest	Yes
Proportionality test	- Issuing: yes - Outstanding EAWs are regularly reviewed and withdrawn when no longer proportional. - Executing: on the basis of Article 73 IRG surrender can be refused on the basis that a minimum proportionality standard has not been observed while issuing.
Is it possible for a sought person to get (state paid) legal assistance provided by X in the following situations: (1) in X for the underlying X criminal proceedings when he is arrested in another Member State on the basis of a X EAW and (2) in another Member State, for the underlying criminal proceedings when he is arrested in X on the	

basis of an EAW of the other state? (X = state in the head of the relevant column)	
Accessory surrender	Yes
Flagging	Sirene bureau in cases where surrender is obviously not permissible; in case of doubt the federal office of justice is consulted.
Competent authority for Art. 111 Schengen requests	BundesKriminalamt/Verwaltungsgericht Wiesbaden
Seizure and handover of property	Yes
Principle of direct contacts	Yes
Integration of recital 12 in implementation law	Yes and 13
Dual criminality abolished for attempt and complicity	
4 months requirement	4 months
Regime for transfer back	In case of own nationals: the international conventions apply, i.e. 1983 CoE convention and, if it is applicable in relation to the relevant EU Member State, the additional protocol to the 1983 CoE Convention and Art. 67-69 CISA; in case of persons with usual residence in Germany: provisions of the national law on international assistance in criminal matters (Sec. 48 ff.) 1983 CoE convention
24/7 rota?	
In case of refusal of surrender for the execution of a sentence on the ground that the sought person has the nationality, or is a resident of the executing State, is execution of that sentence possible in the executing state when there is no dual criminality?	Cf. Sec. 80 and 83b para. 2 LIACM
Age of criminal liability	14
Statistics	Yes: 2007, 2008 and 2009
Website	
Jurisdiction ECJ	Yes

Case law/preliminary questions

- *Bundesverfassungsgericht 3-9-09 (EuGRZ 2009, 686-691)*

In case of the surrender of own nationals (also if the person has both the nationality of Germany and of the requesting State) on the basis of a EAW, surrender has to be refused if, under German law, the statute of limitations prevents a prosecution in Germany and Germany's jurisdiction would exist (that is the case if the person sought is a German national). An interpretation of Sec. 9 No. 2 LIACM [that implements Art. 4 No. 4 of the FD EAW] in conformity with the constitution entails that only German acts interrupting the prescription can be considered. Whether the prescription has been interrupted or stayed by acts in the issuing State (here: Greece) can not be considered.

- *Bundesverfassungsgericht 9-10-2009 (EuGRZ 2009, 691-694)*

Confirmation of the decision of the Federal Constitutinal Court of 3-9-2009 as regards time limitation. In addition: The Oberlandesgerichte (Higher Regional Courts) that decide on the execution of an EAW must examine as carefully as possible whether the specific charges describe punishable behaviour. They may not content themselves with merely performing a rough legal review.

- *Bundesgerichtshof 18-2-2010 (4 ARs 16/09 - NStZ-RR 2010, 177)*

Decision upon the referral of the preliminary question by the *Oberlandesgericht Oldenburg 6-4-2009 (NJW 2009, 2320).* The question was decided by the Federal Constitutional Court by its decision of 3-9-2009 (see above). The decision of the Federal Constitutional Court has binding effect. As a result, surrender of a person with both the Polish and the German nationality to Poland on the basis of an EAW for prosecution for offences committed in Poland cannot be granted, if prosecution in Germany (that has jurisdiction because of the German nationality of the person) is statute barred. Acts interrupting the prescription in the issuing State, that are of a nature that also in Germany would have interrupted prescription, can not play a role.

- *Bundesgerichtshof 15-4-08 (BGHSt 52, 191; NJW 2008, 1968)*

Surrender of a German national to Poland was not granted. Although the case could be prosecuted in Poland, under German legislation prosecution was statute barred and also Germany had jurisdiction in this case.

- *Oberlandesgericht Stuttgart 26-6-2009 (AZ.:3 Ausl 175/08)*

Preliminary question to the ECJ: see website of the ECJ, case C-261

- *Oberlandesgericht Celle 20-5-2008*

Surrender for prosecution for possession of a small quantity of cannabis (7 seedlings) refused when in the issuing state a life long sentence is eligible.

- *Oberlandesgericht Karlsruhe 13-7-2007 (AZ.: 1 Ars 21/08)*

Refusing surrender relating to prosecution in an *in absentia* case is not appropriate if the prosecuted person was aware of the prosecution, a defence lawyer participated in the trial and the summons to appear in court could not be served because the escape of the defendant. This applies only if a sought person is aware of being prosecuted and he or she leaves that state to hide away in another state. It can also apply when a sought person deliberately ducks out of a situation in which official letters can be assigned.

- *Oberlandesgericht Stuttgart 9-1-2008 (Az.: 3 Ausl 134/07*)

A 'case of escape' means that the defendant deliberately backs out of his or her obligations in order to escape prosecution. The mere fact of changing address within the EU as such cannot qualify a case as 'case of escape'.

If there is no 'case of escape' the surrender of the prosecuted person to a Member State of the EU for the purpose of execution of a criminal sentence rendered *in absentia* without granting effectively the right for a new trial is inadmissible even in the case where, on the basis of the provisions on legal assistance without any treaty of the German law on international legal assistance (IRG) and the second additional protocol, the legal minimum

standards (in the present case: lack of communication of the prosecuted person with a defence counsel chosen by him or her in the requesting state) would have been observed.

- *Oberlandesgericht Köln 27-4-2009 (Az.: 6AuslA 25/08)*

Surrender should not be refused in case a life sentence is eligible and the law of the issuing Member State provides for a possibility to apply for clemency in which procedure the execution of the sentence can be reviewed.

- *Oberlandesgericht Düsseldorf 5-10-2009 (Az: III-4 Ausl (A) 145/09 – 609/09 III)*

Surrender refused in case a review of the penalty of life imprisonment is only possible after 25 instead of 20 years under the law of the issuing State. The general possibility of amnesty does not suffice for granting the request.

- *Oberlandesgericht Zweibrücken 2-11-2009 (Az: 1 Ausl 17/08)*

If the request for extradition is extended by the issuing State beyond the criminal offence in the EAW the general rules of the national extradition law apply. Another EAW is not necessary, a document that describes the additional criminal charge against the person sought is enough.

- *Oberlandesgericht Stuttgart 25-2-2010 (NJW 2010, 1617-1619)*

Surrender to Spain because of drug offences was not refused, but the Court must consider the following while executing a EAW:

Art. 49 para. 3 of the Charter of Fundamental Rights of the European Union (laying down the principle of proportionality in connection with criminal offences and penalties) may prevent the surrender to a EU Member State upon a EAW if the expected penalty in the issuing State would be intolerably severe.

The order of an extradition arrest (upon a EAW), that is provided by the national law, must fully respect the principle of proportionality as laid down in the German constitution. As a result, the enforcement of an EW may not be appropriate if the alleged offence is of minor importance and the expected sentence is disproportioned to the charge of detention for purpose of surrender.

- *Oberlandesgericht Hamm 25-2-2010 (Az: (2) 4 Ausl A 163/08 and 89/09)*

Surrender currently refused because of ordre public: The principle of proportionality and fundamental rights of the person sought must equally be respected in the surrender procedure as in the national procedure. The interest of prosecution of the issuing State must be weighed up with the right to private and family life as laid down in Art. 8 ECHR and Art. 6 of the Basic Law.

COM Implementation Report of 2007	
DE has transposed correctly only article 24(1), and does not provide for temporary surrender pursuant to article 24(2).	In practice no difficulties were recorded.

11. GREECE

Recommendations EAW report 20-10-2008 (13416/1/08 REV 2 CRIMORG 146)	***Follow up report 31-7-09 and 28-07-2010***
New Developments	Since 1 April 2007 no amendments related to the application of the EAW have been made. The Ministry of Justice, Transparency and Human Rights circulated after the fourth round of mutual evaluations to all Public Prosecutors' Offices at the Court of Appeal the evaluation report on Greece regarding the practical application of the EAW. The Greek Ministry urged the Prosecutors to take into account, when dealing with EAW matters, the recommendations addressed both to the member states and to Greece individually. Furthermore, a Special Working Party is going to be established at the Ministry of Justice, Transparency and Human Rights in order to proceed to the necessary legal amendments so that the relevant provisions on EAW comply with the recommendations addressed in the evaluation report.
1.- Produce written guidelines with the involvement of practitioners to provide detailed guidance on how the Greek implementing law should be applied in practice (see 7.1.1).	No national guidelines or handbooks have been issued, however, the European handbook on how to issue a EAW has been distributed to all Public Prosecutor's Offices of the country.
2.- Review the conformity of the implementing law with the Framework Decision, as well as the correlation between the former and domestic criminal procedural law, and fill the gaps where appropriate (see 7.1.1).	
3.- Consider establishing a pool of judges and prosecutors in each Court of Appeal to handle EAW cases (see 7.1.2).	
4.- Establish mechanisms to ensure the appropriate coordination among prosecution offices with a view to avoiding divergent practices in the processing of EAWs and promoting a common understanding of the relevant legislation (see 7.1.3).	
5.- Take measures to ensure that accumulated experience relating to EAW matters be disseminated effectively to all practitioners, e.g. by drawing up a handbook, providing extensive and regular training	

and/or establishing centres of expertise, as a means of improving the efficiency of the system (see 7.1.4).	
6.- Organize training in basic foreign legal language for judges and prosecutors, enabling them to establish direct contacts with their partners abroad in the most commonly spoken languages (see 7.1.5).	
7.- Establish tools aimed at modernizing the processing of EAW files and the information related thereto (see 7.1.6).	
8.- Ensure that an EAW is only issued when the objective sought can not be achieved by using other forms of (mutual legal) assistance less intrusive for the individual (see 7.2.1.1).	
9.- Set up appropriate mechanisms to deal with urgent EAW matters at weekends and on official holidays, e.g. by introducing a 24/7 duty scheme for the Public Prosecutor's Offices at the Courts of appeal (see 7.2.1.2).	
10.- Ensure that existing SIS alerts based on International Arrest Warrants and (where appropriate) INTERPOL alerts based on EAWs are replaced with SIS alerts based on EAWs (see 7.2.1.3).	
11.- Correct the current practice of the Public Prosecutors at the Courts of Appeal of exercising powers not envisaged in the implementing law to refuse the execution of EAWs (see 7.3.1.1).	
12.- Reconsider the current situation where the initiation of the court procedure for a decision on surrender de facto depends on the decision of the Public Prosecutor at the Court of Appeal to arrest the requested person (see 7.3.1.1).	
13.- Amend the implementing law to conform with the Framework Decision with respect to the list of offences not covered by the double criminality test (see 7.3.1.2).	
14.- Amend the implementing law to conform with the Framework Decision with respect to the grounds for optional non-execution of EAWs (see 7.3.1.3 and 7.3.1.5).	
15.- Reconsider the inclusion of Article 11 paragraph e) as a ground for refusal in the implementing law (see 7.3.1.4).	

16.- In connection with recommendation 9, reconsider, in the light of domestic legislation, the validity of the current practice of extending the period of arrest at weekends and on public holidays beyond 24 hours (see 7.3.1.6).	
17.- Fill the current gap in Greek law as regards the right of a person arrested on the basis of an EAW to a state-paid lawyer (see 7.3.1.7).	
18.- In the meantime, ensure that the requested person is duly informed of his rights immediately after the arrest and provided with a quality linguistic assistance where necessary (see 7.3.1.7 and chapter 6).	
19.- Amend Article 15.2 of the implementing law so that the requested person is provided with free copies of the relevant file documents (see chapter 6).	
20.- Adopt the necessary measures to ensure that the requested person can effectively exercise his right to appeal the court's decision on surrender (see 7.3.1.8).	
21.- Amend Article 19 of the implementing law to allow the court to establish direct contacts with the issuing authorities without the intervention of the Prosecutor General at the Court of Appeal (see 7.3.1.9).	

General information **General Council recommendations 2009**	
Language flexibility	- English text accepted for initiating proceedings and additional information - all issued EAWs are translated in English
Time limit for translated EAW	
Provisional arrest	Yes, 24 hours
Proportionality test	No
Is it possible for a sought person to get (state paid) legal assistance provided by X in the following situations: (1) in X for the underlying X criminal proceedings when he is arrested in another Member State on the basis of a X EAW and	

(2) in another Member State, for the underlying criminal proceedings when he is arrested in X on the basis of an EAW of the other state? (X = state in the head of the relevant column)	
Accessory surrender	No
Flagging	- Sirene bureau under supervision of the prosecutor. - All incoming alerts are checked with assistance of judges or prosecutors seconded to the Sirene bureau
Competent authority for Art 111 Schengen requests	
Seizure and handover of property	yes
Principle of direct contacts	Via prosecutor
Integration of recital 12 in implementation law	Yes and 13;
Dual criminality abolished for attempt and complicity	Yes
4 months requirement	Cf FD
Regime for transfer back	Article 5(3) of the FD
24/7 rota?	
In case of refusal of surrender for the execution of a sentence on the ground that the sought person has the nationality, or is a resident of the executing State, is execution of that sentence possible in the executing state when there is no dual criminality?	
Age of criminal liability	
Statistics	Yes: 2007 and 2008
Website	
Jurisdiction ECJ	Yes

Case law/preliminary questions :

Decisions on EAW by the Supreme Court of the Hellenic Republic are systematically sent to the Council.

COM Implementation Report of 2007	

Implementation of recitals 12/13 goes beyond the FD and therefore creates the risk that a EAW will be refused on the basis of grounds not envisaged in the Framework Decision (an activity for the cause of freedom)	

12. HUNGARY

Recommendations EAW report 14-1-2008 (15317/2/07 REV 2 CRIMORG 174)	***Follow up 27-8-2009 and 30-07-2010***
New developments	Latest modification of the Hungarian Act No CXXX of 2003 on cooperation in criminal matters with the Member States of the European Union was made by Act No LXXX of 2008. These amendments, which relate to the EAW, entered into force on 8 January 2009.
1 - In view of Article 8(1)(c) of the FD and box (b) of the EAW form, to consider amending its national legislation to require that the issue of an EAW for prosecution purposes is always preceded by a national arrest warrant or another enforceable judicial decision having the same effect (see 7.2.1.1).	Hungary did not amend its national legislation in this regard, since in its view it is in line with the Framework Decision. Hungarian European arrest warrants are always issued by a judge. The basis of the European arrest warrant may either be the motion of the prosecutor or a final sentence or the judge can even decide on issuing a European arrest warrant ex officio. It has to be emphasised that problems in this regard with other Member States have been solved bilaterally. Section 25 (1) of Act CXXX of 2003 on the Co-operation with the Member States of the European Union in Criminal Matters says that „If criminal proceedings must be conducted against an accused who is staying in a Member State of the European Union, the court shall without delay issue a European arrest warrant. If an accused is sentenced to imprisonment on basis of a final judgment, the judge responsible for penitentiary affairs shall issue the European arrest warrant." According to Section 25(7) of the above mentioned Act, the European arrest warrant is also effective on the territory of Hungary, which means that a European arrest warrant (issued by a Hungarian court) has to be considered also as a national arrest warrant. As a result of this, there is no need to issue a separate national or international arrest warrant, since the European arrest warrant issued by a Hungarian court is the national arrest warrant as well.
2 - To amend Section 26 of Act No CXXX of 2003 to ensure that in those cases in which an EAW is issued to replace a pre-existing international arrest warrant, the date of issue of the EAW is clearly indicated in	Section 26 has been repealed by Act No LXXX of 2008.

the EAW form (see 7.2.1.3).	
3 - To consider setting up appropriate mechanisms to deal with urgent EAW matters at weekends and on official holidays (see 7.2.1.4).	Hungary does not intend to set up any mechanism to deal with urgent EAW matters at weekends and on official holidays as far as the central authority (Ministry) is concerned. At SIRENE, in prosecutor offices and courts are always available official, prosecutor or judge on duty even at weekends and on official holidays. Instead of setting up such mechanism, we are of the opinion that time limits for receiving translated EAWs should be rationalized in Member States
4 - To consider establishing mechanisms that allow the competent authorities initiating criminal proceedings against a person surrendered for an offence committed before the surrender which was not covered by the EAW, to check the conditions of the surrender in good time, with a view to respecting the speciality principle (see 7.2.1.6).	Hungary does not intend to set up any mechanism with a view to respecting the speciality rule. It is always respected on case-by-case basis
5 - In the context of its practice of executing a simplified surrender on the basis of an Interpol alert issued by another Member State, ensure that the information available is the same as that included in the EAW (see 7.3.1.1).	Simplified surrender is possible on the basis of §12 of Act No CXXXX of 2003 on cooperation in criminal matters with the Member States of the European Union. Section 12. (1) The Metropolitan Court shall order the arrest for surrender and the surrender (simplified surrender) of the requested person if *a)* the conditions for the execution of the European arrest warrant and surrender are met, and *b)* the requested person – following appropriate warning – consents to his or her surrender; in this case the warning and consent, and if applicable the express renunciation of the application of the speciality rule referred to in Section 31, shall be recorded formally in minutes. (2) An alert in the Schengen Information System shall be equivalent to a European arrest warrant accompanied by the information set out in point a)-e) of para (1) of § 6 and § 14 of the Act No CV of 2007. (3) The consent defined in paragraph (1) cannot be withdrawn. (4) An order for simplified surrender is not subject to appeal./
6 - To take appropriate measures to ensure that the	The execution of an EAW can only be refused on

execution of an EAW may only be refused on grounds expressly provided in the implementing law (see 7.3.1.3). NB the evaluation report states (7.3.1.3) among judges no common view exists that no additional grounds may be applied on the basis of national legislation or general principles of HU law	grounds expressly provided in the implementing law which cannot give any possibility to the executing judicial authority for different interpretation.
7 - To amend Section 4(c) of Act No CXXX of 2003 to bring it into line with Article 4(4) of the FD (see 7.3.1.4).	Section 4 (c) has been amended by Act No LXXX of 2008 in order to bring it into line with Article 4(4) of the FD. The provision reads now: "The execution of the European arrest warrant shall be refused: c) where the criminal prosecution or penalty is statute-barred according to the law of the Republic of Hungary, subject to the condition that the act on which the EAW is based falls within the jurisdiction of Hungary (Section 3 and 4 of the Criminal Code)"
8 - To amend its national legislation so that, in the event of sentences passed against Hungarian nationals in other Member States for offences not punishable under Hungarian law, it either surrenders the persons or executes the imprisonment sentences imposed by other Member States' courts (see 7.3.1.6).	According to Section 5(1) of Act No. CXXX of 2003 the execution of the European arrest warrant shall be refused and measures shall be taken for the execution of the sentence or detention order where the European arrest warrant has been issued for the purposes of executing a custodial sentence or detention order, and the requested person is a Hungarian national resident in Hungary. This provision is not subject to any amendment. According to §57(4) of the Constitution „No one shall be declared guilty and subjected to punishment for an offence that was not a criminal offence under Hungarian law at the time such offense was committed". The application of the principle of nulla poena sine lege is deriving from the Hungarian Constitution.
9 - To amend its national legislation so that the specific arrangements covering Hungarian nationals resident in Hungary against whom sentences have been passed in other MSs by decisions taken *in absentia* are abolished (see 7.3.1.7).	A Hungarian national resident in Hungary and sentenced in absentia abroad cannot be surrendered, even if a guarantee of a retrial is given. In such a case the EAW is sent to the General Prosecutor's Office for consideration of the initiation of criminal proceedings or taking any other appropriate measures. It is stipulated by the Act No XXXVIII of 1996 on international assistance in criminal matters which is a background legislation concerning EAW cases.

General information	

General Council recommendations 2009	
Language flexibility	Yes
Time limit for translated EAW	40 days from arrest
Provisional arrest	Yes, 72 hours (*Section 11(1) c) of Act No. CXXX of 2003*) as police detention and then 40 days from ordering the provisional arrest for surrender by the Capital Court
Proportionality test	No (principle of legality)
Is it possible for a sought person to get (state paid) legal assistance provided by X in the following situations: (1) in X for the underlying X criminal proceedings when he is arrested in another Member State on the basis of a X EAW and (2) in another Member State, for the underlying criminal proceedings when he is arrested in X on the basis of an EAW of the other state? (X = state in the head of the relevant column)	(1) yes (§ 46b CCP) (2) No
Accessory surrender	Issuing: not possible Executing: possible if dual criminality (Section 3(4))
Flagging	applicable
Competent authority for Article 111 Schengen requests	applicable
Seizure and handover of property	yes
Principle of direct contacts	Direct transmission of an EAW between judicial authorities is not permitted; the MoJ has been designated for this task.
Integration of recital 12 in implementation law	No specific provision provided by Act No CXXX of 2003, however its background legislation – Act No XXXVIII of 1996 on international cooperation in criminal matters – contains the following provision in §7: The Minister of Justice or the Chief Public Prosecutor may make the performance of requests for legal assistance subject to conditions; if fulfillment of these conditions is denied, the aforementioned parties may refuse the request, if it can be assumed that the proceedings underway in

	the Foreign State, the prospective punishment or the enforcement of such is inconsistent with the Constitution and with the provisions and basic principles of international law on the protection of human rights. (This provision shall be applied *mutatis mutandis* concerning surrender procedures.)
Dual criminality abolished for attempt and complicity	Yes
4 months requirement	Act No CXXX of 2003 contains the relevant provision concerning the 4 months requirement in § 25 (2) in the following way: Where a sentence or a detention order has been imposed, a European arrest warrant may only be issued if the sentence or detention order imposed is of at least four months.
Regime for Transfer back	
24/7 rota	
In case of refusal of surrender for the execution of a sentence on the ground that the sought person has the nationality, or is a resident of the executing State, is execution of that sentence possible in the executing state when there is no dual criminality?	No
Age of criminal liability	14
Statistics	2007 and 2008: yes
Website	
Jurisdiction ECJ	Yes

Case law/preliminary questions: -

COM Implementation Report of 2007	
Deduction of the period of detention served in the executing Member State: HU has not transposed Article 26 FD in the notified legislation.	Section 29 of Act No CXXX of 2003 reads as follows: **"**Section 29. All periods of detention served abroad pursuant to the execution of a European arrest warrant shall be deducted from the total custodial sentence or detention order imposed by the court."
Principle of direct contacts	HU does not allow direct transmission.

13. IRELAND

Recommendations EAW report 5-10-2006 (11843/2/06 REV 2 CRIMORG 129 + COR 1)	***Follow up report 6-10-2009,***
New Developments	New legislation implemented on 25 August 2009 amending the EAW Act and adapted administrative procedures (Criminal Justice (Miscellaneous Provisions) Act 2009) A guide for practitioners in other Member States on how to proceed in transmitting a EAW to Ireland has been available on the Department of Justice, Equality and Law Reform's website for a number of years and has been updated in 2009 following implementation of the amending legislation.
1 - To monitor the work flow of the various phases of the issue of EAWs so that any delays which may arise during the process may be more easily observed and rectified. (See 7.2.1.1)	The Office of the Director of Public Prosecutions and the Garda Siochana have put in place procedures to monitor the work flow in the issuing of EAWs which ensure that delays are minimised.
2 - To assess whether increased staffing levels in the EAW Unit and possibly the Directing Division of the ODPP would lead to a corresponding decrease in the time taken to perfect applications for EAWs, particularly in respect of the provision of advice and assistance pertaining to the detail of domestic precursor warrants. (See 7.2.1.2)	As volume has increased, staffing level in the Office of the Director of Public Prosecutor has been correspondingly increased to ensure the smooth operation of the system for the application for European arrest warrants. There are currently 7 legal staff in the Division. Staffing levels are constantly kept under review.
3 - To undertake a coordinated inter-agency analysis of the potential volumetric and procedural impacts that accession to SIS may involve. (See 7.3.1.1)	The agencies involved in the operation of the European arrest warrant set up a group to analyse future needs in relation to the implementation of SIS II, and a number of meetings have taken place. In anticipation of an agreement on SIS II, legal provisions have been implemented (Criminal Justice (Miscellaneous Provisions) Act 2009) which give effect in national law to the Council Decision on SIS II. .
4 - To ensure legislative clarity in respect of a positive assertion that Interpol and e-mail channels may be utilised for the purposes of transmitting EAWs to Ireland (under consideration). (See 7.3.1.2)	Amendment to section 12(1) EAW act: “(b) any means capable of producing a written record under conditions allowing the Central

	Authority in the State to establish its authenticity.”
5 - To consider implementing systems to ensure that mobile officers are given real time access to data contained on the PULSE system. (See 7.3.1.3)	Garda Siochana has put new systems in place including a database storing details of all European Arrest Warrants which allows for access to and the monitoring of progress in all cases. A devolved execution of warrants system has also been put in place which allows warrants to be executed in the Garda Divisions at local level. A facility on the internal intranet 'Garda Portal' allows all operational personnel to view the warrants and to obtain a copy of the warrant immediately in the event of execution.
6 - To restrict the mandate of the CA so as to bring it into strict compliance with the role perceived in Articles 7 paragraph 2, 10 paragraph 5 and 15 paragraph 2 of the FD. (See 7.3.1.4)	The Irish Supreme Court has ruled (Rodnov) that the Central Authority must ensure that warrants are correct in form and content before being brought before the High Court. An amendment to the European Arrest Warrant Act 2003 (see Recommendation 11) on technical and minor errors has modified the need for correction/re-issue of warrants and reduced the time spent on checking incoming warrants. In addition, good communications between the Central Authority and other Member States, and increasing familiarity with the needs of each Member State, has led over time to an improvement in the completion of warrants. European arrest warrants are currently being endorsed, on average, within two weeks of receipt.
7 - To reassess whether the endorsement process is necessary, sufficiently rapid and compatible with the FD and, to the extent that it is not, to consider ways and means to bring the procedures into line with the FD while respecting the Irish constitutional system. (See 7.3.1.5)	An analysis of all the issues involved has not yet been completed but the legal provision in the European Arrest Warrant Act 2003 in relation to the need for endorsement is currently being examined.
8 - To consider broadening the powers of the Gárda Síochána so as to provide them with discretionary powers to photograph and fingerprint requested persons on arrest. (See 7.3.1.6)	An amendment to section 20(b) EAW Act provides that fingerprints, palm prints and photographs may be taken for identification purposes.
9 - To consider whether the creation of a further practice note would be of assistance in particularising those circumstances in which the JA might consider it appropriate to grant an application, by the defence or by the State, to adjourn the commencement of the	Adjournments are granted in the interests of justice. It is constitutionally impermissible to bind the discretion of the judiciary. The issuing of Guidelines would not therefore be considered appropriate. However, it should be

surrender hearing (beyond 21 days from arrest). (See 7.3.1.7)	noted that adjournments are strongly resisted by the State unless there are compelling reasons for them.
10 - To undertake a review of practice and procedures for initial surrender hearings in order to explore how they may be streamlined and brought more closely into line with the spirit of the FD and with principles of mutual trust between judicial authorities. (See 7.3.1.7)	See the previous response in relation to practice and procedures in the Courts. The principal issue raised in relation to this recommendation is cross-examination, which is permitted under the European Arrest Warrant Act 2003. This reflects a constitutional right. However, as pointed out previously, the leave of the Court is required to cross-examine and the relevance must be clearly established.
11 - To ensure that only grounds for refusal permitted under the FD and not minor administrative, typographical or other comparable errors on the face of the EAW are the basis for a refusal of surrender and to limit requests for redrafts or reissue of new EAWs to what is absolutely necessary. (See 7.3.1.8)	Section 40 of the European Arrest Warrant Act 2003, provided a ground for refusal in relation to lapse of time. This provision transposed an optional ground for refusal under Article 4.4 of the Framework Decision. The provision has now been deleted. (section 19 of the Criminal Justice (Miscellaneous Provisions) Act 2009.) An amendment to the European Arrest Warrant Act 2003 also deals with the issue of minor or technical errors (Section 20(b) of the Criminal Justice (Miscellaneous Provisions) Act 2009.) Consequently, redrafts or reissue of new European arrest warrants have been limited to those that are absolutely necessary.
12 - To undertake a review of the appeal remedies available to requested persons, in order to explore how those rights may be streamlined and brought more closely into line with the time limits set out in the FD and to ensure adequate notification of any breaches to Eurojust. (See 7.3.1.9)	- An amendment in section 11 Criminal Justice (Miscellaneous Provisions) Act 2009 limits the possibilities of appeal to the Supreme Court to points of law of exceptional public importance. The High Court must give leave to appeal. - the central authority monitors pending cases on a weekly basis and notifies Eurojust where relevant
13 - To examine whether practical measures can be put in place to accelerate payments made to defence counsel in respect of properly submitted fee notes. (See 7.3.1.10)	Every effort is made to ensure prompt payment. When parity is established and all documents in relation to fees have been submitted and verified, an order for payment is made and the payment is issued within two weeks.
14 - To ensure that statistical records in respect of all aspects of the EAW process (i.e. from receipt) are maintained and reviewed at the bi-monthly inter	The Central Authority's database records all actions taken on European arrest warrants. Reports can be produced at any time and are

agency meetings so that matters arising may be identified and remedied on a regular basis. (See 7.3.1.3)	used to monitor progress and identify delays. The Central Authority circulates Reports in advance of the bi-monthly meetings so that all parties are fully aware of issues arising. Any problems which arise are discussed at the meeting. The database is also regularly updated to capture fields identified as necessary to the efficient management of the operation of the European arrest warrant, or in response to legislative changes.
15 - To ensure that Irish authorities involved in EAW processing are familiar with the operation of the EAW in other Member States and in particular with the constraints on foreign judicial authorities as regards their ability to amend or reissue existing EAWs. (See 7.3.1.12)	The Central Authority has built up a considerable amount of knowledge about the systems in other Member states. The Evaluation Reports have also been a valuable tool in raising awareness about practice in other Member States. Members of the relevant agencies continue to attend meetings and training courses in Europe to ensure full knowledge of developments and problems. The Central Authority liaises with authorities of other member states, as necessary, to establish good practice in relation to European arrest warrants.
16 - In respect of those Member States (including Ireland) who rely upon the Transfer of Sentenced Persons regime or the like for the surrender of own nationals, that those States consider between themselves whether an agreed form of undertaking (for example that they would not seek to impede the return of an own national/prisoner, should that individual wish to return to his country of origin) would suffice to satisfy any undertakings required pursuant to Article 5 paragraph 3 of the FD. (See 7.2.1.3)	The European Arrest Warrant Act 2003 has been amended to provide that, where surrender is subject to the condition that the person be returned to the executing state to serve any sentence imposed in the issuing state, and where the person consents to his return, the Minister will issue a warrant for the transfer of that person to the executing state following final determination of the proceedings. (section 20(b) of the Criminal Justice (Miscellaneous Provisions) Act 2009.) Ireland, therefore, no longer relies on the Transfer of Sentenced Persons regime and can offer a guarantee on the basis of the European Arrest Warrant Act 2003.

General information **General Council recommendations 2009**	
Language flexibility	No (Irish or English)
Time limit for translated EAW	Ireland must receive the translated EAW at the same time as the original language

	warrant.
Provisional arrest	No
Proportionality test	Yes, carried out by Garda Siochana (Irish Police Force) and the Director of Public Prosecutions
Is it possible for a sought person to get (state paid) legal assistance provided by X in the following situations: (1) in X for the underlying X criminal proceedings when he is arrested in another Member State on the basis of a X EAW and (2) in another Member State, for the underlying criminal proceedings when he is arrested in X on the basis of an EAW of the other state? (X = state in the head of the relevant column)	(1) As court proceedings in Ireland will be stayed pending the execution of the domestic warrant upon which the EAW is based, it is envisaged that the issue of funding legal assistance in Ireland would be rare. Where it does arise, such assistance may be covered by legal aid depending on the circumstances (2) No
Accessory surrender	Under conditions (see case law)
Flagging	-
Competent authority for Art.111 Schengen requests	-
Seizure and handover of property	Yes
Principle of direct contacts	No direct transmission
Integration of recital 12 in implementation law	Yes (and all other recitals, section 15(1)(c) and 16(1)(e) EAW Act 2003)
Dual criminality abolished for attempt and complicity	In practice verification of dual criminality is not sought in respect of the inchoate versions of the list offences
4 months requirement	Yes
Regime for transfer back	Section 20(b) of the Criminal Justice (Miscellaneous Provisions) Act 2009 (see recommendation 16) - not possible without consent of the person
24/7 rota?	Yes
In case of refusal of surrender for the execution of a sentence on the ground that the sought person has the nationality, or is a resident of the executing State, is execution of that sentence possible in the executing state when there is no dual criminality?	The Irish implementing legislation did not transpose Article 4(6) as a ground for refusal. There is no restriction on the surrender of Irish national/residents

Age of criminal liability	12 years
Statistics	2007 and 2008: yes
Website	www.justice.ie E-mail: warrantsmail@jsutce.ie
Jurisdiction ECJ	No

Case law/preliminary questions

ECtHR (Application No. 56588/07) Robert Stapleton v Ireland delivered 4th May 2010.

In this case the ECtHR considered an appeal of an Irish Supreme Court decision to surrender a requested person to the UK for alleged fraud offences that had occurred 27 years previously on the grounds that the delay (27 years) between the alleged (fraud) offences and the prosecution created a real risk that he would not receive a fair trial, thus offending article 6 ECHR Convention, which provides inter alia for a "fair...hearing within a reasonable time." The ECtHr rejected the requested person's complain complaint under Article 6 as manifestly unfounded on the basis that the facts don't support a finding that there would be a "flagrant denial" of Article 6 rights in the UK upon surrender. The ECtHR then set out reasons for not accepting that the executing state should go beyond a "flagrant denial" and look at whether there was a "real risk if unfairness in the criminal proceedings in the issuing state)"

Composite sentences (Minister for Justice, Equality and Law Reform v Ferenca.)

The Supreme Court has held that if an offence which does not correspond to an offence in this jurisdiction is part of a composite sentence in the issuing state (the sentence having been imposed for the non-corresponding offence and an offence which corresponds to an offence in this jurisdiction), surrender will not be ordered if there is a risk that the person, on being surrendered, would serve time in respect of the non-corresponding offence.

Notification of trial (Minister for Justice, Equality and Law Reform v Sliczynski

The Supreme Court has held that notification of trial must be 'actual notification' to the person him/herself. Notification to a relative or other person is not sufficient.

Where the person is not notified in person of a trial, an undertaking under section 45 of the European Arrest Warrant act (guarantee for retrial) must be provided.

COM Implementation Report of 2007	
In IE the transposing legislation applies only to the Member States which have been listed by Decree or Order. Under the Irish implementing law, the Minister for foreign affairs has designated all Member States except for Bulgaria and Rumania for the purpose of the Act, which have under their national law given effect to the Framework Decision. As far as IE is concerned, the use of secondary legislation to designate States rather than primary legislation was to allow	All EU Member States are listed. (RO and BG since 13-2-2007)

extradition procedures to subsist for those Member States who were delayed in ratifying the Framework Decision.	
Recitals 12 and or 13 transposed beyond the scope of FD; IE law requires refusal where surrender would breach their national constitutions. Although this may cover situations arising under both Article 6 TEU and Recital 12 (such as rules on due process), it nevertheless goes beyond the Framework Decision, in particular as Art 6 TEU refers only to those constitutional principles common to Member States.	See above (recommendation 11)
IE has transposed this paragraph to allow for immunity by virtue of amnesty or pardon in the issuing Member State rather than the executing Member State. This is not in line with the Framework Decision which allows refusal only where there is amnesty in the Executing Member State. This may have an impact the EAW system since it may result in IE always requiring this additional information, which was not foreseen in the EAW form.	While it is to be hoped that a member state would not issue an EAW in respect of a subject where an amnesty exists, Irish legislation allows for the possibility in order to protect the rights of the subject. However, in the c. 5 years operation of the Act, Ireland has never requested information on whether or not an amnesty is in operation in the issuing member state. This provision therefore has no practical effect on the operation of the EAW.
IE requires an additional guarantee that the person be notified of the time and place of any retrial in respect of the offence concerned if such a retrial was to take place and that in such cases, he or she will be permitted to be present	
IE does not impose the condition of Art 5(3) FD. The Commission has been informed that provisions to enable IE to give the guarantee required by 5(3) are being included in a Criminal Justice (Miscellaneous Provisions) Bill, which should be published by the end of 2007. This is still a difficult issue as for those above listed countries, the return of own nationals is regulated by the Transfer of Sentenced Persons Act which places the right of initiative exclusively on the requested person (save for the cases of mental incapacity). Indeed the Minister may not compel such a person to return to any particular Member State to continue serving a sentence. Given this, the Irish authorities, for example, cannot give any undertaking, should one be required by the executing Member state pursuant to Article 5(3) of the Framework Decision. A requested person, being a national of the executing Member State requiring such an undertaking is therefore in the position to render null and void the efforts of both	The European Arrest Warrant Act 2003 has been amended to provide that, where surrender is subject to the condition that the person be returned to the executing state to serve any sentence imposed in the issuing state, and where the person consents to his return, the Minister will issue a warrant for the transfer of that person to the executing state following final determination of the proceedings. (section 20(b) of the Criminal Justice (Miscellaneous Provisions) Act 2009.) Ireland, therefore, no longer relies on the Transfer of Sentenced Persons regime and can offer a guarantee on the basis of the European Arrest Warrant Act 2003.

states to have him or her surrendered.	
IE has amended its domestic law with effect from March 8th 2005 so that it now complies with the provisions of Article 7. However the Irish Supreme Court in the Rodnov Case decided on the 1st June 2005 held that the Central Authority should ensure that there is clarity before the warrant is brought before the High Court. The Commission believes that the role played by the Central authority in the pre-endorsement procedures, though one to perfect the application for the benefit of the ultimate surrender is clearly outside the scope of the Framework Decision which attributes this role to the judicial authorities.	See response to recommendation 6
IE has imposed a certification or pre-endorsement stage for a EAW to be valid. This supplementary formality is to be complied with by the central authority, which, in practice often acts as an executive authority.	All warrants are endorsed solely by the High Court. The Central Authority arranges for the submission of the warrant to the High Court.
Art 15.1 FD: IE asks for additional info on a systematic basis.	This is not the case. At present, Ireland asks for additional information only in cases where the form is inadequately completed. Further information may also be requested when the High Court Judge requires it
IE has fully transposed the 10 day deadline in paragraph 2 for the taking of the decision following consent. However, at the pre-endorsement stage, the central authority is not bound by any time limit. As a consequence, the average time between receipt of the EAW and endorsement in IE is 88 days. Given this additional delay, it seems that IE will hardly be in a position to comply with the Framework Decision.	The current average time between receipt of an EAW and its endorsement is 14 days.
Article 23 – Time limits for the surrender of the person In relation to the period between the making of the surrender decision and its execution in normal circumstances, as a principle in IE, the effective surrender after the final decision will only take effect upon the expiration of an additional 10 day deadline. IE has never-theless amended its legislation, which now provides surrender may take place earlier than the additional deadline for its execution only if the person so requests and the Court agrees. Although closer to article 23(2), this provision is still not fully in line with the FD.	

Article 27 – Possible prosecution for other offences IE has not explicitly transposed exception g). Initially consent could only be provided by the central authority contrary to article 27(3)(g) and 27(4) of the Framework Decision. IE has stated that they have amended their legislation to vest the powers to give consent in the judicial authority. The provisions on requests for consent under article 27(4) have not been transposed	Under S 22.7 of the European Arrest Warrant Act 2003, as amended, the High Court may consent to proceedings being brought in the issuing state for offences for which the subject was not surrendered upon receipt of a written request. (27(3)(g) In relation to Article 27.4 amending legislation is currently being considered. However, the Irish Court has issued requests for consent to executing states based on the current EAW legislation read in conjunction with the Framework Decision.

14. ITALY

Recommendations EAW report 23-2-2009 (5832/2/09 REV 2 CRIMORG 19)	***Follow up report 21-9-09***
New developments	No amendments to the relevant legislation since 01-04-2007. A practical guide for practitioners has been issued
1 – Examine the possibility of increasing measures to promote training, for judges, prosecutors and judicial staff, in languages other than Italian, in particular in those languages that can assist in making direct contact with competent authorities in other Member States and that can facilitate the members of the judiciary and of the MoJ to attend seminars in other Member States and participate in exchanges [see 7.1.2.2.]	
2 – Examine the possibility of bringing the thresholds for issuing an EAW closer to those set out in Article 2 of the Framework Decision, in particular as regards conviction cases [see 7.2.1.1.]	
3 – Envisage making more use of Article 95 alerts when the whereabouts of the requested person are unknown and there are not yet "solid indications" that the requested person is in one of the (other) Member States [see 7.2.1.3.]	
4 – Consider, in the situation where more than one EAW has been issued in respect of the same person, mentioning the existence of the other EAWs on the M form [see 7.2.1.4.]	
5 – Envisage installing a national register of EAWs on which, if possible, national arrest warrants and other international arrest warrants are also entered [see 7.2.1.6.]	
6 – Ensure that the competent authorities keep SIRENE informed of any changes (revision, withdrawal, etc.) regarding EAWs that have been issued by Italian issuing authorities [7.2.1.7.]	
7 – Monitor the situation of providing guarantees in respect of "in absentia" judgments; make sure that appropriate guarantees can be provided in good time [see 7.2.1.8.].	
8 – Ensure that existing SIS alerts based on	

International Arrest Warrants and (where appropriate) Interpol alerts based on EAW's are replaced with (Article 95) SIS alerts based on EAW's [see 7.2.1.11.]	
9 – Limit the grounds for refusal to those set out in the Framework Decision, and hence delete Article 18(1)(b), (c), (e), (f), (g), (s), (t), (u) and (v) of Law 69/2005 [see 7.3.2.1. (a)]	
10 – Consider deleting Article 7(2), second sentence, of Law 69/2005 [see 7.3.2.1.(b)]	
11 – Consider deleting Article 18(1)(a) and (d) and Article 18(1)(h) of Law 69/2005 [see 7.3.2.1.(c)]	
12 – In Law 69/2005, consider the conversion into optional grounds for refusal of those grounds for refusal that are based on Article 4 of the Framework Decision [see 7.3.2.1.(d)]	
13 – Delete Article 6(3), (4), (5) and (6) of Law 69/2005 [see 7.3.2.2.]	
14 – In conformity with the developments in the case-law of the Court of Cassation, bring Article 17(4) of Law 69/2005, regarding the verification of guilt, in line with the Framework Decision [see 7.3.2.3.]	
15 – Align the wording of the list of offences in Article 8(1) of Law 69/2005 with the description of the categories of offences set out in Article 2(2) of the Framework Decision [see 7.3.2.4.(a)]	
16 – Consider deleting Article 8(3) of Law 69/2005 [see 7.3.2.4.(b)]	
17 – Consider the deletion of Article 7(3), second sentence, as well as of 4 words in the heading of Article 8(1) of Law 69/2005 ("escluse le eventuali aggravanti" – "excluding any aggravating circumstances") [see 7.3.2.5.]	
18 – In conformity with developments in the case law of the Court of Cassation, consider modifying Article 1(3) of Law 69/2005 in order to bring it in line with the Framework Decision [see 7.3.2.6.]	
19 – Bring Article 2(2) in line with the Framework Decision, so that it only refers to the guarantees that can be requested by Italian executing authorities under the Framework Decision [see 7.3.2.7.]	

20 – Consider the deletion of the possibility of appeal in consent cases in Law 69/2005 [see 7.3.2.8.]	
21 – Inform Eurojust in a case of a breach of the 90-day period for execution of an EAW, in conformity with Article 17(7) of the Framework Decision; consider involving Eurojust more to facilitate contacts with competent authorities in other Member States [see 7.3.2.11.]	
Recommendation 22 – Consider bringing Article 40 of Law 69/2005 in line with Articles 31 and 32 of the Framework Decision [see 7.3.2.12.]	

General information **General Council recommendations 2009**	
Language flexibility	No
Time limit for translated EAW	
Provisional arrest	Yes 24 hours
Proportionality test	Yes, only very serious cases
Is it possible for a sought person to get (state paid) legal assistance provided by X in the following situations: (1) in X for the underlying X criminal proceedings when he is arrested in another Member State on the basis of a X EAW and (2) in another Member State, for the underlying criminal proceedings when he is arrested in X on the basis of an EAW of the other state? (X = state in the head of the relevant column)	
Accessory surrender	
Flagging	Sirene bureau
Competent authority for Art 111 Schengen requests	
Seizure and handover of property	
Principle of direct contacts	Important role of central authority
Integration of recital 12 in implementation law	Yes and 13

Dual criminality abolished for attempt and complicity	Yes
4 months requirement	Cf FD
Regime for transfer back	
24/7 rota?	
In case of refusal of surrender for the execution of a sentence on the ground that the sought person has the nationality, or is a resident of the executing State, is execution of that sentence possible in the executing state when there is no dual criminality?	
Age of criminal liability	
Statistics	No
Website	Yes, extensive guidelines and publication of overviews of relevant case law
Jurisdiction ECJ	yes

Case law/preliminary questions

The Constitutional Court (decision 143/2008) has ruled unconstitutional the provision that the time of deprivation of liberty related to the execution of an EAW in another Member State is not deducted from the statutory limit of pre trial detention.

COM Implementation Report of 2007	
Article 1 and recitals 12 and 13 FD: IT has transposed the text into its legislation in such a way that it goes beyond the Framework Decision and therefore creates the risk that a EAW will be refused on the basis of grounds not envisaged in the Framework Decision. In addition the law requires refusal where surrender would breach its national constitution. Although this may cover situations arising under both Article 6 TEU and Recital 12 (such as rules on due process), it nevertheless goes beyond the Framework Decision, in particular as Art 6 TEU refers only to those constitutional principles common to Member States	
In IT, aggravating circumstances are excluded when calculating the 12 month threshold. Moreover, where a EAW is issued by IT for execution, the legislation does not refer to the 4 month threshold referred to in the Framework	

Decision	
IT legislation disregards the list contained in Article 2(2) of the Framework Decision and replaces it with its own list of corresponding offences found in national criminal law. The consequence is that IT legislation reintroduces the principle of a control of dual criminality.	
In IT aggravating circumstances are excluded from the calculation of the 3 year limit in Article 2(2) FD	
IT refuses the EAW on a series of grounds which appear contrary to the Framework Decision. For example, an executing authority in IT may refuse to execute a EAW	Some of those additional grounds for refusal are softened by case law of the Cassation Court
IT has transposed Art 4(1) but has made it subject to an additional condition of assimilation by analogy to Italian tax offences, for which the maximum penalty is at least three years. This appears contrary to the Framework Decision.	
In relation to Article 5(1) IT law does not provide for a possibility to retrial in cases where the requested person has not taken part in the proceedings which may in practice be a serious issue.	
IT may require an additional guarantee in respect of fundamental rights or Italian constitutional principles on guarantee, which might be contrary to the Framework Decision.	
The legislation provides that the EAW shall be accompanied by additional documents. These include: a copy of the applicable provisions; the initial decision of the issuing judicial authority on which the EAW is based; information regarding the sources of evidence; all personal identification data available; and, any other documents considered necessary according to the Italian issuing judicial authority to verify all additional grounds for refusal.	This provision is mitigated by case law from the Cassation Court in 2006 (no report on the offences necessary if the EAW form is sufficient), 2007 (absence of information relating to the identity and nationality of the requested person should not impede surrender if this information can be ascertained by other information by the issuing state) and 2008 (texts of the applicable legislation is only necessary if there are specific problems of interpretation, which require knowledge of the scope of the law of the issuing state, e.g. in order to verify dual criminality)
Art 25 FD: It has no provisions for transit by air	
IT has not transposed Article 28(4) as issuing Member State	

15. LATVIA

Recommendations EAW report 12-12-2008 (17220/1/08 REV 1 CRIMORG 213)	***Follow up report 30-7-09 and 04-08-2010***
	Amendments to the law on 29 July 2008, 1 and 9 July 2009 and 21 October 2010.
1.- Consider regrouping in different sections or chapters the provisions concerning extradition and those governing surrender on the basis of an EAW (see 7.1.2).	The special working party on the Criminal Procedure Law (CPL) considered the recommendation. However, due to the structure of the CPL, diving international cooperation into subject matters, not countries with which Latvia cooperates, as well as to avoid duplication of norms, the working party decided not to group the sections.
2.- Take the necessary measures to promote direct contacts between the issuing judicial authorities in Latvia and their foreign counterparts (see 7.1.4).	Direct cooperation is permitted in accordance with CPL Article 675
3.- Improve current training programmes to ensure that adequate training on EAWs and on basic foreign legal language is provided to all judicial authorities involved in the issuing process, and adopt measures to promote the training of defence lawyers on EAW-related matters (see chapter 5).	With assistance of Norwegian authorities the Ministry of Justice organized two seminars with participation of EU lectors: “Principle of double criminality and the principle of mutual recognition in the field of cooperation in criminal matters in the EU” January, 2009; „Application of fundamental human rights in criminal procedure, practical application of European Arrest Warrant and European Evidence Warrant” August, 2009. The seminar was organized for judges, prosecutors and defence lawyers. Moreover, in the year 2008 the Latvian Training center for judges organised number of lectures: EU Law: international cooperation in criminal matters; Application of European arrest; European Arrest Warrant; Completion of the forms on international cooperation via internet;

	In year 2009 there were also number of lectures for judges: Novelties in international cooperation in criminal matters; International cooperation in criminal matters for new judges; Novelties in international cooperation in criminal matters and applicability of European Arrest Warrant. In year 2010 there are planned to be two lectures on international cooperation in criminal matters (search and seizure); and applicability of European Arrest Warrant. In year 2011 there is a plan to organise lecture on international cooperation in criminal matters.
4.- Produce written guidelines with the involvement of practitioners providing updated and practical guidance to assist judicial authorities in completing the EAW form, and take the necessary measures for their appropriate dissemination (see 7.2.1.1).	The EAW handbook, which was produced by the Council, was disseminated to all the judges.
5.- Take the necessary measures to ensure that during the pre-trial investigation EAWs are requested only following approval by the public prosecutor (see 7.2.1.2).	Pursuant to legislation adopted on 11 October 2010 (entering into force on 1 January 2011), the Prosecutor General's Office will be the competent authority in respect of the issue of EAW decisions not the courts.
6.- Amend the implementing law to fill the current gap as regards the transposition of Article 29(4) of the Framework Decision (see 7.2.1.4).	
7.- Identify indicators to facilitate the decision on issuing an EAW in terms of proportionality (see 7.2.2.1).	Article 682 part 3 of the CPL provides indicators to facilitate the decision on issuing an EAW in terms of proportionality.
8.- Amend the implementing law to bring it into line with Article 4(6) of the Framework Decision as regards the undertaking to execute the sentence passed in the issuing State in accordance with domestic law (see 7.3.1.1).	Amendment of 11 June 2009 to the law (art 777(4) CCP: the execution of a sentence "shall be possible' if extradition of a Latvian citizen for the execution of a sentence imposed in another EU Member State has

	been refused)
9.- Re-examine transposition into national law with regard to Article 2(4) of the Framework Decision (see 7.3.1.2).	Amendment of 11 June 2009 to the law (art 696(2) CCP: the dual criminality rule is applied "unless an international treaty has specified otherwise"
10.- Consider introducing in the transposing legislation more detailed provisions on the procedure for the examination of the EAW and the adoption of the corresponding decision on surrender (see 7.3.1.3).	The practice shows that Article 714-716 of the CPL considered to be sufficient for authorities to examine the EAW and the adoption of the corresponding decision on surrender. Additionally, the competent authority – the Prosecutor General's Office in the near future will adopt internal regulatory enactment, providing guidance.
11.- Reconsider the current practice of adding restrictive validity flags to SIS alerts without prior consultation of the Prosecutor General's Office (see 7.3.1.4).	The competent authority – the Prosecutor General's Office in the near future will adopt internal regulatory enactment, providing further guidance.
12.- Supplement the implementing law to fill the current gap as regards the transposition of Article 17(7) of the Framework Decision (see 7.3.1.5). (inform Eurojust in case of breaching time limits)	
13.- Supplement the implementing law to fill the current gap as regards the transposition of Article 16(1) of the Framework Decision (see 7.3.1.6).	Article 716, part 3 CPL regulates the criteria for evaluating competing requests, namely – several extradition requests, as well as several EAWs.
14.- Supplement the implementing law to fill the current gap as regards the transposition of Article 20(2) of the Framework Decision (see 7.3.1.7)1. 1 According to the information provided by the Latvian authorities, action already taken. See chapter 2.2 and footnote in chapter 7.3.1.7 above.	Amendment of 29 June 2008 to the law (art 715(4) CCP
15.- Re-examine the transposition of Article 25 of the Framework Decision into national law as regards the transit of Latvian nationals in prosecution cases (see 7.3.1.8).	
16.- Re-examine the transposition of Article 29(2) of the Framework Decision into national law as regards the handover of property acquired as a result of the offence (see 7.3.1.9).	Amendment of 11 June 2009 to the law (art 722(2) CCP
17.- Produce the "Fiche Francaise" on Latvia and forward it for publication on the Council's website (see 7.3.1.10).	

General information **General Council recommendations 2009**	
Language flexibility	Latvian and English, also for additional information
Time limit for translated EAW	
Provisional arrest	Yes 72 hours
Proportionality test	Yes. The legal provision relates to a match between the seriousness or nature of the offence and the expenses of the surrender procedure. In practice also consideration is given to the circumstances of the case, the personality of the offender and the harm to the individual. There are, however no specific indicators or guidelines.
Is it possible for a sought person to get (state paid) legal assistance provided by X in the following situations: (1) in X for the underlying X criminal proceedings when he is arrested in another Member State on the basis of a X EAW and (2) in another Member State, for the underlying criminal proceedings when he is arrested in X on the basis of an EAW of the other state? (X = state in the head of the relevant column)	LV does not provide state paid legal assistance for person whom LV seeks and that person is arrested in EU MS on the basis of EAW. For the EAW proceedings in LV, LV ensures state paid legal assistance for a person whom EU MS is seeking and that person is arrested in LV.
Accessory surrender	Yes
Flagging	Sirene with advice from the General Prosecutors office where appropriate
Competent authority for Art 111 Schengen requests	Data State Inspectorate
Seizure and handover of property	Yes, however, Article 29(4) of the FD has not been implemented
Principle of direct contacts	The Prosecutor General's office plays a major role
Integration of recital 12 in implementation law	Yes
Dual criminality abolished for attempt and complicity	Yes
4 months requirement	Cf FD
Regime for transfer back	1983 CoE convention

24/7 rota?	Yes
In case of refusal of surrender for the execution of a sentence on the ground that the sought person has the nationality, or is a resident of the executing State, is execution of that sentence possible in the executing state when there is no dual criminality?	No
Age of criminal liability	14
Statistics	2007 and 2008: yes
Website	
Jurisdiction ECJ	Yes

Case law/preliminary questions: -

COM Implementation Report of 2007	
Art 4(6): In LV this is a mandatory ground (for nationals) but there is no provision in the legislation requiring an undertaking to execute the sentence.	see follow up recommendation 8
LV has not provided for the inclusion of aliases in its form unlike in the form in the annex to the Framework Decision.	The form has been changed and contains now a possibility to include aliases
Art 16 LV has only transposed paragraph 3. LV does not have legislation in particular in relation to competing requests between Member States. Though it has stated that in practice this issue is dealt with by the Prosecutor General's office, this is not in line with the Framework Decision.	See follow-up recommendation 13
LV has transposed correctly only article 24(1), and does not provide for temporary surrender pursuant to article 24(2)	Amendments of 29-6-2008 to the law (Article 688 and 721) allow now for temporary surrender
Art 27(3)LV has not transposed exception b) c) and d)..	Exception b – is provided in Article 695(1) of CCP; exception c – is provided in Article 695(2) of CCP.
The provisions on requests for consent under article 27(4) have not been transposed;	Amendment of 11-6-2009 to article 695 fills the gap
Article 28(2) only partly implemented and Article 28(3) not transposed	Amendment of 11-6-2009 to article 695 fills the gap
Article 29 not transposed paragraph 4 on rights acquired in the property	See above

16. LITHUANIA

Recommendations EAW report 13-11-2007 (12399/2/07 REV 2 CRIMORG 134)	***Follow up report 5-8-2009 and 29-06-2010***
New developments	Since 1 April 2007, Lithuania has made several amendments to the law relating to the implementation of the European arrest warrant in Lithuania. In particular, Article 70(2) of the Criminal Code of the Republic of Lithuania has been amended by Law No X-1236 of 28 June 2008. These amendments relate to consent of the executing state to re-extradition or surrender of a person from LT to a third state (see below) and the competence of regional or district courts to decide on issues relating to detention in EAW cases. Lithuania has taken into account the recommendations and conclusions it received during the assessment of the implementation of the European arrest warrant. Therefore, increased consideration is being given to improving the process of issuing and executing the European arrest warrant, and legal and practical measures designed to solve any related problems are under development.
1 ─ That Lithuania, in the light notably of Article 6(1) of the FD, should reconsider its legal system by entrusting a judicial authority with the power to issue EAWs in conviction matters. The initiative by Lithuania to allow the courts to issue EAWs in the future should be welcomed (see 7.2.1.1.).	
2 ─ To give consideration to the improvement of coordination within the prosecution service and between the OPG, MOJ and ILO with a view to enhancing the efficiency of the EAW system in Lithuania (see 7.2.1.2.).	
3 ─ To provide the prosecution with up-to-date communication and database equipment (computers, adequate software) so as to enable it to carry out quick and efficient database searches and exchange information with other EAW actors (MOJ, ILO) more easily (see 7.2.1.3.).	
4 ─ To ensure the availability of reliable statistical information on EAW matters at national level (see 7.2.1.4.).	LT has provided statistics for 2007, 2008 and 2009

5 ─ To ensure that the OPG acts in conformity with the wording of Article 73(1) of the Code of Criminal Procedure, leaving the decision on the execution of an EAW entirely in the hands of the competent judicial authority (which is currently Vilnius Regional Court), or alternatively, modify the law or provide other adequate legal solutions so as to clearly determine the powers of the OPG and Vilnius Regional Court when acting as the executing authority (see 7.3.1.1.).	
6 ─ To reconsider the notification to the Council General Secretariat under Article 6(3), in conjunction with Article 6(2), of the FD, and designate also Vilnius Regional Court as the executing judicial authority (see 7.3.1.2.).	Lithuania has provided the modified notification pursuant to the provisions of the FD on the European arrest warrant and the surrender procedures between the Member States of the European Union, under Article 6 (3), in conjunction with Article 6 (2), designating as the *executing judicial* authority in Lithuania Vilnius County Court. The Office of the Prosecutor General is competent authority to receive EAW's (*letter sent to the Permanent Representation of Lithuania to the European Union on 5 September 2008*)
7 ─ To reconsider Article 73(4) of the Code of Criminal Procedure, so that judges are allowed to directly enter into contact with judicial authorities in other Member States with a view to obtaining additional information, without having to go through the OPG as an intermediary (see 7.3.1.3).	
8 ─ To reconsider at the appropriate level the necessity of the ground for refusal relating to on "human rights" as provided for in Article 91(3)(1) of the Criminal Code (see 7.3.1.4.).	Not changed
9 ─ That domestic legislation be put in place to permit surrendered persons to cross Lithuanian borders without international travel documents (see 7.2.1.5.)	
10 ─ To provide, or continue to provide, appropriate training to all authorities involved in EAW matters, in particular judges (see 7.3.1.5.).	
11 ─ To reconsider the wording of Article 73(5) of the Code of Criminal Procedure of Lithuania in the light of Article 16(1) of the FD (see 7.3.1.7.).	

General information	

General Council recommendations 2009	
Language flexibility	Lithuanian or English (for initiating procedure)
Time limit for translated EAW	
Provisional arrest	Yes 48 hrs
Proportionality test	Lithuania has made amendments to the law relating to the implementation of the European arrest warrant in Lithuania. In particular, the Rules for issuing EAW and taking over of persons pursuant the EAW has been amended by the Order of the Minister of Justice and Prosecutor General of the Republic of Lithuania No. 1R-312/I-140 of 7 October 2009. These amendments relate to proportionality check in EAW cases (criteria to apply when issuing an EAW -principle of proportionality).
Is it possible for a sought person to get (state paid) legal assistance provided by X in the following situations: (1) in X for the underlying X criminal proceedings when he is arrested in another Member State on the basis of a X EAW and (2) in another Member State, for the underlying criminal proceedings when he is arrested in X on the basis of an EAW of the other state. (X = state in the head of the relevant column)?	Lithuania, as an issuing State, does not guarantee free legal assistance to a person arrested in another State under a European arrest warrant issued in Lithuania, since in this case the person is not under the jurisdiction of Lithuania and the process of executing the European arrest warrant is carried out under the law of the executing State. However, the person has the right to contact a legal counsel in Lithuania if she/he has appointed one.
Accessory surrender	Executing: yes
Flagging	
Competent authority for Art 111 Schengen requests	
Seizure and handover of property	Yes
Principle of direct contacts	Via the office of the Prosecutor General
Integration of recital 12 in implementation law	Yes
Dual criminality abolished for attempt and complicity	Yes
4 months requirement	Cf FD

Regime for transfer back	1983 CoE Convention
24/7 rota?	
In case of refusal of surrender for the execution of a sentence on the ground that the sought person has the nationality, or is a resident of the executing State, is execution of that sentence possible in the executing state when there is no dual criminality?	
Age of criminal liability	16 yrs; 14 yrs for specific serious offences
Statistics	Yes, 2007, 2008 and 2009
Website	Handbook for issuing EAW's
Jurisdiction ECJ	Yes

Case law/preliminary questions: -

COM Implementation Report of 2007	
In LT, the Criminal Code provides for a mandatory ground for refusal in the case where "the surrender of the person would be in breach of fundamental rights and (or) liberty". The Commission has been advised that this ground of refusal may go beyond the provisions contained in the Framework Decision. Moreover, where a ground of refusal is to be applied, the Office of the Prosecutor general can directly stop the proceedings without asking for further evaluation by the judge of the ground of refusal.	
LT has indicated that an EAW for enforcement of a sentence is issued by the Ministry of Justice but only at the request of the judicial authority or the authority executing the sentence, that is the relevant prison department which is, however, under the under the control of the Ministry of Justice . The Ministry of Justice is not a judicial authority, but rather part of the executive. In particular, in the case the issuing of a EAW is asked by the prison department, there is no involvement at all of the judiciary. As to the Office of the Prosecutor General, it is considered as judicial authority in LT because the related provision is inserted in Chapter 9 of its Constitution entitled "The Court" of the judicial Procedure. Hence, there is no strong support to the argument that the Office of the Prosecutor General is a judicial authority in LT. Again, the	

Framework Decision states that an EAW must be issued or executed by a judicial authority and as a consequence LT's implementation of Article 6 is contrary to the Framework Decision.	
LT has not transposed Article 27, exception c	
LT has not transposed Article 27, exception d	
LT has incorrectly implemented article 28(4) as they have allowed the possibility for subsequent extradition to a third state without the permission of the original executing Member State contrary to the Framework Decision. LT has, however, confirmed this was unintentional and that they intend to rectify the problem.	Amended legislation:: "A person extradited or surrendered by a foreign State may be re-extradited or surrendered to a third State for a criminal act for which he was previously surrendered or extradited, or any other criminal act which was committed prior to his extradition or surrender, only when the State which has surrendered or extradited the person in question gives its consent. If a person was surrendered to the Republic of Lithuania under the European arrest warrant, the same person may be surrendered to another Member State for criminal acts committed prior to his surrender in the cases provided for in points 2-4 of Part 1 of this Article.″

17. LUXEMBURG

Recommendations EAW report 19-11-2007 (10086/1/07 REV 1 CRIMORG 101)	***Follow up report 10-8-2009 and 04-08-2010***
New developments	There have been no legislative changes since 01-04-2007. However as at 04-08-2010, a bill amending the Luxemburg implementing legislation (Law of the 17 March 2004 on the European arrest warrant and surrender procedures between Member States) has been drafted and is currently going through the legislative process. This proposed legislation addresses a number of the evaluation report recommendations
1 - Amend Article 37 of the law of 17 March 2004 to comply with Article 32 of the Framework Decision as an issuing State (see 7.2.1.1).	An amendment proposed in the draft bill will address this issue
2 - Ensure coordination and regular contacts between the Sirene Bureau and the issuing judicial authorities in Luxembourg, to harmonise drafting methods for SIS forms relating to EAWs issued in Luxembourg (see 7.2.1.2).	A 'circulaire' issued by the judicial authorities gives guidance through the different steps of proceeding in executing EAWs
3 - At national level, clarify the provision on temporary surrender, particularly as regards the valid grounds for detention during temporary surrender (see 7.2.1.5).	LU.= issuing authority : In case of temporary surrender to the authorities of LU, the ground for detention is the international arrest warrant issued by the judge ("juge d'instruction") LU, which is the basis for the EAW. This warrant is served to the requested person at the moment of his surrender and corresponds to an arrest order, serving as a basis for detention. (Art. 103 CIC).
4 - Make use of the possibility offered by the EAW form (heading (g)) as regards the seizure and handing over of property held by the wanted person (see 7.2.1.7).	
5 - Amend Article 37 of the law of 17 March 2004 to comply with Article 32 of the Framework Decision	See response to 1 above

as an executing State (see 7.3.1.1).	
6 - Consider a legislative amendment concerning arrangements for the receipt of EAWs (acceptance of the EAW in forms other than the original or a certified true copy of the original) when arrest is carried out on the basis of a SIS alert (see 7.3.1.2).	An amendment proposed in the draft bill will address this issue
7 - Look in depth at the issue of extending the principle of mutual recognition as regards the limits which the executing authority should respect when examining an EAW. Specific training on this subject could be planned (see 7.3.1.3).	The LU executing authority, when examining the transmitted EAW, cannot go beyond the conditions set out in the law and in the FD. In this context the request for additional information in order to clarify occurring contradictions (in the adequacy of legal qualifications compared to the facts) is admissible.
8 - Make clear whether the law on judicial supervision is applicable in EAW cases (see 7.3.1.6).	If conditional release can be applied with real guarantees against the escape from surrender, such a release with judicial supervision is perfectly possible even without express provision in the law.
9 - Consider amending Article 10(4) of the law of 17 March 2004 and organise prior consultation on this subject with the two other Benelux States (see 7.3.1.7).	An amendment proposed in the draft bill will address this issue
10 - Consider amending the law of 17 March 2004 as regards the transposition of Article 17(7) of the Framework Decision (see 7.3.1.8).	An amendment proposed in the draft bill will address this issue
11 - Consider the possibility of transposing Article 16(2) of the Framework Decision (see 7.3.1.9).	This does not need to be inserted into the provisions of the law but can simply result from an internal instruction
12 - Consider the possibility of organising training sessions on the EAW for all practitioners (see 7.3.1.10).	
13 - Consider the possibility of allowing the police to have access to the social security database and the tax administration database (see 7.3.1.11).	The access has been allowed by the law of 5 June 2009, entitled "Loi du 5.6.2009 relative à l'accès des autorités judiciaires, de la Police et de l'Inspection générale de la Police à certains traitements de données à caractère personnel".

General information **General Council recommendations 2009**	
Language flexibility	French, German or English
Time limit for translated EAW	
Provisional arrest	Yes 24 hours
Proportionality test	Yes, person absconded or living outside LU, minimum penalty of 6 months imprisonment imposed or to be expected
Is it possible for a sought person to get (state paid) legal assistance provided by X in the following situations: (1) in X for the underlying X criminal proceedings when he is arrested in another Member State on the basis of a X EAW and (2) in another Member State, for the underlying criminal proceedings when he is arrested in X on the basis of an EAW of the other state? (X = state in the head of the relevant column)	1) LU issuing state: If requested, LU has no problem in agreeing to a contact with a LU lawyer; the question of cost: free consultation is governed by the rules on judicial assistance-conditions concerning the financial situation of the requesting person are applicable. 2) No
Accessory surrender	In case of two or more infringements, from which one (or more) does not satisfy the conditions of applicability of the EAW, Art. 60 and 61 CP allows including all of them in one EAW, as the sanction to be applied will be that which is foreseen for the infringement which meets the criteria of the EAW; this sanction can be than doubled, but cannot exceed the sum of the sanctions defined for the different infringements.
Flagging	Decision of the Prosecutor
Competent authority for Art 111 Schengen requests?	
Seizure and handover of property	In practice on the basis of separate MLA request
Principle of direct contacts	Yes. No central authority, except for requests

	for transit
Integration of Recital 12 in implementation law	
Dual criminality abolished for attempt and complicity	Yes
4 months requirement	Cf FD
Regime for transfer back	Article 20 of the Law of 22 March 2004 mentions the conditions of the Law of 25 April 2003 concerning the transfer of convicted persons (law approving the additional Protocol of 18.12.1997 to the European Convention of 25.05.1987 concerning transfer).
24/7 rota?	
In case of refusal of surrender for the execution of a sentence on the ground that the sought person has the nationality, or is a resident of the executing State, is execution of that sentence possible in the executing state when there is no dual criminality?	Yes, subject to the condition that the competent Luxembourg authority commits to execute the sentence in compliance with Luxembourg law (as this is not a mandatory refusal case, there might possibly be surrender rather than refusal).
Age of criminal liability	18 yrs; in serious cases surrender of minors between 16-18 yrs possible
Statistics	Yes, 2007 and 2008:
Website	JUMAR IT system for judicial authorities includes info and forms relating to EAW
Jurisdiction ECJ	Yes

Case law/preliminary questions : -

COM Implementation Report of 2007	
Reporting breaches to the deadlines, LU makes no mention in legislation of this requirement, however it does not see any obstacle in doing so.	EAW evaluation: in LU breaches of time limits have not occurred in 2006, 2007 and 2008. An amendment proposed in the draft bill will address this issue
The legislation of LU provides for a hearing only, not for a temporary transfer, as is possible under Art 18 and 19 FD (Evaluation report: due to lack of title for detention during the temporary surrender to LU). LU can temporary surrender a	See above (recommendation 3)

person to another MS.	
ART 32: LU did not make any statement at the time of the adoption of the Framework Decision (JO L 190 of 18.7.2002, p. 19). The transitional provision is applicable where LU is both the issuing and executing Member State contrary to the Framework Decision. This means that LU will not apply surrender arrangements to EAWs issued by other Member States for offences before 7 August 2002 but they will not, in addition, be able to issue EAWs for offences committed prior to that date. Contrary to the Framework Decision, requests for offences committed prior to 7 August 2002 will be treated by LU under previous extradition arrangements.	An amendment proposed in the draft bill will address this issue

18. MALTA

Recommendations EAW report 19-6-2008 (9617/2/08 REV 2 CRIMORG 75)	***Follow up report 21-7-2009***
	No further legislative measure adopted since 1 April 2007. Guidelines for the police on issuing and executing EAWs have been produced.
1 - It is recommended that the Maltese authorities take care to ensure, in accordance with the current practice, that the execution of EAW and SIS alerts and the consequent arrest of persons is not delayed because of the certification by the AG (see 7.3.1.1).	
2 - Adopt a flexible approach in those cases of provisional arrest, where a SIS alert has not been issued, as regards the 48 hour time-limit for receiving a translated EAW: the discharge of the person solely because of the lack of a translated EAW should be avoided. The receipt of an EAW in the language of the issuing State should be taken into consideration to avoid jeopardizing the execution procedure and every attempt should be made to obtain the information required by the law within 48 hours by other means (direct contacts with issuing authorities, recourse to Eurojust), while respecting the defendant's rights (see 7.3.1.3).	
3 - Envisage addressing the issue of grounds for non-recognition in the light of the spirit of mutual recognition and mutual trust in order to have a position closely in line with the Framework Decision. In particular, consider amending the implementing legislation as regards the transposition of Article 4.7(a) of the Framework Decision, so as to make it an optional ground for refusal (see 7.3.1.4). 'extraneous considerations' and 'prescription'	
4 - Consider the possibility, at least in cases where there are manifest and objective grounds for refusal, of anticipating the Magistrate's intervention to raise the invalidity of the EAW's request with a view to avoiding the arrest. An amendment to the implementing law should be envisaged (see 7.3.1.5).	
5 - Consider measures to prevent domestic national appeals before the Constitutional Court from hindering the surrender of requested persons within the time-limits provided for by the Framework	

Decision (see 7.3.1.6).	
6 - Consider amending the implementing law as regards the transposition of Article 17(7) of the Framework Decision, so as to bring domestic law in line with current practice (see 7.3.1.7).	
7 - Prevent the absence/unavailability of one of the specialised officials dealing with EAW from hampering the execution of EAWs. In particular, the involvement and training of one or more Magistrates and prosecutors in the AG's office should be envisaged (see 7.3.1.10).	
8 - Update the Fiche Francaise in accordance with the latest amendments to the implementing legislation (see general conclusions).	

General information **General Council recommendations 2009**	
Language flexibility	Maltese and English
Time limit for translated EAW	
Provisional arrest	Yes 48 hours
Proportionality test	Person must be 'unlawfully at large'. In practice only for serious offenses.
Is it possible for a sought person to get (state paid) legal assistance provided by X in the following situations: (1) in X for the underlying X criminal proceedings when he is arrested in another Member State on the basis of a X EAW and (2) in another Member State, for the underlying criminal proceedings when he is arrested in X on the basis of an EAW of the other state? (X = state in the head of the relevant column)	(1) (2) no
Accessory surrender	
Flagging	no
Competent authority for Art 111 Schengen requests	
Seizure and handover of property	yes

Principle of direct contacts	Yes
Integration of recital 12 in implementation law	Yes (non exhaustive), and 13
Dual criminality abolished for attempt and complicity	yes
4 months requirement	Cf FD
Regime for transfer back	Based on Framework Decision on the EAW
24/7 rota?	
In case of refusal of surrender for the execution of a sentence on the ground that the sought person has the nationality, or is a resident of the executing State, is execution of that sentence possible in the executing state when there is no dual criminality?	
Age of criminal liability	9 yrs, adapted regime for minors from 9-14 and 14-18 years
Statistics	2007:yes
Website	Forms and guidelines on the practical application are electronically available
Competence ECJ	Yes

Case law/preliminary questions: -

COM Implementation Report of 2007	
The Attorney General in MT is required to transmit and certify EAWs (in particular that the incoming request has come from an authority having the function of issuing arrest warrants in the requesting country), renunciations to the speciality rule, consents to further surrender to a third Member State and consents to further extradition to a third country. The Attorney General is also in charge of consenting to the issue of a EAW and lodging an appeal in respect of a person. Given the attributions of the Attorney General which are of an administrative nature as well as of a judicial nature, the Commission believes that MT has not properly transposed the Framework Decision.	
No deadline is provided for making the decision following the highest appeal (the MT Court of Criminal Appeal). Thus both the 60 and 90 day deadlines could in principle be exceeded.	

No obligation in The law to report breaches of time limits to Eurojust.	Breaches of time limits are reported to Eurojust as a matter of good practice
Article 21 – Competing international obligations MT legislation is contrary to this article. MT has provided that where there is a speciality condition imposed by a third state this constitutes a mandatory ground for refusal. In addition there is no provision to request the consent of the third state. However MT has informed the Commission that in practice, MT will always ask for a third state's consent. This may not be in line with the Framework Decision since refusal should only be possible once it is established that consent has not been given.	
In relation to Article 23(2) MT has gone beyond the Framework Decision in its implementing law in specifying that the surrender is not allowed before 7 days from the arrest.	
MT has in transposing Article 23(4) allowed for discharge of the person as an alternative to postponement. The grounds for discharge (where it would be "unjust or oppressive" to extradite the person) are vague to contrast with the Framework Decision. The postponement of the surrender for humanitarian reasons is not specifically foreseen as it is for the hearing according to their legislation.	
Art 29 MT has not transposed paragraph 4 on rights acquired in the property	

19. NETHERLANDS

Recommendations EAW report 2-12-2008 (15370/2/08 REV 2 CRIMORG 185)	*Follow up report 31-7-09*
	The relevant law has not been amended since 1-4-2007.
1. Update the existing guidelines on the use and completion of the EAW form (Provisional Method of Operation) in the light of practice and the experience gained (see 7.2.1.1).	This has been completed and it will be formally adopted in October 2010.
2. Provide public prosecutors with appropriate training and promote the assisting role of the IRCs with a view to improving the quality of outgoing EAWs (see 7.2.1.2).	The Studiecentrum Rechtspleging (national training centre for public prosecutors and judges) does provide a mandatory training which addresses amongst others the EAW.
3. Screen all the existing SIS alerts and take the necessary steps to ensure that all those based on International arrest warrants are replaced by SIS alerts based on EAWs (see 7.2.1.3).	When reviewing a SIS alert periodically this issue will be addressed on a case by case basis. The Netherlands considers this to be a transitional problem. Most of the SIS alerts for extradition from before 2004 will have been withdrawn by now. All SIS alerts after the entry into force of the implementation legislation (12 May 2004) are based on an EAW.
4. Amend the implementing law so that it conforms to the Framework Decision as regards scope in both prosecution and conviction cases (see 7.3.1.1).	This recommendation addresses an issue that would only be of interest for cases concerning minor offences, punishable by less than one year. In view of the ongoing discussion in Brussels on the proportionality when issuing an EAW, no change of the Dutch legislation has been prepared
5. Adapt the implementing legislation to facilitate the enforcement in NL of sentences passed against the Netherlands nationals, in line with the letter ("undertake to execute") and spirit of the Framework Decision (see 7.3.1.2).	This will be part of the legislation in preparation implementing the FD 2008/900/JHA.
6. Correct the practice of systematically asking for a copy (with translation) of the full text of the issuing Member State's legislation applicable to the case underlying the EAW (see 7.3.1.3).	Following the Supreme Court's decision of 8 July 2008 no longer texts of issuing Member States' applicable provisions are requested.
7. Produce precise written guidelines to assist the SIRENE bureau officers when checking incoming SIS alerts, with a view to ensuring a consistent policy for flagging cases (see 7.3.1.4).	The practice has been changed and a consistent policy is ensured. The executing judicial authority, the Public prosecutors office in Amsterdam is consulted by the SIRENE office before a flag may be put on a

	SIS alert.
8. Repeal Article 11 of the implementing law (see 7.3.1.5).	Article 11 will not be repealed. There is no legal reason for it.
9. Consider amending the implementing legislation so that there is no automatic link between consent to surrender and renunciation of the entitlement to the speciality rule, as a means of promoting the use of the abbreviated procedure (see 7.3.1.7).	After careful consideration by the prosecutors office Amsterdam responsible for all the incoming EAW, and reviewing the day to day practice over a longer period there is no evidence to be found that persons do not agree to the simplified procedure because the speciality rule does not apply. Thus there is no longer a reason to change the existing legislation. Furthermore to give a follow up to this recommendation would be contrary to the ideas voiced in Brussels to make more use of the declaration envisaged in article 27 FD EAW.
10. Supplement the criteria applicable to detention in EAW procedures so that detention pending surrender may be ordered on grounds other than the risk of absconding with a view not to hampering the proceedings underlying the EAW (see 7.3.1.8).	Such change of legislation is still under consideration.
11. Abandon the current practice of requiring the original of the EAW or a copy of the EAW with the signature of the issuing authority and signed by an official who is competent within the court or the public prosecutor's office to state that the document is a copy of the original EAW, as a prerequisite for a court decision on surrender (see 7.3.1.9).	This practice is fully compatible with the FD EAW thus it will not be abandoned. However, it will be changed once the complete EAW can be entered in the SIS.
12. Introduce some mechanism for the review of the public prosecutor's decision to refuse an EAW (see 7.3.1.10).	This recommendation will not be implemented. Nothing in the FD EAW obliges to do so. The recommendation is the outcome of personal considerations of the evaluation team. The underlying reasoning of the evaluation team that lead to this recommendation is neither based on concrete negative findings nor is it shared by the competent judicial authorities, including the court in Amsterdam, or by the government of The Netherlands.
13. Enlarge or reorganise, as felt necessary, the trial capacity of the Amsterdam District Court with a view to ensuring that EAW cases are dealt with within the time limits of the Framework Decision (see 7.3.1.11).	This has been done
14. Amend the implementing law so that the fact that a decision on surrender has not been issued within the prescribed 90-day time limit does not entail the	The advantages and disadvantages of such change of legislation are still under

suspension of the detention pending surrender, and exceptions to the general rule are admissible based on the circumstances of the case (see 7.3.1.12).	consideration.

General information **General Council recommendations 2009**	
Language flexibility	Yes, English accepted for EAW and additional information
Time limit for translated EAW	The Netherlands accepts EAWs in English aswell.
Provisional arrest	Yes, 22 days
Proportionality test	Yes, on a case by case basis
Is it possible for a sought person to get (state paid) legal assistance provided by X in the following situations: (1) in X for the underlying X criminal proceedings when he is arrested in another Member State on the basis of a X EAW and (2) in another Member State, for the underlying criminal proceedings when he is arrested in X on the basis of an EAW of the other state? (X = state in the head of the relevant column)	1) yes 2) yes
Accessory surrender	Yes for issuing, not for executing
Flagging	Sirene officials after consultation of the executing judicial authority, the Public Prosecutor's office in Amsterdam.
Competent authority for Art. 111 Schengen requests	Civil Judge
Seizure and handover of property	Restricted to property found in possession of the requested person when arrested
Principle of direct contacts	No central authority, direct contact between judicial authorities is promoted.
Integration of recital 12 in implementation law	Yes
Dual criminality abolished for attempt and complicity	Yes
4 months requirement	Cf FD
Regime for transfer back	Domestic law, based on the 1983 CoE

	convention
24/7 rota	
In case of refusal of surrender for the execution of a sentence on the ground that the sought person has the nationality, or is a resident of the executing State, is execution of that sentence possible in the executing state when there is no dual criminality?	No, see comments recommendation 5
Age of criminal liability	12 yrs, specific regimes for the categories between 12-16 and 16-18 yrs
Statistics	2007:yes
Website	Yes
Jurisdiction ECJ	Yes

Case law/preliminary questions

- Following the Supreme Court's decision of 8 July 2008 texts of issuing Member States' applicable provisions are no longer requested.

- Wolzenburg (ECJ - C-123/08)

In relation to a EAW for the purposes of serving a custodial sentence legislation require not only that the sentence be for at least 4 months but simultaneously that the related offence be punishable by at least 12 months. This is contrary to the Framework Decision.	See comments recommendation 4
NL shall refuse surrender if the Dutch executing judicial authority finds that there can be no doubt that the requested person is innocent. NL has stated this will only occur "in exceptional cases" and if "it has become crystal clear to the executing judicial authority that the person could not have committed the offence", for instance "where the person can immediately prove beyond any doubt that he was being kept in custody at the time of the offence". Nevertheless the Commission is of the view that making this a ground for refusal is contrary to the Framework Decision, since it might require an examination in substance of the case, and also contrary to the principle of mutual trust between Member States.	The Netherlands will not abolish this provision. It re-iterates that the provision is necessary in the rare case where before the surrender of the person it is already clear that the person will be released immediately after the surrender because there is no case against him of he is not the person wanted. However rare these cases are, they have occurred in other Member States such as Belgium and one of the Baltic States. Thus this provision is a provision that strengthens procedural safeguards of individuals subjected to an EAW.
NL has stated that it will not surrender a national for the prosecution for an offence that is not an	See comments on recommendation 5.

offence under Dutch law, because it is impossible under the relevant treaties and the national law to transfer a person where the requirement of double criminality has not been met. It does not see a contradiction with the Framework Decision, since the Framework Decision does not regulate return but leaves that to the Member State. Nevertheless it is clear that one of the principal advantages of this Framework Decision compared with previous extradition arrangements is the removal of the double criminality requirement in relation to the Article 2(2) list of categories of offences. NL's position obviously runs counter to this.	
NL legislation makes no mention of the requirement in case of breach of time limits.	In practice Eurojust will be informed.
In spite of Article 24, in NL, the Ministry of Justice rather than the executing judicial authority is responsible for postponed or temporary surrender.	The Minister of Justice is responsible for the proper administration of justice in The Netherlands. Due to this responsiblity he is under Dutch law the only authority competent in cases of postponed or temporary surrender to balance the two interests at stake: the interest of the issuing judicial authority by the surrender and the interest of the Dutch prosecutor by continuation of the pending prosecution in The Netherlands in another case. That is what the Minister of Justice does on the basis of the advice of the executing judicial authority and the prosecutor handling the Dutch criminal case.

20. POLAND

Recommendations EAW report 14-12-2007 (14240/2/07 REV 2 CRIMORG 158)	***Follow up report 4-8-09 and 02-08-2010***
New developments	PL has modified its legislation on the EAW on 5 November 2009 (the bill has been published in OJ 2009.206.1589 from 5 December 2009), in force since 8 June 2010. Summary of introduced changes: - possibility to issue the EAW request if the offence, which falls within the jurisdiction of Polish courts, has been committed outside the Polish territory (art. 607a of Criminal Proceedings Code (CPC)); - possibility to issue the EAW ex officio by the circuit court or by the circuit court on the request of the district court in relation to the judicial and executive stage of proceedings (art. 607a of CPC); - possibility to transfer the EAW to the Police unit cooperating with Interpol with the request to institute an international searching of the requested person in the case there is suspicion that he or she is staying in the territory of another Member State of the EU (art. 607d § 1 of CPC); - possibility to issue requests also as regards evidences (art. 607h § 1 of CPC) and introducing mechanism to execute this kind of requests in PL (new art. 607wa of CPC); - possibility to apply provisional arrest up to 100 days (by the circuit court on the request of the prosecutor) based on the information that in the issuing State there is the final and valid custodial sentence or a detention order (art. 607k § 3 of CPC); - possibility to apply provisional arrest up to 7 days before receiving the EAW, if the issuing authority requests so and ensures that there is the final and valid custodial sentence or the detention order (art. 607k § 3a of CPC); - clearing the doubts concerning the 60-days period for issuing surrender decision, or 10 days, if the requested person agrees on the surrender (art. 607m § 1 i 1a of CPC); - possibility of the temporarily surrender of the requested person based on the agreement between issuing and executing authorities (art. 607o § 2 of CPC).
1 – To consider solutions, which may for example	All prosecutorial units which deal with the

include the setting up of a national platform involving all national authorities involved in EAW procedures, to increase standardisation of procedures and the search for common good practices (see 7.1.4.).	EAW requests receive regularly instructions from the supreme prosecutor's office (since 31 March 2010 – Prosecutor's General Office).
2 - To update the guidelines of the National Prosecutor of 2005, based on the experience gained during the last two years, and to ensure that they are well disseminated, including among Judges (see 7.1.4.).	In 2009 the National Prosecutor's Office published a joint publication entitled "Rules on mutual legal cooperation in criminal matters during the preparatory proceedings", concerning among others the specific issues of the EAW procedure.
3 - During training sessions, to put specific emphasis on the use of the EAW form and on the use of the SIS (see 7.1.5.).	Issues concerning the use of the SIS are regularly discussed with prosecutors during the training sessions.
4 - To take appropriate measures to be able to provide detailed statistics on EAW procedures (see. 7.3.1.5.).	PL has provided statistics for 2007, 2008 and 2009.
5 - To amend the Constitution and the legislation regarding the surrender of Polish nationals in order to implement the partial abolition of double criminality check and to make it optional for the Courts to refuse the execution of the EAW on the basis of territoriality (see 7.2.1.)	
6 - To amend the Constitution and the legislation in order to abolish, in EAW procedures, the exception for political offences (see 7.2.2.).	
7 – To finalise as soon as possible the legislative procedure already launched (draft bill already proposed in Parliament) and to adopt particularly the amendments relating to the possibility for the competent Court to issue an EAW on its own initiative in trial and post-trial cases (see 7.3.1.1.);- the deletion of the requirement of indications that the person is on the territory of an EU State (see 7.3.1.3.);- the extension of the possibility to issue an EAW in cases where the Court has jurisdiction over the case even though the offence was not committed in Poland (see 7.3.1.4.).	New legislation in force since 8 June 2010. - 7.3.1.1. – see: art. 607a of CPC; - 7.3.1.3. – see: art. 607a of CPC; - 7.3.1.4. – see: art. 607a of CPC;
8 - To reflect at national level on the way to ensure that EAWs are issued only when the seriousness of the offence justifies the co-operation measures which the execution of the EAW will require (see 7.3.1.2.).	The recommendation was discussed at length with the Prosecutor's General Office. However in the view of absence of such obligation in the FD on EAW and the legality principle established in Polish CPC, any legislative action seems to lack sufficient legal base.
9 – To consider solutions to ensure, before the issuing of the EAW, a systematic verification of the	Such verification is carried out by prosecutorial units (on a basis of instructions

existence of other EAWs or criminal proceeding against the same person (see 7.3.1.5.).	from the supreme prosecutor's office).
10 – To reflect upon the possibilities to create direct links between the two EAW registers kept by the Ministry of Justice and by the National Prosecutor's Office or to merge these registers (see 7.3.1.5.).	Due to the establishment of the General Prosecutor's Office outside of the structure of the Ministry of Justice, currently there is no possibility to merge these registers.
11 – To consider using the assistance of the College of Eurojust in cases where repeated difficulties are experienced with a specific Member State and where the practice in that Member State seems to be in contradiction with the Framework Decision on the EAW (see 7.3.2.2). 8.1.4. As executing Member State	Appeal and circuit prosecutors, if consider it necessary, are entitled to undertake direct contacts with Eurojust on a basis of § 316 of the internal rules of the procedure of prosecutor's offices (OJ 2010.49.296).
12 - To rectify the EJN Atlas with regard to the designation of the authorities competent to receive an EAW (see 7.4.1.1.).	Due to the institutional changes, up-to-date information to the EJN Atlas is currently in preparation.
13 - To initiate work in order to allow the reception of original EAWs in electronic format (see 7.4.1.2.).	
14 - To ensure that the National Prosecutor's Office and, at circuit level, prosecutors with adequate experience in EAW procedures are available 7 days a week (see 7.4.1.3.)	At circuit prosecutor's offices prosecutors are available 7 days a week.
15 – To accelerate the preparations and internal discussions related to the use of the SIS, especially regarding the judicial control on flagging (see 7.4.1.4.).	See point 3
16 – To consider amending the legislation to ensure that, in all cases, the person arrested on the basis of an EAW has the right to see a defence counsel during the period of provisional arrest (see 7.4.1.5.).	The person arrested on the basis of the EAW has the right to legal aid and legal cousel on general rules (see: "General information, General Council recommendations 2009"). However at this point it has to be underlined that the prosecutor may not refuse the presence of a legal counsel during the hearing of the arrested person (no grounds for such an action in CPC).
17 – To amend the legislation in order to provide explicitly that the original EAW and its official translation are not necessary for the decision of the Court on temporary detention and to set longer time limits for the production of such material for the decision on the execution of the EAW (see 7.4.1.6.).	New legislation in force since 8 June 2010.. Possibility to apply provisional arrest up to 100 days (by the circuit court on the request of the prosecutor) based on the information that in the issuing State there is the final and valid custodial sentence or a detention order (art. 607k § 3 of CPC); Possibility to apply provisional arrest up to 7 days before receiving the EAW, if the issuing authority requests so and ensures that there is

	the final and valid custodial sentence
18 - To consider amending the legislation in order to accept EAWs in languages other than Polish, including, if possible, English (see 7.4.1.6.).	
19 – To consider amending the legislation and increasing the awareness among judges regarding the partial abolition of the double criminality requirement (see 7.4.1.8.).	
20 - To consider amending the legislation in order to make it (at least) possible to execute the EAW with regard to accessory offences (see 7.4.1.9.).	No basis for such amendment in FD on EAW
21 - To amend the legislation regarding the time limit for the whole procedure leading to the decision on the execution of the EAW and, in the meantime, to interpret the current legislation as providing that the 60 days time limit covers both the first instance procedure and the appeal procedure (see 7.4.1.10.).	New legislation in force since 8 June 2010. - see: art. 607m § 1 and § 1a of CPC;
22 - To ensure that all breaches of time limits are notified to Eurojust and to clarify, for example through training efforts, the division of tasks regarding this notification to Eurojust (see 7.4.1.11.).	Notification of the breaches of time limits is in the competence of Prosecutor's General Office (see: § 308 of the internal rules of the procedure of prosecutor's offices; OJ 2010.49.296).
23 - To ensure that the information provided to the executing State at the time of the physical surrender of the person includes information on the duration of the detention (see 7.4.1.12.).	Issues discussed during the training sessions

General information **General Council recommendations 2009**	
Language flexibility	No
Time limit for translated EAW	7 days (see: art. 607k § 3a of CPC);
Provisional arrest	Up to 7 days before receiving the EAW (see: art. 607k § 3a of CPC); - up to 100 days for the purpose of the surrender of the requested person (see; art. 607k § 3 of CPC);

Proportionality test	No, legality principle
Is it possible for a sought person to get (state paid) legal assistance provided by X in the following situations: (1) in X for the underlying X criminal proceedings when he is arrested in another Member State on the basis of a X EAW and (2) in another Member State, for the underlying criminal proceedings when he is arrested in X on the basis of an EAW of the other state? (X = state in the head of the relevant column)	As regards the legal aid for the persons in detention no additional provisions are foreseen as the general framework will apply. This is: legal representation as right, if the person cannot afford provided by the state; legal representation always provided if minor, deaf, mute, blind or if there is a doubt concerning his/her cautiousness and whenever the court considers if necessary for a reason making the defence difficult; the costs of legal aid are counted according the general rules and if cannot be borne by the defendant will be covered by the state treasury.
Accessory surrender	No
Flagging	PL entered Schengen on 21-12-2007 Flagging is in the competence of the circuit courts (see: § 328a of the rules of the procedure of common courts; OJ 07.38.249)
Competent authority for Art 111 Schengen requests	The Inspector General for the protection of personal data
Seizure and handover of property	New legislation in force since 8 June 2010. - see: art. 607 & 607wa of CPC;
Principle of direct contacts	Yes, MoJ appointed as central authority
Integration of Recital 12 in implementation law	
Dual criminality abolished for attempt and complicity	No
4 months requirement	Cf FD. It's not clear what requirement is meant by that. If it relates to the requirement mentioned in art 2.1 of the FD, then it was implemented in art. 607b CPC, which excludes issuing of EAW in cases of sentences shorter than 4 months
Regime for transfer back	Persons surrendered under the EAW, on condition of being returned after the final judgement has been passed against them, are returned automatically to the executing state
24/7 rota?	Yes

In case of refusal of surrender for the execution of a sentence on the ground that the sought person has the nationality, or is a resident of the executing State, is execution of that sentence possible in the executing state when there is no dual criminality?	No
Age of criminal liability	Generally 17 yrs, yet there are exceptions. 15 yrs - in a case of committing a listed, serious offences (f.ex. homicide, serious bodily harm, rape if the victim is a child under 15 yrs old).
Statistics	Yes: 2007, 2008:and 2009
Website	www.ms.gov.pl (available in Polish)
Jurisdiction ECJ	No

Case law/preliminary questions: -

COM Implementation Report of 2007	
In PL, Article 607 (w) of the domestic law states that the fact that an act is not a criminal offence according to the PL law does not prevent the EAW from being executed as far as the EAW concerns a foreigner. A contrario, this could mean that there is no possibility to execute a EAW without checking the dual criminality even for the list of 32 offences contained in Article 2 of the Framework Decision when it concerns nationals and therefore render the domestic provision contrary to the Framework Decision.	
In PL, amendments to the Criminal Procedure Code have extended the list of obligatory grounds for refusal. According to those amendments, the execution of a EAW is not possible if its execution would breach the freedoms and rights of a person, when EAW concerns (i) an offence committed without violence for political reasons, (ii) and offence committed by a national on the territory of Poland or on board of Polish aircraft or ship, and (iii) an act committed by a national abroad, which does not constitute an offence according to Polish law. Such grounds for refusal are not provided for in the Framework Decision and thus are contrary to it.	
Art 4(3) part 3 FD: PL's legislation is not sufficiently clear in this matter and could allow	

for refusal where a final judgment has been passed in any other State, including third states.	
Article 4(6) has been transposed as a mandatory ground for nationals, residents and people in asylum, which may be contrary to the Framework Decision	In the event of residents this ground of refusal is optional (see: art. 607s § 2 of CPC).
Article 607(t) of the Polish law states that surrender can be granted under the condition that the requested person will be sent back to PL when the final judgment is rendered. This would amount to the guarantee under Article 5(3) being made automatic as the judge would have no discretion in deciding whether or not he could ask for the guarantee. Although this has not yet been confirmed by PL, it appears that the provision of the domestic law may not be in line with the Framework Decision.	In our opinion art. 5(3) of FD on EAW allows for such an interpretation that Member State can choose to use such possibility in every case concerning its nationals or residents.
Under Article 611(k) of the Polish law, additional information can be asked to the Court by the Ministry of Justice. The intervention of the Ministry of Justice at this stage of the proceedings does not seem to be in line with the Framework Decision.	Art. 611k refers to the cooperation with the ICC and is irrelevant for the EAW proceedings as such.
Article 12 FD, keeping the person in detention: all Member States have implemented this article, although PL legislation does not specifically refer to measures to prevent absconding.	In the event of the revoking of the provisional arrest, general provisions concerning provisional measures would apply (the competent authorities are to choose between a bail, police supervision, prohibition of leaving the State; they are also allowed not to apply any provisional measures, if there is no need for them).
PL has not transposed Article 22 (notification of the decision)	

21. PORTUGAL

Recommendations EAW report 26-04-2007 (7593/2/07 REV 2 CRIMORG 59)	***Follow up report 03-08-2009 and 02 -08-2010***
New developments	Penal code amended in September 2007; Article 5 now comprises a reference to the applicability of PT law on acts committed outside national territory for PT nationals and customarily residents relating to certain crimes Handbook updated and published on website Area dedicated to the EAW created at the site of the Documentation and Comparative law Office (http://www.gddc.pt) Case law published on http://195.23.47.101/mandado/pesquisa/pesquisapalavrafora.htm
1 - To take steps to ensure greater compliance with the requirements set out in the Attorney-General's references to provide copies of all EAWs issued by Portugal to the CA and to the national member of Eurojust. (See 7.2.1.1.).	
2 - To formulate a written request to the General Secretariat of the Council of the EU seeking rectification of the Official Journal in respect of the linguistic error contained within the Portuguese text of Article 5 paragraph 1 of the FD. (See 7.2.1.2.).	
3 - To undertake such residual measures as may be necessary to complete the process of providing Public Prosecutors with appropriate and direct access to the SIS (See 7.2.1.6.).	
4 - To put guidance in place to ensure that the Portuguese SIRENE bureau notifies all of Portugal's relevant issuing JAs in cases where additional EAWs arise in respect of the same requested person. (See 7.2.1.7.).	
5 – To ensure that the EAW handbook is published electronically on the HABILUS case management system utilised by Portugal's Court Clerks. (See 7.2.2.1.).	Handbook has been revised in July 2007 and published on the website (English version: http://195.23.47.101/mandado/manual/Manual_MDE_INGLES_REVISTO.pdf)
6 - That a review of Portugal's implementing legislation be undertaken so that those Articles which have been implemented contrary to the FD, or which are lacking in legal certainty, may be reconsidered and redrafted accordingly. (See	No amendments to the EAW law.

7.3.1.1.). i.a. refusal grounds - 11(d) death penalty - 11(e) political grounds - 12 (1) (c) jurisdictional locus omitted - 12 (1) f confused wording	
7 - That consideration be given to creating a rota of Public Prosecutors to enable greater provision of appropriate on-site legal advice within the SIRENE bureau. (7.3.1.3.).	
8 – That an invitation be issued to Portugal's executing JA requesting that it contribute, in a manner deemed appropriate, to the permanent informal working party on the EAW. (See 7.3.2.3.).	The position in August 2010, is that the Conselho Superior da Magistratura (Supreme Judicial Council) has designated Judge (Juiz Desembargador) Fernando Ventura to participate in the referred working group.

General information **General Council recommendations 2009**	
Language flexibility	Yes, relating to Spanish
Time limit for translated EAW	
Provisional arrest	Yes 48 h
Proportionality test	Yes. The PT handbook contains a generic advise that 'the EAW should be used in an efficient, effective, proportional manner, taking account of the legitimate goals of co-operation, as a tool for the prevention and re-pression of crime. There is also a need to adjust this instrument, which is based upon the deprivation of personal freedom, to the prosecution of more serious or more dama-ging crime that may substantially justify it.' It recommends also considering alternatives to the EAW. Case law of the Supreme Court prohibits disproportionate use of EAWs
Is it possible for a sought person to get (state paid) legal assistance provided by X in the following	(1)

situations: (1) in X for the underlying X criminal proceedings when he is arrested in another Member State on the basis of a X EAW and (2) in another Member State, for the underlying criminal proceedings when he is arrested in X on the basis of an EAW of the other state? (X = state in the head of the relevant column)	(2) Not explicitly mentioned, possible in conformity with the domestic legislation, state paid assistance, if insufficient financial resources are demonstrated for Portugese nationals, EU citizens, third country nationals and stateless persons holding a residence permit valid in the EU
Accessory surrender	Not explicitly in the legislation. Issuing: possible on case by case basis Executing: possible
Flagging	
Competent authority for Art 111 Schengen requests	
Seizure and handover of property	
Principle of direct contacts	Yes
Integration of recital 12 in implementation law	No. recital 13 has been integrated
Dual criminality abolished for attempt and complicity	Yes
4 months requirement	Cf FD
Regime for transfer back	83 CoE convention
24/7 rota?	
In case of refusal of surrender for the execution of a sentence on the ground that the sought person has the nationality, or is a resident of the executing State, is execution of that sentence possible in the executing state when there is no dual criminality?	No
Age of criminal liability	16
Statistics	Yes, 2007 and 2008
Website	Yes, partly in English
Jurisdiction ECJ	Yes

Case law/preliminary questions

http://195.23.47.101/mandado/pesquisa/pesquisapalavrafora.htm

COM Implementation Report of 2007	
No deadline for Constitutional Court	
In relation to Article 5(1) FD PT law does not provide for a possibility to retrial in cases where the requested person has not taken part in the proceedings which may in practice be a serious issue.	

22. ROMANIA

Recommendations EAW report 27-4-2009 (8267/09 CRIMORG 53)	*Follow up report 3-8-09 and 30-07-2010*
New developments	New legislation was adopted in Romania with effect from 10 November 2008 (Law no. 222/2008). This legislation amends Title III of Law No. 302 of 28 June 2004 on the international judicial cooperation in criminal matters Law 322/2004, which implemented the FD on the EAW in Romania. The 2008 amending legislation (which also implemented three other FDs) was introduced in respect of the EAW to adjust some procedural aspects or to eliminate some procedural loopholes and did not amend the substance of the original implementing law on the EAW Preparation of implementation of the recommendations has started.
1.- Encourage direct contacts of the competent judicial authorities with their foreign counterparts and devise measures necessary to establish such contacts (including appropriate telecommunications equipment) (see 7.1.3).	
2.- Promote specialisation of judicial authorities in EAW cases (see 7.1.4).	This recommendation on specialisation was very much embraced by the Ministry of Justice and Citizens Liberties and by practitioners, who considered that it will assure uniformity and efficiency of the procedures. Decisions are to be taken, especially at the level of the Superior Council of Magsitracy.
3.- Create appropriate mechanisms, able to provide complete, up-to-date and easily accessible information, for gathering and processing data on all incoming and outgoing EAWs (see 7.1.5).	
5.- Continue efforts to provide systematic training programme on EAW matters as well as language training for practitioners (judges, prosecutors and court staff) (see 7.1.6)	Guidelines for judges and prosecutors have been published on the website of the Ministry of Justice and Citizens Liberties and a series of newsletters have been sent to courts and prosecutor's offices to facilitate the issue and transmission of the EAW Within the PHARE Project RO 05/1B/JH/03 “Strengthening of the institutional and legal frame of international judicial cooperation in Romania” (institutional partnership project between

	Romania and Austria), finalized in May 2008, *The Manual on Judicial Cooperation in Criminal Matters for Judges and Prosecutors* and *The Manual on Judicial Cooperation in Criminal Matters for Court Clerks* were drafted, including dispositions on the Framework Decision 2002/584/JHA. Within the same program, as well as in others, several seminars were organized to discuss, among other topics, the aspects regarding the issue, completion and transmission of the European Arrest Warrant. The manuals have been sent, in printed and electronic formats, to all the participants in the training seminars organized within the program (about 1000 participants). The manuals were posted on the websites of the Ministry of Justice and Citizens Liberties, the Superior Council of Magistracy and of the Prosecutor's Office of the High Court of Cassation and Justice. A national handbook on the EAW is being drafted by the Ministry and will be disseminated electroncially. The Ministry organises working meetings and seminars for practitioners through the National Magistrates School and the National Court Clerk's School An electronic guide on International Judicial Cooperation in Criminal Matters is available on www.just.ro. Magistrates and Clerks have access to an Intranet Portal on International cooperation on Criminal matters and to a Romanian translation of the EAW handbook The Romanian Judicial network on judicial cooperation in criminal matters meets twice a year and has the EAW on its agenda at each meeting
5.- Take measures, as considered appropriate, to promote training of lawyers on EAW matters (see 7.1.6).	See response to 4 above
6.- Develop a uniform practice to verify if a wanted person is located on Romanian territory prior to issuing an EAW (see 7.2.1).	
7.- Create mechanisms to enable judicial	

authorities to check the existence of pending cases against given individuals prior to issuing an EAW (see 7.2.2).	
8.- Promote the uniform understanding of the effects of the prosecutorial closure of the case under Article 881(5) of the implementing law, e.g. by issuing guidelines for prosecutors (see 7.3.1.1).	
9.- Develop uniform practice concerning the application of Article 883 of the implementing law on apprehension and arrest of the requested person based on an Interpol alert (see 7.3.1.2).	
10.- Take the necessary steps to promote the use of preventive measures alternative to detention in EAW cases where appropriate, including– if necessary – amending Article 90 of the implementing law (see 7.3.1.3).	

General information **General Council recommendations 2009**	
Language flexibility	Yes French and English
Time limit for translated EAW	As soon as possible 48 h after the arrest of the sought person
Provisional arrest	48 hours in exceptional circumstances
Proportionality test	Yes 4 yrs maximum penalty threshold for prosecuting cases. (art 148 of the Romanian Criminal Procedural Code)
Is it possible for a sought person to get (state paid) legal assistance provided by X in the following situations: (1) in X for the underlying X criminal proceedings when he is arrested in another Member State on the basis of a X EAW and (2) in another Member State, for the underlying criminal proceedings when he is arrested in X on the basis of an EAW of the other state? (X = state in the head of the relevant column)	1) no – only consular assistance 2) no – only consular assistance
Accessory surrender	Not in legislation, however possible in executing EAWs

Flagging	-Not yet a Schengen member
Competent authority for Art. 111 Schengen requests	Not yet a Schengen member
Seizure and handover of property	Yes
Principle of direct contacts	The Romanian Courts are encouraged to contact directly the executing foreign authorities. Any difficulty will be solved with the assistance of the Romanian MJo. (art.83 paragraph (3) of the Law no. 302/2004
Integration of recital 12 in implementation law	No (the transposition of the recital is not mandatory but it can help in order to understand and give a correct interpretation to the provisions of the FD)
Dual criminality abolished for attempt and complicity	When the offence underlying the EAW is one of the 32 offences listed in art. 2 paragraph 2 of the FD, the dual criminality check is not performed, irrespective of the degree of participation of the offender Art 85 paragraph 2 of the implementation law states that for the other offences, surrender shall be granted on condition that the deeds underlying the issuing of the EAW constitute offences according to Romanian Law
4 months requirement	Transposed in article 81 paragraph (1) of the Law no. 302/2004
Regime for transfer back	The transposition law provides that " a Romanian citizen shall be surrendered based on a European arrest Warrant issued in view of criminal prosecution or trial on condition that, should a penalty depriving of freedom be handed down, the person surrendered will be transferred to Romania to serve the penalty." The transfer procedure procedure will take place under the provisions of the European Convention on the transfer of sentenced persons, Strasbourg, 1983
24/7 rota	Yes
In case of refusal of surrender for the execution of a sentence on the ground that the sought person has the nationality, or is a resident of the executing State, is execution of that sentence possible in the executing state when there is no dual criminality?	No
Age of criminal liability	14 years

Statistics	Yes: 2007, 2008 and 2009
Website	Yes
Jurisdiction ECJ	Yes

Case law/preliminary questions

Decision of the High Court of Cassation and Justice no. 581 of 18 February 2008

"An analysis of the above legal provisions, and of the other provisions of the special law that regulate the execution of European arrest warrants, shows that the role of the Romanian court, in this procedure, is limited to checking whether the formal conditions of the warrant have been met - aspects relating to the existence of the imputed criminal acts, and whether or not the measure of provisional detention is justified, exceed the limits imposed by Law No. 302/2004- and to dealing with any objections regarding identity raised by the requested person and with the grounds for refusal of surrender that the requested person may invoke."

Preliminary question addressed to the ECJ on 28-07-2010 (C-264/09)

COM Implementation Report of 2007	
The list provided for in article 2 of the Framework Decision has been transposed with some adaptation made for linguistic reasons in order to comply with domestic law. Those adaptations render the scope of the offences for which dual criminality is abolished wider than what is provided for in the Framework Decision. There is no reference to kidnapping or to hostage taking, rather a general statement on illegal depravation of freedom, illegal arrest and abusive investigation	The 2008 amendment brings the RO law in line with the FD.
Article 5(2) has not been properly implemented as the domestic law states that a EAW will be executed if the legal system of the issuing Member State provides for the possibility of reviewing the sentence after a service of at least 20 years. As a result, this provision appears to be contrary to the Framework Decision.	Art 87 of the implementation law provides that the execution of an EAW may be subject to the condition that, should the offence be punished with life imprisonment, the legal system of the issuing Member State provides either for the possibility of conditional release after a service of 20 years, or for clemency measures
No mention in the law of the obligation to notify Eurojust in case of breach of time limits.	According to the provisions of article 95 paragraph 5 of the transposition law "When, for exceptional reasons, the time limits in this Article cannot be observed, the executing Romanian judicial authority shall inform the Eurojust, specifying the reasons for the delay"
Regime for transfer back	The amendment to the law of 2008 limits the application of the ground for refusal of article 4(6) to those cases in which the judge grants (in

	the same court procedure) the execution of the foreign penalty.

23. SLOVAK REPUBLIC

Recommendations EAW report 31-3-2009 (7060/1/09 CRIMORG 33)	***Follow up report 31-7-2009***
New developments	The Slovak Republic has adopted Act No 154/2010 on the European arrest warrant ('EAW'), due to enter into force on 1 September 2010. This Act repeals the original transposing legislation, Act No 403/2004 on the EAW, as amended.
1.- Consider rewording the implementing law to ensure greater clarity (see 7.1.1).	The new Act takes into account the request for greater accuracy and clarity of legislation
2.- Consider drafting an easy-to-use ('user- friendly'), comprehensive manual, including best practices, for judges and prosecutors (see 7.1.5).	Judges and prosecutors have access to the Slovak version of the European handbook for issuing the EAW and to the EJN Judicial Atlas on the website of the Ministry of Justice. Practical issues regarding the functioning of the EAW are dealt with on an ongoing basis as part of the Justice Academy's training activities. The provisions of Section 41 of the new Act govern assistance from the Ministry of Justice to judicial authorities, where this is necessary, as follows: *Section 41- Assistance* *The Ministry of Justice shall provide all necessary assistance to the judicial authorities of the State of origin and the executing judicial authorities in connection to any actions undertaken pursuant to this Act.'*
3.- Take measures to ensure that information on the Slovak Republic is available in the EAW-Atlas (see 7.1.6).	Because the new Act on the European arrest warrant was under preparation, and because of changes in the court system in Slovakia, the information on Slovakia in the EAW Atlas has not yet been finalised. It is intended that the information will be added to the EJN website by the end of 2010.
4.- Further promote the use of the European Judicial Network in EAW cases by facilitating access of practitioners to the information provided on the EJN website (see 7.1.6).	A direct reference to the EJN website has been published on the Ministry of Justice's website, in the section on information for judicial bodies. The EJN and its use by practitioners forms part of the training activities of the Ministry and the Justice Academy.
5.- Further promote among practitioners the use of	The issue of the possible use of Eurojust in

Eurojust as a means to facilitate exchange of information and provide assistance in resolving difficulties, both when issuing and executing EAWs (see 7.1.7).	EAW procedures forms part of the training activities of the Ministry and the Justice Academy for judges and prosecutors.
6.- Consider providing more facilities for practitioners to improve their language skills (see 7.1.8).	The training of judges, prosecutors and judicial officials in Slovakia is provided by the Justice Academy, which is an organisation funded from the budget of the Ministry of Justice. The Justice Academy provides continuous training for candidate prosecutors and senior court officials, and lifelong learning activities for prosecutors and judges, including language training.
7.- Consider simplifying the procedure for issuing an EAW in pre-trial proceedings (see 7.2.1.1).	
8.- Consider introducing a specific provision on the issue of proportionality or drawing up a list of indications that can be used by practitioners as a basis for a proportionality test when issuing an EAW (7.2.1.3).	The new wording of Section 5(3) addresses the issue of examining proportionality in the issuance of EAWs as follows: *'(3) A court shall not issue a European arrest warrant if it is clear before such issuance that the requesting of the person from a foreign country would cause a degree of harm disproportionate to the significance of the criminal proceedings or to the consequences of the criminal act.'*
9.- Bring Sections 4(5) of the implementing law in line with the Framework Decision (see 7.3.1.1)	This issue has been resolved in the new Act, which has been brought into line with Article 2 of the Framework Decision. The new wording of Section 4(2) provides as follows: *'(2) A European arrest warrant may be executed: (a) if it was issued in relation to criminal proceedings regarding an act which is classed as a criminal act under Slovak law and under the law of the State of origin, and if it is possible, under the law of the State of origin, to impose a custodial sentence with an upper tariff limit of at least twelve months, and if there are no grounds to refuse execution of the European arrest warrant; (b) if it was issued for the purposes of executing a custodial sentence already imposed for an act which is classed as a crime under the law of the Slovak Republic and the State of origin, if the sentence or its remaining period is at least four months and if there are no grounds to refuse execution of the European arrest warrant. Neither any other sentences nor the remaining portions of these other sentences are included in this calculation.'*

10.- Consider setting up clear provisions on the time limits for the receipt of (language-compliant) EAWs (see 7.3.1.2).	This issue has been resolved in the new Act as follows: The time limit for issuing the original of the EAW and its translation into the official language of the State is fixed as 40 days from the arrest of the person. If this 40-day deadline is not met, the court must release the detained person from preliminary custody. A period of 18 days has been fixed for the issuance of the EAW, or of a document confirming its existence (without translation into the official language of the State concerned), if the person was detained and taken into preliminary custody on the basis of an SIS alert. If this deadline is not met, the court has the power to decide, upon a proposal from the prosecutor, whether to release the person from pre-sentence custody.
11.- Consider amending Section 17 of the implementing law as regards the necessity of mandatory detention in the case of listed offences (see 7.3.1.3).	This issue has been resolved in the new Act by removing mandatory detention in these cases.
12.- Remove the reference to "important interests of the Slovak Republic" from Article 15(1) of the implementing law (see 7.3.1.4).	The reference to 'important interests of the Slovak Republic' has been left in place in the new Act, in Section 12, which determines the procedure for the flagging of an SIS alert by the Public Prosecutor's Office. This provision extends the principle of maintaining public order (*ordre public*) into proceedings regarding the EAW.
13.- Consider converting the ground for refusal based on territoriality into an optional ground for refusal (see 7.3.1.5).	This issue has been resolved in Section 23(2) of the new Act, which governs the optional grounds for refusal to execute an EAW: *'(2) Execution of a European arrest warrant may be refused if:* *(...)* *(d) the European arrest warrant concerns acts which, under Slovak law, are considered to have been committed either partially or entirely on Slovak territory, on a vessel sailing under the Slovak flag or on an aircraft registered in the register of Slovak aircraft; execution of the European arrest warrant may also be refused in this case if the act is not considered a criminal act under Slovak law, or* *(...)'*
14.- Include specific provisions on additional consent	This issue has been resolved in the new Act in

and consent to subsequent surrender in the implementing law so as to conform to the Framework Decision (see 7.3.1.7).	the separate Section 35, which reads as follows: *'Section 35 - Additional consent and consent to subsequent surrender* *(1) The provisions of the first, third and fifth part shall also be applied, as appropriate, to proceedings regarding a request from the Member State to which the person has been surrendered from the Slovak Republic for consent for the following:* *(a) to prosecute the person for a crime committed before the surrender and different from the one for which the person was surrendered on the basis of a European arrest warrant, or to execute a different custodial sentence than the one for which the person was surrendered,* *(b) to surrender to a different Member State on the basis of a European arrest warrant for criminal prosecution or to execute a custodial sentence. The competent executing judicial authority for proceedings under paragraph (1) is the one which took the decision on the execution of the European arrest warrant to which the request for additional consent or consent for subsequent surrender relates. The executing judicial authority shall take a decision on the request in paragraph 1 within 30 days. If the decision on the execution of the European arrest warrant under Section 21(2) was taken by the prosecutor and the conditions for a decision on consent are not met, the prosecutor shall submit a request for a decision to be taken by the court which would be competent to take a decision under Section 22.* *(3) The executing judicial authority shall return the request, without taking a decision, to the authority of the State of origin which made the request for additional consent, if, during the proceedings, it finds that the person:* *(a) consented to surrender to this Member State and renounces their entitlement to the application of the speciality principle under Section 31(1),* *(b) agreed, after surrender to this Member State, that he or she would explicitly renounce entitlement to apply the speciality principle under Section 31(1) in relation to the criminal acts covered by the request for additional consent and which were committed before the surrender.* *(4) The procedure in the general regulation on criminal procedure applies to proceedings on requests from a different Member State and to which the person was surrendered on the basis of a European arrest warrant, for consent to surrender the surrendered person to a third State*
15.- Consider including in the implementing law a specific provision on temporary surrender in line with	This issue has been resolved in the new Act with the separate Section 30, which reads as

the Framework Decision (see 7.3.1.8).	follows: *'Section 30 - Temporary surrender of a requested person* *(1) At the request of a judicial authority of the State of origin the court may allow the temporary surrender of a person to the State of origin if, following a decision on the execution of a European arrest warrant, a decision was taken to postpone surrender under Section 29(1). If a prosecutor took a decision on a European arrest warrant in accordance with Section 21(2), the decision on the temporary surrender of a person shall be taken by a court, on a proposal by the prosecutor. The terms of the temporary surrender of a person shall be agreed in writing directly between the court and the judicial authority of the State of origin. The court may allow the temporary surrender of a person only when it has no effect on their ability to make a statement in the proceedings on their surrender.* *(2) If the court allows the temporary surrender of a person, it shall also require that during the temporary surrender the person must be held in custody. If, in its request for the temporary surrender of a person, the judicial authority of the State of origin does not stipulate the period of time for which it is requesting surrender, nor state the procedures which it wishes to execute in relation to the person, the court shall ask it to send an updated request containing this information. In this case it may impose an appropriate deadline for the submission of an updated request.'*

General information **General Council recommendations 2009**	
Language flexibility	Slovak language required. Special language regimes have been arranged on the basis of bilateral agreements with AT (German),CZ (Czech) and PL (Polish).
Time limit for translated EAW	40 days
Provisional arrest	40 days
Proportionality test	Proportionality is governed by the Act for the issuance of the European arrest warrant in Section 5(3) of the new Act, which reads as follows: *'(3) A court shall not issue a European arrest*

	warrant if it is clear before such issuance that the requesting of the person from a foreign country would cause a degree of harm disproportionate to the significance of the criminal proceedings or to the consequences of the criminal act.'
Is it possible for a sought person to get (state paid) legal assistance provided by X in the following situations: (1) in X for the underlying X criminal proceedings when he is arrested in another Member State on the basis of a X EAW and (2) in another Member State, for the underlying criminal proceedings when he is arrested in X on the basis of an EAW of the other state? (X = state in the head of the relevant column)	
Accessory surrender	Accessory surrender is possible under Section 4(6) of the new Act, which provides that: *'(6) If a person's surrender is requested in relation to several criminal acts, of which at least one meets the conditions in paragraphs 1 to 5, a European arrest warrant may also be executed or issued in order to prosecute for other criminal acts or to execute other sentences which would otherwise be inadmissible on the grounds of the magnitude of the sentence or the remainder of the sentence.'*
Flagging	Flagging of the alert shall be done by the prosecutor in accordance with Section 12 of the new Act, which reads as follows: *'Section 12.- Preliminary examination of the alert* *If the Public Prosecutor's Office of the Slovak Republic (hereinafter "the Public Prosecutor") finds that the alert in Section 3(l) does not comply with the law, with international commitments or with the essential interests of the Slovak Republic, or if conditions set out in separate legislation have been met[8)], it shall order SIRENE to flag the alert; this body shall flag the alert immediately. The flagging of an alert prevents the detention of a person; an alert flagged in this way may only be used to seek a person in order to determine their place of residence.*
Competent authority for Art 111 Schengen requests	

Seizure and handover of property	Possible, SK authorities prefer MLA
Principle of direct contacts	Slovakia has not designated a central authority pursuant to Article 7(2) of the Framework Decision. Section 36 of the new Act governs in general terms direct contact between judicial authorities.
Integration of Recital 12 in implementation law	
Dual criminality abolished for attempt and complicity	Yes
4 months requirement	
Regime for transfer back	Domestic law/1983 CoE convention
24/7 rota	
In case of refusal of surrender for the execution of a sentence on the ground that the sought person has the nationality, or is a resident of the executing State, is execution of that sentence possible in the executing state when there is no dual criminality?	The general rule established by Section 23(4) applies: *'(4) The fact that the requested person is a citizen of the Slovak Republic does not constitute grounds to refuse execution of a European arrest warrant.'* The question of introducing optional grounds to refuse execution of a European arrest warrant pursuant to Article 4(6) is being examined at national level..
Age of criminal liability	14 years
Statistics	Yes, 2007, 2008 and 2009
Website	
Jurisdiction ECJ	Yes (2009)

Case law/preliminary questions: -

COM Implementation Report of 2007	
No deadline for deciding the highest appeal (Supreme Court)	
SK law does not provide for temporary surrender pursuant to article 24(2). SK has informed the Commission that the provisions contained within Article 24 of the Framework Decision may be implemented by a new amending legislation which should be adopted in June 2007	This issue has been resolved in the new Act with the separate Sections 29 and 30, which read as follows: *'Section 29 - Postponement of surrender* *(1) A court or prosecutor which took a decision on the execution of a European arrest warrant may decide, by*

	issuing a resolution, to postpone its implementation, if criminal proceedings against the person are ongoing in the Slovak Republic or if the person is serving or is due to serve a custodial sentence for a different criminal act than the one for which the European arrest warrant was introduced. No complaints are admissible against the decision of a court or prosecutor to postpone surrender. *(2) If the reasons underlying the decision to postpone surrender have changed substantially, the executing judicial authority which took a decision pursuant to paragraph 1 may revoke its decision. Appeals against this decision are inadmissible.* *Section 30 - Temporary surrender of a requested person* *(1) At the request of a judicial authority of the State of origin the court may allow the temporary surrender of a person to the State of origin if, following a decision on the execution of a European arrest warrant, a decision was taken to postpone surrender under Section 29(1). If a prosecutor made a decision on a European arrest warrant in accordance with Section 21(2), the decision on temporary surrender of a person shall be taken by a court, on a proposal by the prosecutor. The terms of temporary surrender of a person shall be agreed in writing directly between the court and the judicial authority of the State of origin. The court may allow the temporary surrender of a person only when it has no effect on their ability to make a statement in the proceedings on their surrender.* *(2) If the court allows the temporary surrender of a person, it shall also require that during the temporary surrender the person must be held in custody. If, in its request for the temporary surrender of a person, the judicial authority of the State of origin does not stipulate the period of time for which it is requesting surrender, nor state the procedures which it wishes to execute in relation to the person, the court shall ask it to send an updated request containing this information. In this case it may impose an appropriate deadline for the submission of an updated request*
Article 25(5) SK has made no provision for transit from a third state	
28(3) has not been transposed by SK	This issue has been resolved in the new Act with the separate Section 35, which reads as follows: *Section 35 - Additional consent and consent to subsequent surrender* *(1) The provisions of the first, third and fifth part shall also be applied, as appropriate, to proceedings regarding a request from the Member State to which*

	the person has been surrendered from the Slovak Republic for consent for the following: *(a) to prosecute the person for a crime committed before the surrender and different from the one for which the person was surrendered on the basis of a European arrest warrant, or to execute a different custodial sentence than the one for which the person was surrendered,* *(b) to surrender to a different Member State on the basis of a European arrest warrant for criminal prosecution or to execute a custodial sentence. The competent executing judicial authority for proceedings under paragraph (1) is the one which took the decision on the execution of the European arrest warrant to which the request for additional consent or consent for subsequent surrender relates. The executing judicial authority shall take a decision on the request under paragraph 1 within 30 days. If the decision on the execution of the European arrest warrant under Section 21(2) was taken by the prosecutor and the conditions for a decision on consent are not met, the prosecutor shall submit a request for a decision to be taken by the court which would be competent to take a decision under Section 22.* *(3) The executing judicial authority shall return the request, without taking a decision, to the authority of the State of origin which made the request for additional consent, if, during the proceedings, it finds that the person:* *(a) consented to surrender to this Member State and renounces their entitlement to the application of the speciality principle under Section 31(1),* *(b) agreed, after surrender to this Member State, that he or she would explicitly renounce entitlement to apply the speciality principle under Section 31(1) in relation to the criminal acts covered by the request for additional consent and which were committed before surrender.* *(...)'*
SK has not transposed Article 28 at all in the transmitted legislation	This issue has been resolved by the provisions of Section 33 to 35 (see above)

24. SLOVENIA

Recommendations EAW report 22-9-2008 (7301/2/08 REV 2 CRIMORG 44)	***Follow up report 30-04-2009 and 03-08-2010***
New developments The recommendations correspond to the situation existing in Slovenia at the time of the evaluation visit. As regards proposed legal amendments, reference is made where, according to the draft the expert team was provided with, action is taken in the Act on cooperation in criminal matters with the European Union Member States.	In February 2008 a new single act has come into force comprising all instruments of cooperation in the field of criminal law within the EU - Act on International Co-operation in Criminal Matters between the Member States of the European Union of 25 October 2007, which entered into force on 24 February 2008 (hereinafter referred to as: ZSKDČEU). The latter has among others substituted also the provisions of the Act on the European arrest warrant and surrender procedures (hereinafter referred to as: ZENPP), by which the Republic of Slovenia had initially implemented the Council Framework Decision of 13 June 2002 on the EAW and the surrender procedures. The indicated Act also supplemented, upgraded and eliminated some deficiencies with regard to which the Republic of Slovenia was criticized during the implementation - evaluation phase
1 – To consider establishing tools aimed at facilitating the practical application of the EAW by practitioners, such as guidelines to assist judicial authorities to fill in the EAW and other means deemed appropriate to provide expertise to those involved in EAW procedures and to further circulate the information available on the application of the EAW in practice (see 7.1.9).	The Republic of Slovenia didn't adopt any special national manuals in connection with the implementation of the EAW, since we believe that the European handbook on how to issue a European Arrest Warrant is sufficient. Namely, it contains all necessary information in connection with the order and transmission of the warrant; in addition, the institute of the European arrest warrant was comprehensively and from various aspects also presented in various educational seminars for criminal judges and state prosecutors. However, we would like to add that all practicians who are responsible for the issuing and implementation of European arrest and surrender warrants have access to the national case-law in connection with the implementation of the warrant in the Republic of Slovenia as well as to all other internet sites, which contains sufficient and comprehensive information on the EAW. They are also in due time notified by the Ministry as well as the EJN contact points about new developments, modifications and recommendation adopted or agreed upon among various institutes.

2 - To adopt measures to ensure that appropriate training programmes are put in place, so that extensive and regular training on EAW is provided to judges, state prosecutors and defence lawyers (see 7.1.10).	The institute of the European arrest warrant was comprehensively and from various aspects also presented in various educational seminars for criminal judges, state prosecutors as well as lawyers, moreover several publications regarding the implementation as well as the application of the EAW are available to all practicians, so we believe that all interesting parties have enough information on the EAW. Several seminars on the application of the EAW in practice were also organized by the Ministry over the last two years
3 - To re-examine the transposition of the Framework Decision into national law as regards the speciality rule, so that the taking of the surrendered person into custody is expressly included in the scope of the domestic legislation (see 7.2.3).	As we already explained during the evaluation phase, it is not possible to impose a detention against the person to which the principle of speciality applies, however the requesting person may be put in the police "custody" before the latter is brought before the investigative judge
4 - To consider establishing a mechanism allowing the Slovenian judicial authorities, when proceeding against a person surrendered pursuant to an EAW, to check the conditions of the surrender, with a view to respecting the speciality rule (see 7.2.3).	As pointed out before, only the court may issue a decision on detention in criminal proceedings, that is, in a judicial procedure. Indeed, the court does not verify ex officio in the process of surrender whether the person sought has already been convicted or other criminal proceedings against him or her are underway. It is, however, a fact that Act on criminal procedure makes provision in Article 227 that the person charged has to be asked at the first hearing whether he or she has already been convicted and whether the conviction has been erased, when and why and whether and when he or she has served the sentence, whether another procedure for another criminal offence against him or her is underway, meaning effectively that the court also indirectly verifies the provision of the principle of speciality. It is also the role of the District state prosecutor that on the "surrender hearing" brings up all circumstances, relevant to a decision on surrender, among which is also the circumstance about the ongoing investigations - criminal proceedings against the requested person before the competent Slovenian authorities.
5 - To re-examine the transposition of the Framework Decision into national law as regards the subsequent surrender, so that the surrendered person may be re-surrendered solely with his consent to a Member State other than the executing State without the	The provision of article 28/2 (b) of the FD is implemented in the article 44 in relation to article 45 of the ZSKZDČEU, which among others determines that the principle of speciality shall not apply if the person

consent of the latter (see 7.2.4).	expressly renounced his entitlement to the speciality rule before or after the surrender. The person surrendered to the Republic of Slovenia may renounce his entitlement to the principle of speciality for criminal offences committed prior to his surrender before the national court where the criminal procedure for the criminal offence committed prior to the surrender is being conducted or before the investigating judge of the court competent for the execution of the sentence or surrender procedure. The person must be instructed on the meaning of the principle of speciality, the consequences of renunciation of entitlement to the principle of speciality and on the fact that renunciation is voluntary and may not be revoked. The surrendered person without a counsel must also be instructed that he is entitled to engage a counsel of his own choice, etc…"
6 - To amend the implementing law so that it conforms to the Framework Decision as regards the list of offences not covered by double criminality (see 7.3.1.1)	ZSKZDČEU implements an entire list of criminal offences referred to in Article 2 of the Framework Decision. Consequently, the criminal offence of »swindling«, as well as the "illicit trafficking in prohibited drugs" is included in the list and the criminal offence of extortion is no longer limited only to the qualified form. The list is as follows : - participation in a criminal organization; - terrorism; - trafficking in human beings; - sexual exploitation of children and child pornography; - illicit trafficking in prohibited drugs; - illicit trafficking in arms, ammunition and explosives; - corruption; - fraud, including fraud that threatens the financial interests of the European Communities within the context of the Convention on the Protection of the Financial Interests of the European Union of 26 July 1995; - money laundering;

	- forgery of money; - computer-related crime; - criminal acts against environment and natural goods, including unlawful trade in threatened animal species and plant species and varieties; - facilitation of unlawful crossing of the state border and residence within the state; - murder and grievous bodily injury; - illicit trade in human organs and tissue; - kidnapping, unlawful deprivation of liberty and hostage taking; - racism and xenophobia; - group robbery or armed robbery; - illicit trafficking in cultural goods, including antiquities and works of art; - swindling; - racketeering and extortion; - forgery of industrial products and sale of such products; - forgery of official documents and trading in them; - forgery of payment instruments; - illicit trafficking in hormonal substances and other growth promoters; - illicit trafficking in nuclear and radioactive substances; - trafficking in stolen vehicles; - rape; - arson, - criminal acts within the jurisdiction of the International Criminal Court, established by the Rome Statute, - hijacking of an aircraft or ship;

	- sabotage.
7 - To re-examine the transposition into national law with regard to the penalty threshold referred to in Article 2(2) of the Framework Decision (see 7.3.1.1)2.	As we already pointed out the Slovenian judicial authorities understand this provision as set out in the Framework Decision, meaning that they do not verify double criminality in relation to offences for which they should not verify it in compliance with the Framework Decision. However to clarify this provision, the wording regarding the threshold for sentences has been corrected in Article 8 of ZSKZDČEU in order to be more understandable. The new provision of the article 8 of the ZSKZDČEU determines that "…notwithstanding the double criminality, surrender shall be admissible if the warrant is issued for the criminal offence sanctioned by the law of the issuing Member State by imprisonment of not less than three years as the maximum sentence of deprivation of liberty and if such offence is classified under the law of this Member State as one of the following types of criminal offences…" - consequently the threshold is the same as in the Article 2(2) of the Framework Decision
8 - To take steps to correct the current judicial practice of checking the factual description of the EAW against their own Penal Code in respect of the offences listed in the Framework Decision (see 7.3.1.2).	We believe that this conclusion of the evaluation team was to general and unfounded and did not reflect the whole judicial practice. If this was indeed the case, significantly more orders would be rejected, which is not true, as confirmed by statistical data.
9 - To take steps to correct the practice and the underlying legal criteria applicable to detention in EAW proceedings, in particular as regards Slovenian nationals and residents (see 7.3.1.3).	The institute of detention or other alternative measures is regulated in the Article 23 of ZSKZDČEU, which provides for a measure proportionate to a concrete situation, since in compliance with Article 192 of ZKP, to ensure the presence of the person charged (and, consequently, to successfully complete the procedure of the surrender of the person sought) instead of detention, the following measures may be ordered: writ of summons, compulsory appearance, promise of the charged person not to leave his or her residence, restraining orders, reporting to a police station, bail, and house arrest. When deciding on which measure to apply, the court has to comply with the conditions laid down for individual measures. When deciding on

	the measure, the court may not use measures more stringent than those required to achieve the court's purpose, since the Constitutional Court of the Republic of Slovenia has decided that automatic detention is not in compliance with the Constitution. Therefore, for each individual case, it has to be assessed whether to issue a detention against the person or a whether more lenient measure is more appropriate (bail, house arrest etc). Moreover, for a detention order to be issued, more facts need to be considered, such as flight risk. However we should pointed out that indeed there were some changes in the ZSKZDČEU. According to article 17 of the ZSKZDČEU, the investigative judge, after the verification that EAW contains all the data required for taking a decision on its execution and if it complies with the terms as stated in Article 8 issues an order on forced production of the requested person. If an arrest warrant has been issued, police officers may arrest the requested person also without a prior order on forced production as referred to in the preceding paragraph if there is a risk that he will abscond or go into hiding. Consequently the provision that investigative judge must first summon the individual to a hearing has been abolished.
10 - To take the necessary steps to ensure that in the course of an EAW procedure the existence of ongoing investigations or proceedings against the requested person, or prior convictions, is checked (e.g. through appropriate databases or other means) (see 7.3.1.5).	The uniform electronic evidence which enables the systematic verification of current investigations or proceedings against the person sought is already applicable in practice (separate evidence for courts as well as for the prosecutor's offices).
11 - To take the necessary measures to ensure that Slovenia will enforce sentences passed against its own nationals and residents in the issuing Member State for offences not punishable under Slovenian law (see 7.3.1.6).	The institute of the execution of sentences passed against Slovenian nationals and residents imposed in the issuing state is also regulated by the new implementing law - article 72, which determines that if the national court receives an order against a national of the Republic of Slovenia or of another Member State residing in the territory of the Republic of Slovenia, or an alien who is in possession of a permanent residence permit in the Republic of Slovenia, with the aim of executing a custodial sentence, precautionary or other sanction that is

	carried out by detention order, and all other conditions are met for the surrender of such a person, and the person has agreed to serve the sentence in the Republic of Slovenia and the national court binds itself to enforce the judgement, the order shall be treated as a request for the execution of a custodial sentence, precautionary or other sanction that is carried out by detention order. In such a case, the criminal judgement imposed in the issuing State, shall be enforced in the Republic of Slovenia also if the offence in the order is not a criminal offence under the law of the Republic of Slovenia. If the order allowed for the surrender of a national of the Republic of Slovenia, or a national of a Member State, residing in the territory of the Republic of Slovenia, or an alien who is in possession of a permanent residence permit in the Republic of Slovenia, conditioned by returning the person to the Republic of Slovenia after the proceeding is concluded, the criminal judgment imposed by the court of the ordering State shall be enforced in the Republic of Slovenia, even if the offence in the order is not a criminal offence under the law of the Republic of Slovenia as well as without the consent of the person.
12 - To abrogate Article 36(3) of the implementing law (see 7.3.1.7).	The ZSKZDČEU eliminated the provision, by which the Republic of Slovenia implemented Article 32 of the Council Framework Decision on the European arrest and surrender warrant, and consequently limited the application of this institute to criminal offences committed after 7 August 2002
13 - To consider amending the implementing legislation with a view to establishing clear rules enabling courts executing EAWs to proceed to seize property in the possession of the requested person that may be used as evidence, or that has been acquired by him as a result of the offence, without a prior request from the issuing authority (see 7.3.1.8).	With regard to this recommendation it has to be mentioned that the provision of the Framework Decision that governs the seizure of items is partly implemented in Article 24 of ZSKZDČEU, and partly also in the existing national regulations – Criminal code. In accordance with the Slovenian legislation, items from a criminal offence must be seized – this includes items that were used or intended for use while committing a criminal offence, or were produced with a criminal offence, as well as unlawful pecuniary

	advantage and items that could be used as evidence in a criminal proceeding. Article 24 of the ZSKZDČEU also determines that if the issuing judicial authority so orders in a warrant or when so determined by the national criminal code, the investigating judge shall seize and hand over the items that might serve as evidence in criminal proceedings to the issuing judicial authority. If the issuing judicial authority orders a temporary protection of the request for the seizure of financial profit, the investigating judge shall order temporary protection of the property in the Republic of Slovenia. The court shall decide on the seizure in a decision whereby it decides on the surrender.. Items, financial benefit or property as referred to in the preceding paragraphs shall be seized and handed over also in the case when the surrender cannot be carried out because the requested person has died or absconded. If the domestic court seized items or financial benefit or property in criminal proceedings that is underway, it shall retain the items or hand them over temporarily to the issuing Member State, on condition that they are returned. The issuing state shall return items from the first and second paragraphs of this Article if the administering state or a third person is entitled to them
14 - To re-examine the transposition of the Framework Decision into national law as regards transit of non-Slovenians in conviction cases, so that a statement by the requested person that he wishes to serve the sentence in the issuing Member State is not required (see 7.3.1.9).	The provision in the ZSKZDČEU is the same as it was in the ZENPP.
15 - To re-examine the transposition of the Framework Decision into national law, so that transit cases from third States to another Member State are expressly addressed by the implementing legislation, and so that conditions similar to those of transit within the European Union apply (see 7.3.1.9).	The situation regulated in paragraph 5 of the article 5 of the FD is implemented in the second paragraph of the article 37 of the ZSKZDČEU, which determines that if transit across the territory of another Member State is necessary in order to implement the extradition of a person from the third country, the court shall send to the ministry the relevant documents, so that the ministry can request the permission for transit

General information	

General Council recommendations 2009	
Language flexibility	Yes, English, Slovene, (article 15 of the ZSKZDČEU) - additional flexibility arises also from the before mentioned provision, which gives the investigative judge the possibility to order that the warrant is ex officio translated into the Slovenian or English languages, when the detention has been imposed against the requested person.
Time limit for translated EAW	10 days (Decision is within the competence of the judicial authority which determines an appropriate time limit not exceeding ten days.)
Provisional arrest	48 hours
Proportionality test	With rEgard to the question of the proportionality test, we assess that there is no need to include the explicit provision in the implementing law, since the principle is actually being tested in practice as proceeding from the Constitution of the Republic of Slovenia. The condition to issue a European arrest warrant is that in the Republic of Slovenia a decree on a detention order has been issued, typically due to the reason of flight risk, which is indicated under Point 1 of the first paragraph of Article 201 of the Criminal Procedure Act of the Republic of Slovenia. When issuing a detention order, one of the circumstances to be ascertained is the proportionality of the measure vis-avis the violation of the constitutionally protected right to personal liberty. If a concrete criminal offence, of which an individual is suspected on good grounds, is either by its content or due to the anticipated sentence of small weight (that is, regardless of the statutory sentence), a detention order is not issued for this individual. In such a case, a European arrest warrant cannot be issued, since the supposition for issuing such a arrest warrant has not been substantiated. However, even if a final detention order is issued in accordance with domestic legislation, this does yet not mean that an European arrest warrant will be issued, since the proportionality of such a measure has to be considered each time.

	The verification of proportionality is indeed not written expressly in the secondary legislation; however, it proceeds from the Constitution of the Republic of Slovenia and is part of the criminal proceedings of the Republic of Slovenia, since it is mandatory for the court always to verify proportionality between the weight of the criminal offence, the validity of suspicion and the reasons for detention or arrest. In practice, this means that the proportionality verification has been performed while issuing the decree on detention, and without a decree on detention, it is not possible to issue a European arrest warrant. Verification of the principle of proportionality when deciding on the issue of detention orders (and on their subsequent prolongation) and other measures related to the violation of personal liberty is generally accepted in case-law, also due to the decisions of the Constitutional Court of the Republic of Slovenia.
Is it possible for a sought person to get (state paid) legal assistance provided by X in the following situations: (1) in X for the underlying X criminal proceedings when he is arrested in another Member State on the basis of a X EAW and (2) in another Member State, for the underlying criminal proceedings when he is arrested in X on the basis of an EAW of the other state? (X = state in the head of the relevant column)	1)Mandatory defense with a legal representative is stipulated in Article 70 of the Criminal Procedure Act; namely, if it involves cases when the accused person is mute, deaf or otherwise incapable to defend himself, when a criminal proceeding is initiated against him/her for a criminal offence, for which a prison sentence of thirty years is prescribed under law, or if he/she is brought to an investigating judge or if detention is ordered against him/her. In these cases the president of the court shall impose a legal representative by official duty, if the accused person doesn't take one on his/her own. Otherwise, in accordance with Article 71 of the Criminal Procedure Act, the accused person, who by his/her own financial conditions cannot pay for a legal representative, shall be at his/her own request or if in the interest of justice imposed a legal representative by official duty. The costs of the legal representative shall be considered under costs of a criminal proceeding. In accordance with Article 95 of the Criminal Procedure Act, if the accused person has been found guilty, the court shall order that the accused person must reimburse all costs of the criminal proceeding; however, it may also exempt the accused person from the reimbursement of all costs or labour costs, if due to his/her payment the support of the

	accused person or persons that the accused person is obliged to support would be endangered. If the criminal proceeding is suspended or a judgment is issued, by which the accused person is acquitted from the allegation, or if the allegation is rejected or a decision is issued, by which the allegation is rejected, the court shall order that the costs are charged to the budget. 2)According to article 16 of the ZSKZDČEU the requested person must have a counsel during the entire surrender procedure from the bringing to the investigating judge or from the first hearing involving decision on the surrender until the execution of the surrender. If the requested person does not take a defence counsel, the president of the court shall appoint him *ex officio*
Accessory surrender	No
Flagging	Judicial authorities
Competent authority for Art 111 Schengen requests	Competent courts as well as the Ministry of the Interior - Police- International Police Co-operation Division
Seizure and handover of property	With regard to this it has to be mentioned that the provision of the Framework Decision that governs the seizure of items is partly implemented in Article 24 of ZSKZDČEU, and partly also in the existing national regulations – Criminal code. In accordance with the Slovenian legislation, items from a criminal offence must be seized – this includes items that were used or intended for use while committing a criminal offence, or were produced with a criminal offence, as well as unlawful pecuniary advantage and items that could be used as evidence in a criminal proceeding.
Principle of direct contacts	Yes, according to the first paragraph of the 14 of the implementing law (ZSKZDČEU) the issuing and executing judicial authorities must communicate directly as a rule.
Integration of recital 12 in implementation law	Yes
Dual criminality abolished for attempt and complicity	Yes
4 months requirement	

Regime for transfer back	The person would be automatically returned, without any further formalities or consultations, however Slovenia has not had any practical case yet - article 72 of ZSKZDČEU (if the order allowed for the surrender of a national of the Republic of Slovenia, or a national of a Member State, residing in the territory of the Republic of Slovenia, or an alien who is in possession of a permanent residence permit in the Republic of Slovenia, conditioned by returning the person to the Republic of Slovenia after the proceeding is concluded (point 3 of Article 11), the criminal judgment imposed by the court of the ordering State shall be enforced in the Republic of Slovenia, even if the offence in the order is not a criminal offence under the law of the Republic of Slovenia as well as without the consent of the person)
24/7 rota?	Yes
In case of refusal of surrender for the execution of a sentence on the ground that the sought person has the nationality, or is a resident of the executing State, is execution of that sentence possible in the executing state when there is no dual criminality?	Yes**,** if the national court receives an order against a national of the Republic of Slovenia or of another Member State residing in the territory of the Republic of Slovenia, or an alien who is in possession of a permanent residence permit in the Republic of Slovenia, with the aim of executing a custodial sentence, precautionary or other sanction that is carried out by detention order, and all other conditions are met for the surrender of such a person and the person has agreed to serve the sentence in the Republic of Slovenia and the national court binds itself to enforce the judgement, the order shall be treated as a request for the execution of a custodial sentence, precautionary or other sanction that is carried out by detention order. In such a case, the criminal judgment imposed in the issuing State of the order, would be enforced in the Republic of Slovenia also if the offence in the order is not a criminal offence under the law of the Republic of Slovenia
Age of criminal liability	14 years
Statistics	Yes, 2007, 2008: and 2009
Website	
Jurisdiction ECJ	Yes

Case law/preliminary questions

COM Implementation Report of 2007	
SI has not specifically transposed Article 26 FD	The provision of the article 26 of the FD is transposed in different legal instruments - new implementing law - 2 paragraph of the article 33 of the ZSKZDČEU as well as in the provision of the Criminal Code: 2 paragraph of the article 33 of the ZSKZDČEU- determines that upon the surrender of the requested person, all information connected with the duration and type of measures taken in order to provide the presence as referred to in Article 23 of this Act shall be submitted to the issuing judicial authority Article 15 of the Criminal Code determines that any period of detention and confinement during the extradition procedure, or sentence of imprisonment served under the judgment of a foreign court, if it becomes known at a later time, shall be credited towards the sentence imposed for the same criminal offence by the domestic court. If sentences are of different types, the domestic court shall decide on the appropriate method of deduction of the period served abroad. If the convicted person server together more sentences than they were imposed on him in the judgment before the domestic court, the surplus shall deem him wrongfully convicted Article 45 of the Criminal code - determines that time spent on remand shall be counted as a part of the sentence of imprisonment or shall be credited towards a fine.
it is contrary to the Framework Decision that requests received by SI for offences committed prior to 7 August 2002 will be treated under previous extradition arrangements (art 32 FD)	Article 32 of the FD was not transposed in the new law, consequently Slovenia does not have any limitation regarding the time of the commission of the criminal offence.

25. SPAIN

Recommendations EAW report 30-3-2007 (5085/2/07 REV 2 CRIMORG 5)	*Follow up report 27-11-09*
New developments	
1 – That measures are put in place to ensure uniform compliance, by Spain's issuing JAs, of their statutory duty to provide the CA with copies of all EAWs issued and transmitted. (See 7.2.1.1).	Issuing JAs generally do send copies of EAWs issued and transmitted now.
2 – That consideration be given by the Spanish authorities to the preparation of a form of words/brief explanatory memorandum to expressly confirm, for the benefit of executing MSs (in particular common law countries) that prosecution decisions have de facto been reached in respect of all EAW prosecution requests, but that before such a decision can formally be taken, the Spanish Procedural Code requires the hearing of the person. (See 7.2.1.3).	No such memorandum has been done, but permanent contact is established with the executing MS to clarify this on a case by case basis.
3 – That the Spanish authorities reappraise the current practice of causing all requested persons to be transported to Madrid rather than directly to the locality of the issuing JA itself. (See 7.2.1.6).	No legislative change has been introduced in this regard up to now. Nevertheless, Spain considers this issue as one of the possible future changes of the implementing law.
4 – To ensure that measures are put in place to ensure that only judicial scrutiny results in flagging or a request for further information being raised in respect of EAWs received via the International Police Cooperation Unit. (See 7.3.1.1).	The IPCU requests judicial scrutiny when flagging or further information is needed.
5 – To examine the quality of linguistic provision available to requested persons and their legal advisors before the executing JA and to take such remedial action as may be required. (See 7.3.1.2).	Examining the quality of linguistic assistance is difficult because the other language is not known by JAs- however, this is a matter of concern for all authorities involved.
6 – To update the Fiche Française, ensuring that greater clarity is expressed in respect of the procedures which may be adopted in the case of EAWs concerning minors. (See 7.3.1.3)	The FF has not been updated. The practice in Spain so far is to surrender minors ageing 14-18 to the issuing MS.

General information **General Council recommendations 2009**	
Language flexibility	EAWs via SIS will be translated by ES
Time limit for translated EAW	

Provisional arrest	Yes 72 hours
Proportionality test	Yes
Is it possible for a sought person to get (state paid) legal assistance provided by X in the following situations: (1) in X for the underlying X criminal proceedings when he is arrested in another Member State on the basis of a X EAW and (2) in another Member State, for the underlying criminal proceedings when he is arrested in X on the basis of an EAW of the other state? (X = state in the head of the relevant column)	There is no provision for these sort of cases.
Accessory surrender	Yes
Flagging	Judicial authority
Competent authority for Art 111 Schengen requests	National Agency for Data Protection. Courts of the Administrative Jurisdiction
Seizure and handover of property	Yes
Principle of direct contacts	MoJ central authority
Integration of recital 12 in implementation law	
Dual criminality abolished for attempt and complicity	Yes
4 months requirement	Cf FD
Regime for transfer back	The Art 5(3) FD guarantee is sufficient basis for surrender and return of own nationals.
24/7 rota?	
In case of refusal of surrender for the execution of a sentence on the ground that the sought person has the nationality, or is a resident of the executing State, is execution of that sentence possible in the executing state when there is no dual criminality?	No such case has arisen so far.
Age of criminal liability	18 yrs, derogations possible in serious cases for 14-18 yr old
Statistics	Yes, 2007 and 2008
Website	www.prontuario.org detailed and regularly updated practical guide on international

	judicial assistance www.mjusticia.es contains a chapter on the functioning of EAW
Jurisdiction ECJ	Yes

Case law/preliminary questions: -

COM Implementation Report of 2007: no remarks stem from the 2007 COM report.

26. SWEDEN

Recommendations EAW report 21-8-2008 (9927/2/08 REV 2 CRIMORG 79)	***Follow up report 23-7-09 and 29-07-2010***
	In Sweden no new national legislative measures have been adopted since 1 April 2007 regarding the EAW. Therefore Sweden has no new information to provide in this regard.
1 - Institute the necessary mechanisms to provide complete and reliable statistics on European Arrest Warrants issued, executed or rejected by the Swedish authorities (see 7.1.7 and see footnote 2 in page 28).	SE has provided statistics for the year 2007, 2008 and 2009
2 - Adopt measures to ensure that appropriate training programmes are put in place, so that extensive and regular training on EAW is provided, mainly to judges and defence lawyers (see 7.1.8).	
3 - Consider taking appropriate measures to ensure that EAWs in conviction cases are issued either by a judicial authority or under the supervision of a judicial authority, in line with the provisions of the Framework Decision (see 7.2.1.1).	
4 - Produce written guidelines to assist those bodies and institutions entitled to request the issue of an EAW in conviction cases (see 7.2.1.2).	
5 - Consider amending the legislation so that there is no need to summon the person concerned to appear in court when the detention order is requested with a view to further issuing an EAW (see 7.2.1.3).	
6 - Amend the legislation so that the provisions of the Framework Decision on temporary surrender are made effectively applicable, by enabling the competent authorities to provide guarantees that the requested person will be sent back to the executing State (see 7.2.1.4).	
7 - Amend the implementing legislation in order to ensure that renunciation of the entitlement to the speciality rule will be valid only if it is given before a judicial authority and after consultation with a legal counsel (see 7.2.1.5).	
8 - Take the necessary steps to ensure that existing SIS alerts based on International arrest warrants are replaced with SIS alerts based on EAWs (see	

7.2.1.6).	
9 - Reconsider the current practice of adding restrictive validity flags to SIS-alerts without prior consultation of a judicial authority (see 7.3.1.1).	
10 - Update the information on the national authorities competent to receive an EAW provided in the EAW Atlas and the Fiches Françaises, as well as in the notifications to the General Secretariat of the Council (see 7.3.1.2).	Sweden has updated the Fiches Françaises and the notifications to the General Secretariat
11 - Amend the implementing legislation in order to ensure that consent to surrender and renunciation of the entitlement to the speciality rule will be valid only if it is given by the requested person before a judicial authority and after consultation with a legal counsel, in line with Article 13 of the Framework Decision (see 7.3.1.3).	
12 - Clarify the deadline for the prosecutor to refer the case to the court for a decision on surrender, in order to enable the latter to meet the required time limits in accordance with Article 17 of the Framework Decision (see 7.3.1.4).	
13 - Consider amending the implementing law so that the statutory time limits for appeal do not lead to a breach of the time-limits stipulated in Article 17 of the Framework Decision (see 7.3.1.6).	
14 - Take the measures considered necessary (e.g. through an addition to the Prosecutors' Manual) to ensure that the provisions of the implementing law on competing EAWs are fully complied with (see 7.3.1.8).	

General information **General Council recommendations 2009**	
Language flexibility	English/Danish/Norwegian
Time limit for translated EAW	
Provisional arrest	Yes, max 72 hrs
Proportionality test	An arrest warrant may only be issued if it appears justified to do so in view of the nature and seriousness of the crime and the circum-stances in general, and when the harm to the

	individual and the delay and costs that can be expected in the case are taken into account. Prosecutor's manual comprises detailed guidance on proportionality; no specific guidelines for EAWs in conviction cases.
Is it possible for a sought person to get (state paid) legal assistance provided by X in the following situations: (1) in X for the underlying X criminal proceedings when he is arrested in another Member State on the basis of a X EAW and (2) in another Member State, for the underlying criminal proceedings when he is arrested in X on the basis of an EAW of the other state? (X = state in the head of the relevant column)	(1) Yes in accordance with the condition in the Swedish Code on Judicial Procedure. As a main rule a state paid public defence counsel is appointed for the underlying Swedish procedure (2) No
Accessory surrender	Yes (if dual criminality)
Flagging	International police cooperation unit
Competent authority for Art 111 Schengen requests	The Swedish National Police Board
Seizure and handover of property	Partly transposed
Principle of direct contacts	Yes, MoJ Central authority
Integration of recital 12 in implementation law	No
Dual criminality abolished for attempt and complicity	Yes
4 months requirement	Cf FD
Regime for transfer back	Domestic provision
24/7 rota?	
In case of refusal of surrender for the execution of a sentence on the ground that the sought person has the nationality, or is a resident of the executing State, is execution of that sentence possible in the executing state when there is no dual criminality?	Yes
Age of criminal liability	- 15 yrs - issuing a EAW for a person under the age of 18 yrs is possible if it concerns serious criminality or if the person has a strong connection with Sweden or if there is a special reason
Statistics	Yes - 2007, 2008 AND 2009

Website	
Jurisdiction ECJ	Yes

Case law/preliminary questions

COM Implementation Report of 2007	
With reference to the implementation of Art 4(1) FD, SE has stated they will follow the Framework Decision in practice, however such statements do not amount to correct transposition of the Framework Decision.	

27. UNITED KINGDOM

Recommendations EAW report 7-12-2007 (9974/2/07 REV 2 EXT 1 CRIMORG 96)	***Follow up report 13 October 2009***
New developments	The UK has not implemented any legislative changes into its domestic legislation since 1 April 2007. The last amendments came into effect on 15 January 2007.
1 – That the statutory issues particularised in section 7.3.1.2 of this report (*refusal on the basis of ECHR issues and on grounds incompatible with the FD (Art 4.4, and 4.7.b*) be addressed in the light of ECJ interpretational jurisprudence (in particular the *Pupino* case) so that the UK position may be brought more closely into line with the FD.	
2 - That the authorities of the UK re-examine the avenues of appeal available to requested persons and consider how best domestic processes may be streamlined to give effect to the surrender time limits set out in the FD (see 7.3.1.3).	
3 – That the UK prioritises its efforts to identify an appropriate test case in which the necessity of the non-statutory certification process may be examined (see 7.3.1.1).	
4 - That the UK prioritises its efforts to identify appropriate test cases in which guidance can be sought concerning the extent to which supplementary information may be relied upon to remedy deficiencies in EAWs received by the UK as an executing Member State (see 7.3.1.1) or, alternatively, if a Warrant does not contain the statement referred to in Section 2 (2) legislative changes are considered to remedy the situation regarding the provision of supplementary information.	
5 - That, in light of the outcome of the test case(s) taken pursuant to recommendations 3 and 4, the UK authorities consider whether there is a need to introduce further legislation to close any remaining lacunae (see 7.3.1.1).	
6 - That the UK examine its system of handling incoming requests via the Interpol channels for surrender where there is no EAW copy and no UK link. The criteria for giving a follow up to such a request should not be based on a UK perception of the seriousness of the offence (see 7.3.1.5 and	

7.3.1.1).	
7 - That consideration be given to the creation of a suitable forum whereby the various JAs of the UK can undertake an exchange of views and best practices (see 7.3.1.1. and 7.3.2.1).	
8 – That immediate measures be put in place to facilitate the timely and adequate provision of legal aid to persons subject to EAW surrender requests in England and Wales (see 7.3.1.6).	

General information **General Council recommendations 2009**	
Language flexibility	No
Time limit for translated EAW	
Provisional arrest	Yes
Proportionality test	Yes
Is it possible for a sought person to get (state paid) legal assistance provided by X in the following situations: (1) in X for the underlying X criminal proceedings when he is arrested in another Member State on the basis of a X EAW and (2) in another Member State, for the underlying criminal proceedings when he is arrested in X on the basis of an EAW of the other state? (X = state in the head of the relevant column)	
Accessory surrender	
Flagging	Not applicable
Competent authority for Art. 111 Schengen requests	Not applicable
Seizure and handover of property	Separate mla request
Principle of direct contacts	Via central bodies
Integration of recital 12 in implementation law	
Dual criminality abolished for attempt and complicity	Yes
4 months requirement	Cf FD

Regime for transfer back	Domestic legislation based on EAW FD
24/7 rota?	
In case of refusal of surrender for the execution of a sentence on the ground that the sought person has the nationality, or is a resident of the executing State, is execution of that sentence possible in the executing state when there is no dual criminality?	
Age of criminal liability	10 (England, Wales and Northern Ireland), 8 (Scotland)
Statistics	2007: yes
Website	Monthly updated intranet guidebook for prosecutors
Jurisdiction ECJ	No

Case law/preliminary questions:-

COM Implementation Report of 2007	
In relation to Article 1(1), however, it is noted that the UK refuses to surrender the requested person unless the investigations have been closed. Moreover the UK will rarely use provisional arrest in the process of executing an EAW, and therefore will not arrest the requested person until the certification has been granted. This appears to the Commission as contrary to the definition and the scope of the EAW as defined in Article 1(1) of the Framework Decision, and in practice leads to serious difficulties.	
In the UK the transposing legislation applies only to the Member States which have been listed by Decree or Order. The Commission has not fully been informed of these lists, although it should be notified of any relevant transposing measure including secondary national legislation	
For reasons of national security, the Secretary of State in the UK may overrule the decision of the judge or direct the judge if he believes that the requested person was acting in the interests of the UK by carrying out actions conferred or imposed by or under an enactment, or is not liable as a result of an authorisation given by the Secretary of State for his action. This is contrary to the Framework Decision, since this ground for	

refusal is not envisaged and moreover it transfers the decision making power from the executing judicial authority to the Executive.	
UK has introduced additional grounds for refusal based on the passage of time and extraneous considerations, which may go beyond the Framework Decision. Such grounds for refusal may be established on a relatively low standard of proof and once raised, compel the judge to look into the substance of the underlying case and the conduct of the issuing Member State.	
UK has introduced additional grounds for refusal arising from the application of Treaties or Conventions which have not been set aside by the Framework Decision. The UK has also specified that surrender to a Member State is barred by special hostage taking considerations in specific situations where the International Convention against the Taking of Hostages of 18 December 1979 applies. This is contrary to the Framework Decision as this instrument regulates relations between Member States in surrender procedures and as such the Framework Decision has replaced a number of other instruments which cannot be used in order to add grounds for refusal in dealing with Member States. However, those instruments remain unaffected when Member States deal with third countries.	
Article 5(1) guarantee. Of these only UK imposes additional conditions, not envisaged in the Framework Decision, in relation to the conduct of the hearing, such as the right to defend oneself in person or through legal assistance of one's own choosing or where appropriate to be given free legal assistance and to obtain the examination of witnesses on one's behalf under the same conditions as witnesses against oneself.	
Article 8 – Content and form of the European arrest warrant The UK has not included in its legislation all the information in Article 8(1) nor indicated whether it uses the correct form. It has done so because a non EU Member State may be designated under Part One of the Act provided that it does not operate the death penalty and is a Schengen State. The UK has, nevertheless, stated that in practice it uses the form in the annex to the Framework Decision. This again does not satisfy the	

requirement of legal certainty. UK's legislation may give rise to difficulties, as it appears to be somewhat confusing. Also problematic, the UK form must indicate that the requested person was convicted in his presence or give evidence that the individual "deliberately absented himself from his trial" whereas the form annexed to the Framework decision simply states that the requested person shall be present unless indicated otherwise.	
UK has added a stage for the execution of a EAW, which is not required by the Framework Decision and according to how it is dealt with may be contrary to the Framework Decision. UK has imposed a certification or pre-endorsement stage for a EAW to be valid. This supplementary formality is to be complied with by the central authority, which, in practice often acts as an executive authority. The judgment of the House of Lords in Dabas v. HCJ Madrid (2007) UKHL 06, has however reduced the importance of the certification stage in the UK, finding that the EAW in itself could constitute a certificate.	
UK seem to send back an incomplete form and to require almost systematically that a new EAW is issued which cause great difficulties to some MS which cannot reissue EAW and cause delays in any event.	
UK does not allow a EAW to be transmitted directly where the location of the person is known	
In UK, requests for further information before the surrender decision comprise details concerning the statutory requirement that the requested person in any conviction case is declared to be "unlawfully at large" i.e. the person has been convicted and is liable to immediate arrest and detention. However the Commission has been informed that such a requirement should be abolished pursuant to the adoption of the Police and Justice Act, which entered into force on 1st January 2007.	
UK no deadline is provided for making the decision following the highest appeal (House of Lords). Thus both the 60 and 90 day deadlines could in principle be exceeded. Times limits are far from being respected by the UK, as they are not transposed in the Extradition Act 2003 and	

are often delayed by appeal procedures. No 60 day time limit is imposed for surrender after the arrest of the requested person. The only time limit which is mentioned in the Extradition Act 2003 is the 10 day limit after the final decision of Article 17(2). A first instance appeal must be lodged within 7 days of the surrender decision with the hearing taking place within 40 days of the arrest of the requested person. A second appeal to the House of Lords or to the Privy Council is then possible, provided the requested person obtains leave to do so. The leave application may be made to the Appeal Court within 14 days after the 1st decision or if it is refused directly to the House of Lords within 28 days of that refusal. If the leave is granted (and there is no statutory limit set for the granting of leave), the appeal shall commence within 28 days of the grant for leave. No statutory limit is set neither for the hearing nor for the decision. As a result of this procedure, the UK's average time for a surrender procedure to be completed is 28 days when the requested person has agreed to the surrender and 65 days when the requested person does not consent to the surrender and appears to be exceeding the delays set by the Framework Decision.	
UK has in transposing Article 23(4) allowed for discharge of the person as an alternative to postponement. The grounds for discharge (where it would be "unjust or oppressive" to extradite the person) are vague to contrast with the Framework Decision. The postponement of the surrender for humanitarian reasons is not specifically foreseen as it is for the hearing according to their legislation.	

PART IX - STATISTICAL CHARTS IN RELATION TO THE EUROPEAN ARREST WARRANT

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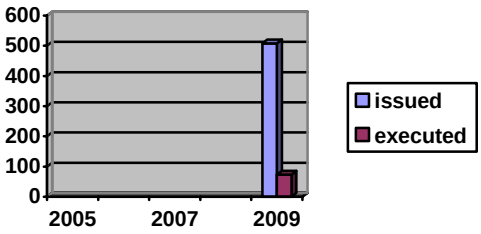

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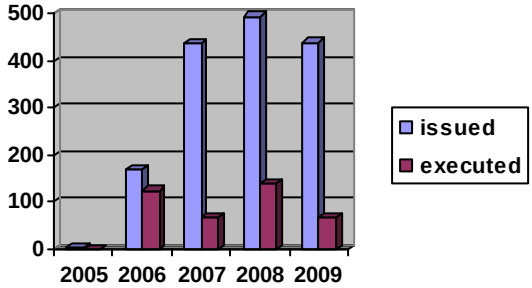

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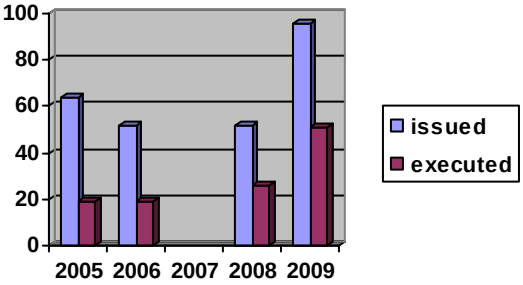

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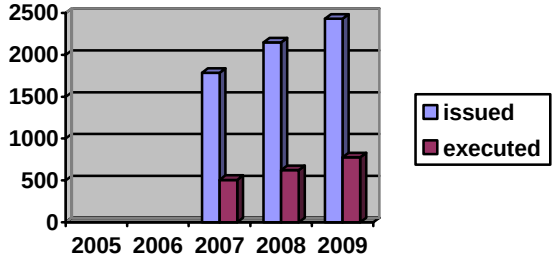

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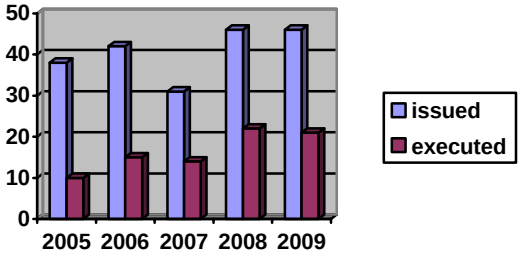

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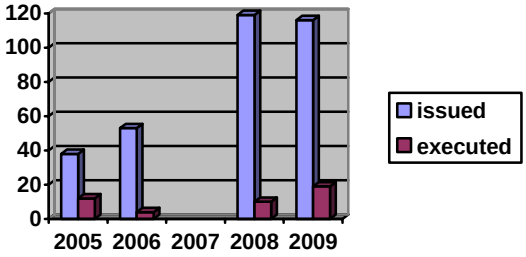

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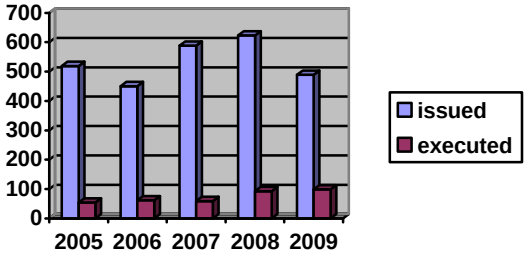

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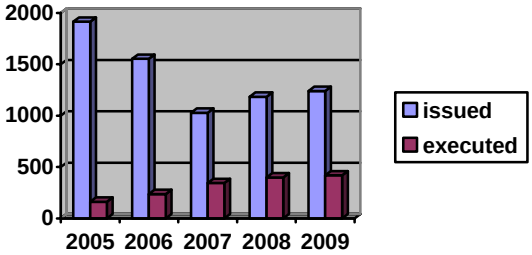

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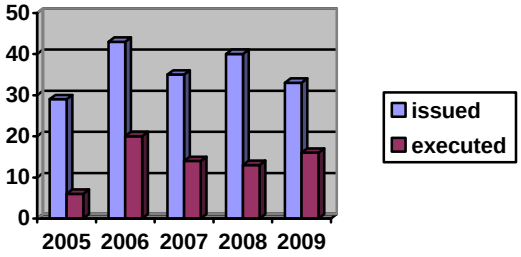

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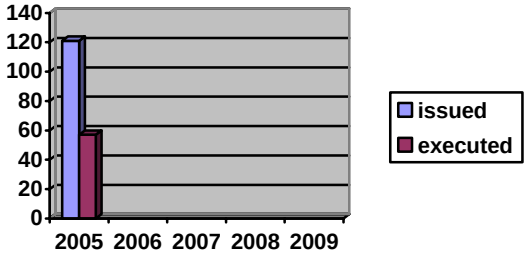

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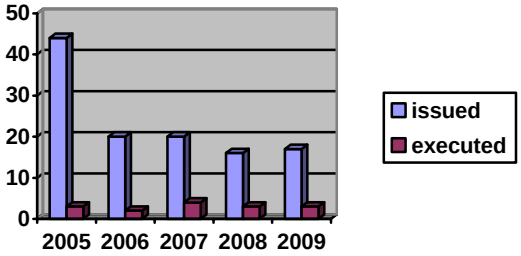

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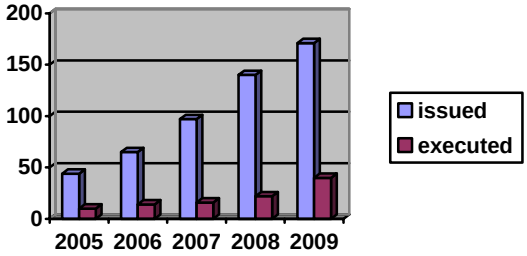

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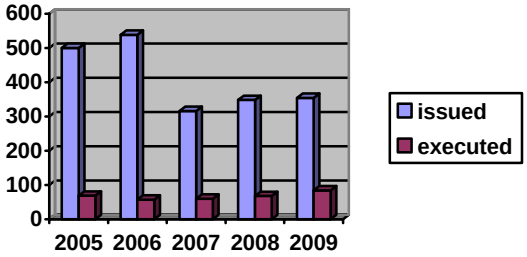

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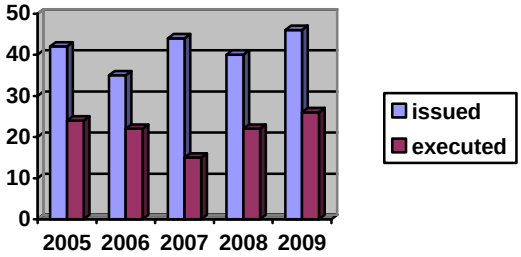

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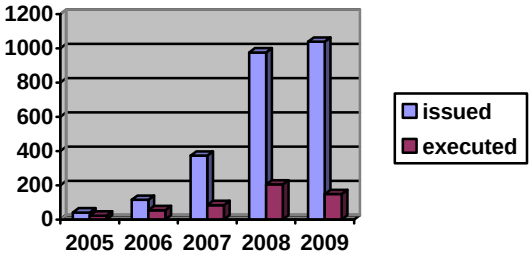

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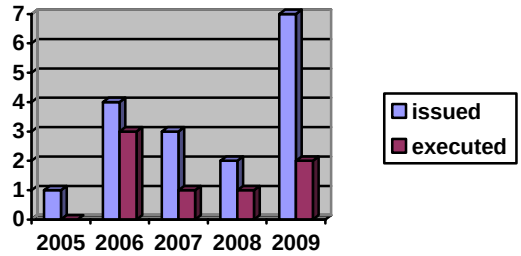

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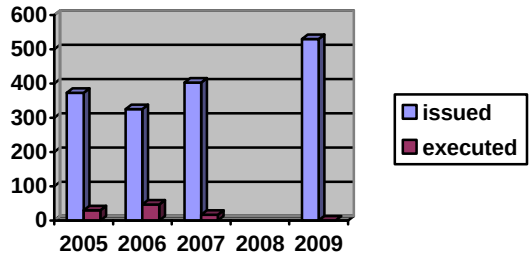

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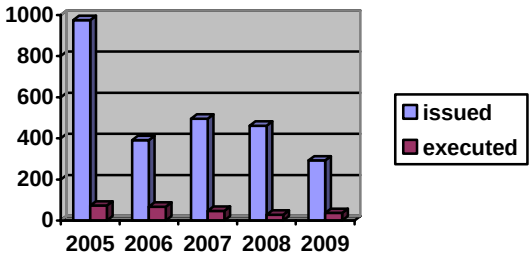

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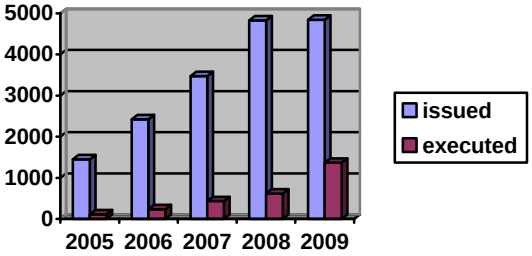

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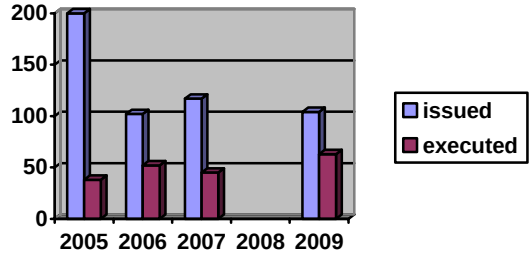

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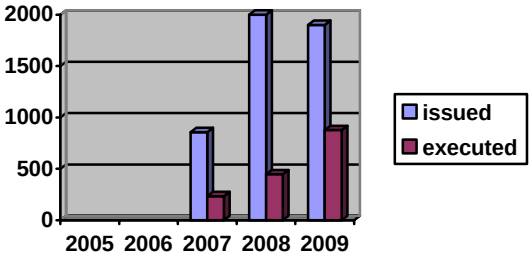

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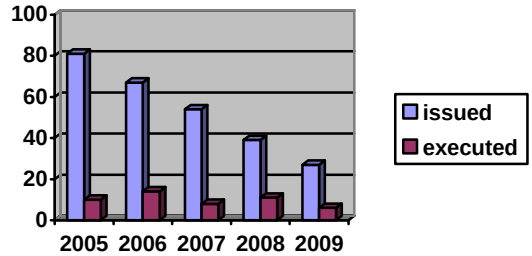

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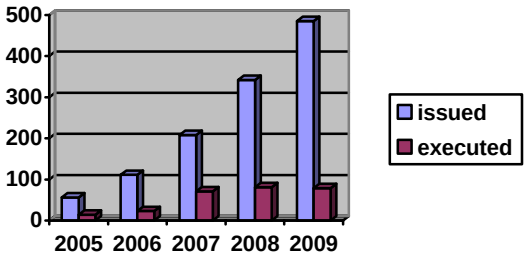
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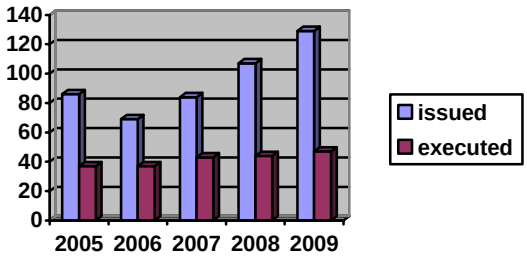
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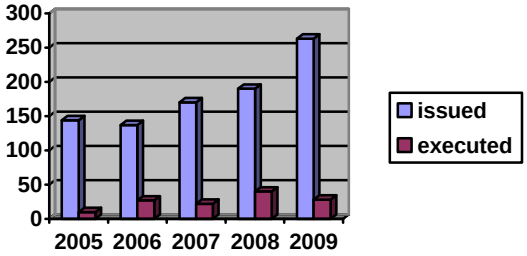
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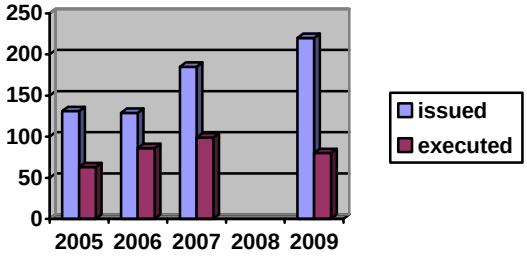
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