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NOTE

from : Commission Services
to : Working Party on Co-operation in Criminal Matters
Subject : Article 32 (1) of the European arrest warrant Framework Decision (EAW)

Article 32 of EAW entitled "transitional provisions" states as follows:

"Extradition requests received before 1 January 2004 will continue to be governed by existing instruments relating to extradition. Requests received after that date will be governed by the rules adopted by Member States pursuant to this Framework Decision. However, any Member State may, at the time of the adoption of this Framework Decision by the Council, make a statement indicating that as executing Member State it will continue to deal with requests relating to acts committed before a date which it specifies in accordance with the extradition system applicable before 1 January 2004. The date in question may not be later than 7 August 2002. The said statement will be published in the Official Journal of the European Communities. It may be withdrawn at any time."

1.1. Member States that have submitted a statement and the periods covered:

As set out for practitioners in the Council's EAW Handbook¹, five Member States (**Austria, Czech Republic, France, Italy and Luxembourg**) have availed (with varying levels of compliance with the Framework Decision²) of the possibility in Article 32 of the EAW Framework Decision to apply, as an executing state, the extradition system in place before 1 January 2004 (the date of operation of the EAW) to acts committed before a set date - no later than 7 August 2002. Three of the five Member States that made statements will apply the extradition system applicable before 1 January 2004 to acts before 7 August 2002, France will apply the extradition system to acts before 1 November 1993 and the Czech Republic to acts committed by Czech nationals before 1 November 2004.

1.2 The legal situation where there is a statement under Article 32:

Difficulties can arise in respect of Article 32 statements in cases where the act(s) have been committed before 7 August 2002 (respectively before 1 November 1993) but where the state of the location of the person sought is unknown. In such cases a European arrest warrant can be issued and, if appropriate, an alert will be entered in the SIS. Only after the hit can it be ascertained whether the executing state (the state where the hit occurs) is one of the states having made a statement under Article 32 of the Framework Decision and whether the act(s) for which surrender is sought is covered by that statement. In such a case it has previously been suggested at Council³ that, although a European arrest warrant has been issued, the issuing state should, if it is necessary for the executing state, follow previously applicable extradition procedures as a requesting State. The Council also proposed that where a European arrest warrant contains several acts some of which have been committed before 7 August 2002 (respectively before 1 November 1993), it would seem appropriate to split up the procedure so that extradition procedures are followed for those acts but surrender procedures are followed for the other acts.

¹ 8436/2/10 p.11.

² Re CZ See Annex to Commission report on the implementation of the EAW SEC(2007)979 12 July 2007 page 37. Re IT See Council evaluation report on Italy 5832/2/09 page 47-48. Re LU See Council evaluation report on Luxemburg 10086/1/07 page 26-27.

³ 15508/03.

In most cases, subject to any applicable bi-lateral agreements between Member States, the extradition system in place before 1 January 2004 applicable by virtue of an Article 32 statement will be the provisions (according to individual states' implementation and reservations) of the Council of Europe Convention on Extradition of 1957 and its three protocols⁴, the European Convention on the Suppression of Terrorism 1977 and its amending protocol⁵ and the EU Conventions on simplified extradition of 1995⁶ and on Extradition 1996⁷ that build on the 1957 Convention.

1.3 A re-examination of the need to maintain Article 32 statements

The potential difficulties set out above, the fact that Article 32 envisages the possible withdrawal of the statements, the passage of time since the EAW has come into operation, the existence of prescription as an optional ground of refusal (Article 4.4) and the ongoing project to produce EU instruments setting out common minimum standards for suspects and accused persons all indicate that this is an opportune time to ask the Member States involved to examine whether there is an ongoing need to maintain the statements made pursuant to Article 32.

The advantages of a withdrawal of the statements to the EAW system in general would be as follows:

- There would be legal certainty within the EU for both Member States and requested persons that the applicable system in all surrender requests within the EU⁸ will be surrender under the EAW, rather than traditional extradition. This is appropriate in an area of freedom, security and justice.

⁴ 13/12/1957 ETS No 24; 15/10/1975 ETS No 86; 17/03/1978 ETS No 98; 10/11/2010 ETS No 209).

⁵ 27/01/1977 ETS No 90 and 15/05/2003 ETS No 190.

⁶ 30/03/1995 OJ C 78.

⁷ 23/10/1996 OJ C 313.

⁸ Subject only to bi and multi-lateral arrangements retained or concluded pursuant to the provisions of Article 31 FD EAW that extend, simplify and facilitate surrender under the EAW such as the retained uniform legislation between Nordic Member States.

- For practitioners (both within and outside the Schengen Information System) dealing with surrender/extradition requests where speed is essential, the benefits of such certainty would be that for Member States it will not be necessary to deal with the many previous extradition instruments⁹ that could possibly apply according to if and how they have been implemented and whether the many reservations made by the states' parties to these instruments apply.
- The Article 32 implementation issues¹⁰ and attendant problems that have been raised by the Commission and Council in relation to some Member States would be addressed.
- Pursuant to the Framework Decision, acts that take place after 7 August 2002 must be subject to the EAW system and nine years have now passed since that "cut-off" date. Given this passage of time and given the existence in Article 4.4 of prescription as an optional ground of refusal the perceived necessity of an Article 32 statement at the time of entry into force of the EAW will from today's viewpoint be considerably reduced and may not now outweigh the potentially detrimental effect on the EAW system as a whole.
- Withdrawal would reflect a confidence by all Member States in an EAW system that has been shown to work in its seven years of operation and is being strengthened by the ongoing project to produce EU instruments setting out common minimum standards for suspects and accused persons with its attendant increase in mutual trust between Member States.

⁹ Including the European Convention on Extradition 1957, 13/12/1957 ETS No 24 and its first (15/10/1975 ETS No 86) second (17/03/1978 ETS No 98) and third (10/11/2010 ETS No 209) additional protocols; European Convention on the Suppression of Terrorism 1977 (27/01/1977 ETS No 90) and its amending protocol (15/05/2003 ETS No 190); Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on simplified extradition procedure between the Member States of the European Union 30/03/1995 OJ C 78; Convention drawn up on the basis of Article K.3 of the Treaty on European Union, relating to extradition between the Member States of the European Union 23/10/1996 OJ C 313.

¹⁰ Re CZ See Annex to Commission report on the implementation of the EAW SEC(2007)979 12 July 2007 page 37. Re IT See Council evaluation report on Italy 5832/2/09 page 47-48. Re LU See Council evaluation report on Luxemburg 10086/1/07 page 26-27.

1.4 The possibility of limiting the scope of Article 32 declarations

Article 32 provides that a statement must be made "*at the time of the adoption of this Framework Decision*" and makes no provision for statements to be made or modified after the Framework Decision has been adopted. However it does provide that an Article 32 statement "*may be withdrawn at any time.*"
