COUNCIL OF THE EUROPEAN UNION

Brussels, 18 May 2009

8302/2/09 REV 2

LIMITE

CRIMORG 55
COPEN 68
EJN 24
EUROJUST 20

NOTE

from :	Presidency
to :	CATS/COREPER/Council
Subject :	Final report on the fourth round of mutual evaluations - The practical application of the European Arrest Warrant and corresponding surrender procedures between Member States

Delegations find attached the draft final report on the fourth round of mutual evaluations.

This report has been discussed at the MDG meetings of 24 April and 13 May 2009 and the CCM meeting of 6 May 2009. The Presidency submits the report to the Article 36 Committee and invites it to forward the report to Coreper/Council. The Presidency expects also that this report will be sent to the European Parliament for information.

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1. INTRODUCTION

Pursuant to Article 8(5) of the Joint Action of 5 December 1997 establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime, this report attempts to draw conclusions regarding the fourth evaluation exercise, with a view to enabling the Council to take such decisions upon it as are considered appropriate.

The fourth round of mutual evaluations addressed the application in practice of the European Arrest Warrant and cooperation between Member States in this regard. In particular, the exercise's objectives were to evaluate the practical processes operated and encountered by Member States when acting both as issuing Member State and as executing Member State and to assess relevant training provisions and provision for defence.

The evaluation process followed a pattern consistent with that of the preceding rounds of evaluation. To that end, following each evaluation visit a report was drafted which gave a factual description of the relevant organisational structures and legal practices of the evaluated Member State in its role both as issuing and as executing Member State, training provisions and defence perspectives, before moving on to identify both areas requiring improvement and areas of good practice and to make such recommendations as the evaluating team felt appropriate concerning means by which the operation of the European Arrest Warrant might be further streamlined and improved.

Many of the recommendations contained in the national reports relate to the unique make-up of individual countries. However, some common issues emerged during the evaluations and recommendations were made on that basis, either with potential application to a number of Member States or explicitly addressed to the European Union as a whole; they constitute the focus of this report.

This report is based on the individual evaluation reports[1], the report on the first seven evaluation visits[2] and the discussions on those reports in the Multidisciplinary Group on Organised Crime (MDG) and in the COPEN group of experts on the EAW. As stated above, the intention is to reflect the main questions identified in the course of the evaluation exercise from a general perspective and, where appropriate, to propose action in the form of recommendations either to the European Union or to the Member States themselves.

These recommendations (...) have not been ranked according to their importance. In the course of preparation of the final report it was considered that creating a hierarchical order of specific recommendations could be difficult and in some cases contra-productive, as those are mutually related and supplementing each other in order to allow the appropriate functioning of the EAW. The purpose of the final report is not to reproduce the individual recommendations made to the Member States and content of individual evaluation reports. All the Member State evaluation reports are available and publicly accessible. The general aim of the final report is to identify certain difficulties and to provide the recommendations in order to solve those problems. For this purpose, depending on the case some of the recommendations are addressed to the Member States, whereas in other cases the Council is agreeing to certain (follow-up) action . It is formulated in the way clearly expressing the importance given to each of the recommendations.

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1 The reference numbers of the individual reports are as follows: 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), Luxembourg (7593/2/07 REV 2 CRIMORG 59), 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).

2 8409/08.

2. KEY FINDINGS

In general terms, the practitioners who were interviewed in the different Member States had a very positive view of the EAW and its application. A very large majority of the authorities involved in the operation of the EAW are of the view that it has significant advantages compared with the traditional extradition system, and emphasise its benefits as a useful tool that speeds up the handling of cases while safeguarding individual rights. Among others, significant shortening of the time limits for the surrender of the person should be mentioned as one of the most important added value of the new instrument. This is further underlined by the statistics which show that in the EU, a contested procedure for surrender takes on average 43 days. (…).. National authorities have assumed the innovative nature of the EAW and are aware of the need to introduce a new judicial culture based on mutual trust, as a condition for the EAW system to deploy all its potential. Their willingness to see that the EAW system is effectively enforced is remarkable. No small number, however, stressed the need to take further steps to approximate legislation and identify common procedural standards as a means of enhancing mutual trust.

The information gathered during the exercise shows that, in general, the EAW is operating efficiently. The basis for this conclusion is the increasing volume of requests, the percentage of them that result in effective surrender and the fact that the surrender deadlines are generally met. The improvement is even more striking when these variables are compared with those existing under the previous extradition regime. It appears, however, that there is still room for improvement. In that connection, one can envisage that the operation of the second generation Schengen Information System (SIS II) will significantly contribute to making the system more efficient, namely by helping sorting out some of the practical problems identified in the processing of EAWs.

Although some evaluation reports recall situations in which the respective national implementing law fails to fully transpose the Framework Decision, it can be concluded that Member States have largely implemented it properly. In that connection, situations were recorded in which the implementing law had already been amended or draft legislation was being discussed at the time of the evaluation visit, in order to comply with the Framework Decision and/or improve the application of the EAW in the light of accumulated experience. There were also cases in which adjustments in domestic law were announced during the discussions in the MDG in line with the recommendations made in the individual reports.

Another finding relates to the lack of practical experience with certain issues covered by the Framework Decision, such as onward surrender and conflicting EAWs. As a result, the question of how relevant provisions would be implemented in practice in such cases remains open. Moreover, in some Member States, especially those in which EAW activity is relatively low compared with the number of authorities empowered to deal with this type of cases, court practice is still developing, even in relation to questions of a general character.

Lastly, a number of visits pinpointed some lacunae in the Framework Decision and raised the question of the advisability of supplementary legislative action at European Union level at some appropriate moment in time. A series of instruments have meanwhile been adopted in that connection that contribute to resolving the difficulties in the practical application of the EAW associated with the procedure for the return of nationals, the practical application of Article 4(6) of the Framework Decision[1], and the information to be provided to the executing authority when the ruling underlying the EAW was made in absentia[2].

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[1] Council Framework Decision 2008/909/JHA 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, OJ L 327, 5.12.2008, p. 27.

[2] Council Framework Decision 2009/299/JHA 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, OJ L 81, 27.3.2009, p. 24.

3. CONCLUSIONS

3.1. The role of the judicial authorities

One of the main features of the EAW system is that the procedure is governed by a judicial authority, so that the role of the central and other administrative authorities is limited to providing practical assistance to smooth the process. The findings of the evaluation demonstrate, however, that in some Member States non-judicial central authorities continue to play a role in cardinal aspects of the surrender procedure far beyond the administrative tasks assigned in the Framework Decision. As a matter of principle, this situation seems difficult to reconcile with the letter and the spirit of the Framework Decision, irrespective of how understandable it may be in view of the specificities of the national system or associated practical advantages.

Recommendation 1: The Council calls on those Member States that have not done so to consider restricting the mandate of non-judicial authorities, or to put equivalent measures in place so as to ensure compliance with the Framework Decision with regard to the powers of judicial authorities.

3.2. The principle of direct contacts

Although some situations remain in which EAWs must be channelled through the central authorities, nearly all the Member States have incorporated specific provisions establishing the principle of direct contacts between the judicial authorities involved in the case. The evaluation reports reveal, however, that in a significant number of Member States those provisions do not match practice insofar as, despite the arrangements introduced, transmission of EAWs and related additional information is made, for preference, via police channels or central authorities, or through judicial authorities other than those designated to deal with the case.

According to the findings of the evaluation, the establishment of contacts through intermediaries (either as a legal requirement or as a matter of practice) does not seem to give rise to major objections on the part of practitioners. The reasons are varied: language difficulties, practical advantages associated with the experience accumulated by the authorities acting as intermediaries, reliance upon the services provided by the latter, resources at hand, the role of the judicial authorities in national criminal proceedings. The experts noted, however, that this practice may hamper the development of a European judicial culture based on the dialogue between judicial authorities working on the case, and that the difficulties that give rise to it could and should be resolved by other means in line with the choice made in the Framework Decision to promote direct communication between the issuing and the executing judicial authorities.

Recommendation 2: The Council urges Member States to analyse their practices and, where necessary, to take measures to promote direct communication between national judicial authorities dealing with EAW cases and their counterparts abroad.

3.3. Training issues

The importance of this issue is highlighted in almost all evaluation reports, as a means of making practice more uniform (in particular in those situations in which officials involved in EAW procedures have little opportunity to acquire experience through recurring cases), improving quality and enhancing cooperation with foreign authorities.

A wide range of training options relevant to the EAW practitioners have been put in place in the Member States. This is, however, an area in which, according to the outcome of the evaluation visits, there is still much room for improvement. In addition to the recommendation to continue efforts to provide systematic training programmes on EAW matters (including regular refresher training) for all judicial authorities and officials involved in the processing of EAWs, a number of evaluation reports highlight the need to take further action to promote a better understanding of other Member States' legal systems and, particularly, learning of other EU languages with a view to upgrading direct contacts.

Another deficit in this area echoed by a significant number of reports is the lack of specific training on EAW matters in the professional training programmes for defence lawyers, although responsibility (including financial responsibility) for such training cannot be solely vested in the Member States, as the defence lawyers organization and training is in many Member States outside of the state administration having a status of self-governing profession which have an own responsibility in organizing their training.

Recommendation 3: The Council calls upon Member States to provide, or continue to provide, judges, prosecutors and judicial staff with appropriate training on EAW and foreign languages (in particular those most useful for making direct contact with competent authorities in other Member States), including meetings and joint activities with authorities from other Member States involved in EAW cases, and to explore ways to promote training on EAW matters for defence lawyers. Given the fact that the defence lawyers' organisation and training, in many Member States, is outside the State administration, this topic is one that the European Judicial Training Network could examine. Financial support should be provided for that kind of activities under EU JHA financial programmes.

3.4. Facilitating mechanisms

A variety of mechanisms aimed at facilitating the practical application of the EAW have been put in place in the Member States. The evaluation reports reveal, however, that such instruments are not always used as efficiently as desirable. On the other hand, the need for additional efforts to keep the information provided in different formats up to date - whether for internal use or for consultation by foreign authorities (Fiches Françaises, EJN EAW Atlas)- emerged in some visits.

As to the structures set up at European level to facilitate judicial cooperation between Member States, whereas a number of reports evidence extensive use of Eurojust and the EJN, others attest the need for further efforts to increase practitioners' awareness of the added value that those bodies could bring in solving difficulties arising from EAW procedures.

Recommendation 4: The Council calls upon Member States and the EJN to explore ways of optimising the use of the support tools available to facilitate the application of the EAW (e.g. (...) by making the EAW Atlas, part of the EJN website, (...) available in all EU official languages,). Member States, EJN and Eurojust are called upon to take measures to raise awareness of the role of these latter so that practitioners make full use of specific capacities of each of them when processing EAWs.

3.5. Language requirements

Few Member States accept an EAW in a language other than their official language. This extends to requests for supplementary information, although the Framework Decision does not lay down any specific arrangements in this case. Throughout the evaluation exercise constant calls have been made for a more practical approach to this matter. The scarcity of translation capacity in some Member States, associated costs, difficulties in translation into some of the less common languages in short periods of time or the bad quality of translations are recurrent arguments in this regard.

A number of reports describe national practices that are rated by the experts as a valuable model to be considered. This covers instances where the language regime set out in the implementing law embraces foreign languages, or where EAWs are accepted outside the statutory language regime under certain circumstances, particularly in cases of urgency. On several occasions the evaluation reports reflect the wish of the authorities interviewed to have a limited number of vehicular languages identified for use in issuing EAWs and supplying supplementary information.

Recommendation 5: The Council encourages Member States that have not yet done so to consider adopting a flexible approach to language requirements in the light of Article 8(2) of the Framework Decision, so that EAWs and additional information in languages other than the Member State's own official language(s) are accepted.

3.6. Transmission of the EAW

In the majority of Member States a faxed copy of the EAW is enough for the purposes of deciding on temporary detention and starting the analysis of the case. Within this group of countries, there is a significant number that require the original EAW (or a copy certified by an authorised officer of the issuing Member State as being a true copy) for a decision on surrender. There are also a number of Member States in which EAW proceedings are not initiated unless the original EAW is available. Acceptance of e-mailed EAWs appears to be rather exceptional.

The evaluating teams were generally in favour of a waiver on originals and the possibility of working throughout the procedure on the basis of copies sent by any verifiable sources, in keeping with the Framework Decision. In any case, the impact of the move from SIS 1 + to SIS II should prompt Member States to adapt their national systems in this regard, where necessary, to Article 31 of Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II)[1].

Recommendation 6: The Council calls on Member States that have not yet done so to reconsider the practice of requiring the original EAW and to accept the validity at all the stages of the procedure of EAWs transmitted by any secure means capable of producing written records and allowing their authenticity to be established.

3.7. Time limits for the provision of language-compliant EAWs

The evaluation exercise reveals that the provision of language-compliant EAWs within the strict deadlines imposed by some Member States has frequently led to difficulties, particularly when combined with the requirement to serve the originals. (...)

Moreover, complaints regarding the wide divergence in time limits between Member States were also recorded during the evaluation: that adds to the complexity of the EAW procedure and makes errors on the part of the issuing authority more likely. It was deemed that such a disparity stems from the absence of any provision in the Framework Decision setting a time limit for the receipt of the EAW following the arrest of the requested person and the subsequent application of internal arrangements concerning the procedural safeguards for detainees.

The evaluation teams were largely of the opinion that this matter should be addressed at European Union level, with a view to finding a common solution bearing in mind the objective of the EAW, which is to facilitate the surrender of the defendant.

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[1] Article 31 - Execution of action based on an alert on a person wanted for arrest with a view to surrender or extradition: "*1. An alert entered in SIS II in accordance with Article 26 in conjunction with the additional data referred to in Article 27, shall constitute and have the same effect as a European Arrest Warrant issued in accordance with Framework Decision 2002/584/JHA where this Framework Decision applies*".

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

3.8. Grounds for non-execution

There are diverging tendencies in the transposition by the Member States of the optional and mandatory grounds for non-execution laid down in the Framework Decision. The situations are very varied and it is difficult to get an overall picture without referring to the individual reports.

Nevertheless, in a more general perspective, some observations can be drawn from the evaluations. They relate, firstly, to the expansion of the grounds for non-execution in a number of Member States to include situations not provided for in the Framework Decision, some of them rooted in the traditional extradition regime. Secondly, the legislation in some Member States has made the grounds for non-execution laid down in Article 4 of the Framework Decision mandatory.

The experts involved in those evaluations were in general critical in this regard. They also emphasised the undesirable consequences that may result in practice from depriving the executing judicial authorities of the discretionary power to apply some of the grounds for non-execution conceived as optional in the Framework Decision (particularly those relating to territoriality and the existence of domestic proceedings), in connection with the issue of determining the jurisdiction best placed to prosecute a particular offence and the reality of cross-border organised crime. It should be noted, however, that the question of how the initial paragraph of Article 4 of the Framework Decision is an issue that has been debated in the context of a case currently pending before the European Court of Justice[1].

Two more specific issues come to light (...) in connection with this subject. Firstly, in a series of reports experts observed differences of treatment between nationals and non-nationals beyond those explicitly allowed in the Framework Decision (...).

[1] Case Wolzenburg C-123/08.

Several experts found it difficult to share the argument that the non-execution of an EAW concerning an own national is counterbalanced by the prosecution of the offence in the executing Member State by virtue of the active personality principle, since it implies a return to the double criminality standard and does not match the aim of the Framework Decision to allow trial in the Member State where the crime was committed. In that regard, the concerns of experts during many evaluations regarding the appropriate legal basis for the execution of sentences, have become redundant due to the recent adoption the Framework Decision 2008/909/JHA of 27 November 2008. However, as acknowledged in recital 12 of the latter Framework Decision, it still allows the enforcement of a sentence to be refused on the basis of the double criminality requirement even in cases where no such ground of non-recognition is provided in the Framework Decision on the EAW. The Commission will have to report on any problems that may arise on this issue, in the context of the report it will draw up on the implementation of Framework Decision 2008/909/JHA (Article 29).

Secondly, some experts noted the different approaches to incorporating Article 1(3) and related recitals 12 and 13 of the Framework Decision into the implementing law, and the creation of a specific mandatory ground for refusal on this basis in some Member States.

Recommendation 8: In view of the fact that the interpretation of some of the relevant provisions is currently pending before the European Court of Justice, the Council refrains from commenting on these issues. The Council, however, calls upon Member States to review their legislation in order to ensure that only grounds for non-execution permitted under the Framework Decision may be used as a basis for refusal to surrender. (…)

3.9. Proportionality check

The application of a proportionality test in issuing an EAW was a recurrent issue during the evaluation exercise. Basically, this proportionality test is understood as a check additional to the verification of whether or not the required threshold is met, based on the appropriateness of issuing an EAW in the light of the circumstances of the case. The idea of appropriateness in this context encompasses different aspects, mainly the seriousness of the offence in connection with the consequences of the execution of the EAW for the individual and dependants, (...) the possibility of achieving the objective sought by other less troublesome means for both the person and the executing authority and a cost/benefit analysis of the execution of the EAW.

The findings of the evaluation show that the way this issue is dealt with in the Member States varies greatly. Some Member States apply a proportionality test in every case, whereas others consider it superfluous. Even in those Member States where a proportionality test exists, there is often uneven practice concerning the circumstances to be taken into consideration and the criteria to be applied.

The expert teams widely considered that, in principle, the proportionality test was the right approach and that some provisions, guidelines or other measures should be put in place at European level to ensure coherent and proportionate use of the EAW. There seemed to be a wide consensus (although not unanimity) that no proportionality check should be carried out at the level of the executing authorities.

While this subject has been widely discussed in the Council working parties, the evaluation reports repeatedly call for renewed efforts to be made to reach a unified approach in order to strengthen mutual confidence between the Member States.

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

3.10. Accessory surrender

In a number of visits the practitioners interviewed recalled that the European Convention on Extradition explicitly provides for the possibility for the requested State to grant extradition for accessory offences, whereas there is no similar provision in the Framework Decision. This gives rise to divergent legislations and practices in the Member States as regards the execution of EAWs insofar as they relate to these offences. Some Member States have incorporated specific arrangements on this issue into their implementing law, while others (the majority) have not; within the latter group, there are countries in which the absence of relevant provisions does not necessarily prevent the executing judicial authorities from authorising such surrenders, while in others the absence of any provision means that surrender with regard to these offences is not permissible and there is no judicial discretion.

In a significant number of visits the authorities interviewed stressed the difficulty they had in seeing what argument could justify the disparity in the treatment of this issue under the EAW and suggested amending the Framework Decision to ensure a common approach in all Member States.

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

3.11. Speciality rule

A significant number of reports states that the operation of the specialty rule is problematic in practice. Problems originate mainly from deficiencies in the regular flow of information and the absence of mechanisms that enable the authorities active in criminal proceedings to check the conditions of surrender in good time; some reports also pinpointed the lack of a reliable or standardised routine for checking the previous surrender. Emphasis was also placed in this regard on the potential impact of the absence of appropriate coordination between the issuing Member State authorities at the time of issuing the EAW, in instances where there is more than one case for which an EAW should be issued, or where other EAWs have been already issued for a given individual.

Nevertheless, beyond the difficulties caused by the practicalities of the speciality rule, during the evaluation some questioned the continued application of such a principle within a European area of freedom, security and justice. In that connection, it should be recalled that, although Article 27(1) of the Framework Decision gives Member States the choice of waiving the speciality rule under the conditions set out therein, only two countries have used such a possibility to date; no country has made the notification envisaged in Article 28(1) of the Framework Decision. The speciality rule is a delicate issue as it concerns the position of individuals and procedural safeguards; any change of the system requires thorough reflection and analysis in advance.

Recommendation 11: The Council encourages Member States to analyse their practice with a view to identifying means of resolving problems associated with the practical application of the speciality rule. The coordination within the Member States should be improved. In doing so, consideration should be given to the possibility of making the notifications envisaged in Article 27(1) and 28(1) of the Framework Decision.

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

3.12. Flagging

An issue that arises repeatedly in the evaluation reports is the scrutiny and flagging in the SIS of alerts for arrest for surrender purposes without the matter being put before the competent executing judicial authority for consideration. This is a major issue for the operation of the EAW, since the flagging of an alert may *de facto* amount to non-execution of the underlying EAW.

The evaluation teams widely considered that validity flags should be added only following an order by a judicial authority or at least under the supervision of a judicial authority, either on the basis of a general instruction or in a specific case (…). Moreover it was recommended that no time be lost in adapting the practice of flagging to comply with the rules laid down in Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II)[1].

Recommendation 13: The Council recommends Member States to apply the practice of flagging EAW-based SIS alerts according to the criteria provided in the Decision on SIS II.

[1] Article 25 - Flagging related to alerts for arrest for surrender purposes: *"1. Where Framework Decision 2002/584/JHA applies, a flag preventing arrest shall only be added to an alert for arrest for surrender purposes where the competent judicial authority under national law for the execution of a European Arrest Warrant has refused its execution on the basis of a ground for non-execution and where the addition of the flag has been required.*
2. However, at the behest of a competent judicial authority under national law, either on the basis of a general instruction or in a specific case, a flag may also be required to be added to an alert for arrest for surrender purposes if it is obvious that the execution of the European Arrest Warrant will have to be refused".

3.13. Article 111 of the Convention implementing the Schengen Agreement

In a number of reports the question was raised of how Article 111 of the Convention implementing the Schengen Agreement[1] should be implemented in practice, and, more specifically, of the impact on the EAW underlying an Article 95 alert of the obligation imposed by paragraph 2 on the Parties to the Convention to enforce the final decision taken by the deciding court or authority in relation to the action envisaged in paragraph 1, in particular in cases where the alert was entered by another Member State. In most of the cases the evaluating teams were not able to get a clear answer from the officials interviewed.

It should be noted that similar provisions can be found in Article 59 of Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II)[2], and that, pursuant to paragraph 3 thereof, an evaluation of the domestic provisions on this subject must be carried out by the Commission (...).

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

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1 It reads: *"1. Any person may, in the territory of each Contracting Party, bring before the courts or the authority competent under national law an action to correct, delete or obtain information or to obtain compensation in connection with an alert involving him.*
2. The Contracting Parties undertake mutually to enforce final decisions taken by the courts of authorities referred to in paragraph 1, without prejudice to the provisions of Article 116".

2 OJ L 205, 7.8.2007, p. 63.

3.14. "Provisional arrest" under the EAW

A mechanism for "provisional arrest" under the EAW is not envisaged in the Framework Decision. This question was raised[1] in relation to instances in which a fugitive leaves the jurisdiction of a Member State immediately after having committed a crime (prior to the EAW) and is traced to a plane/ferry due to land in another Member State.

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

3.15. Information deficits

During the evaluation many of the authorities interviewed stressed the lack of appropriate communications with their foreign counterparts throughout the EAW procedure. Complaints were repeatedly recorded that the level of communication regarding the progress of EAW proceedings is unsatisfactory, and that information from the executing authorities concerning delays in the execution process is rarely provided spontaneously. According to some evaluation reports, these flaws often extend to the timely communication of the surrender dates, and to the requirement to provide, at the time of the surrender, precise information on the total period of detention served by the requested person in the executing Member State on the basis of the EAW.

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

[1] Finland.

3.16. Additional information

Significant number of reports states that certain executing authorities had a tendency to request excessive or over-detailed additional information from issuing authorities, concerning even the legal classification of the acts, and sometimes went so far as to request that documents (judgments, etc.) be sent. The experts deplored this practice, which they considered contrary to the principle of mutual recognition, and pointed out that it is a practice linked to the previous extradition procedure which had no place in the EAW procedure.

Recommendation 17: The Council calls upon Member States, wherever possible, follow the rules in the Framework Decision as regards the information communicated by the issuing Member State on the EAW form and make every effort to avoid the requests for additional information from the issuing Member State for which there is no legal basis in any provision of the Framework Decision and which run counter to the principle of mutual recognition

3.17. Technical facilities

Important deficits have been detected in some visits with regard to the use of database equipment and IT tools adapted to the EAW. The exercise reveals that a centralised reliable system able to provide complete, up-to-date and easily accessible dedicated information on the operation of the EAW does not exist in a number of Member States. This flaw extends on occasion to other kinds of information relevant to EAW procedures (e.g. pending criminal proceedings). Examples of the introduction of case management systems adapted to the specific needs of EAW procedures were recorded during the evaluation, although this does not seem to be general practice.

The positive impact of those tools on the functioning of the system as a whole (production of reliable statistics, improvement of analytical capabilities) and on the management of EAW cases (monitoring of deadlines, compliance with undertakings, provision of information to foreign counterparts, operation of the speciality rule) was constantly highlighted by the experts.

Recommendation 18: The Council encourages those Member States that have not yet done so to set up appropriate mechanisms for gathering, processing and circulating information on EAW cases and other items relevant to them, such as investigations pending and arrest warrants already issued.

3.18. Seizure and handover of property

The Framework Decision on the EAW was the first instrument in the field of criminal law implementing the principle of mutual recognition. It includes in Article 29 specific provisions on the seizure and transfer of property that may be required as evidence in the criminal proceedings underlying the EAW, or that has been acquired by the requested person as a result of the offence. Generally speaking, not much information is available on how such provisions have been applied in practice. On the other hand, in the meanwhile a series of instruments aimed at implementing the principle of mutual recognition of judicial orders relating to the proceeds and instrumentalities of an offence and the obtaining of evidence have been enacted, namely Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence[1], Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders[2] and Council Framework Decision 2008/978/JHA of 13 December 2008 on the European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters[3]. It seems advisable to address the issue of how Article 29 of the Framework Decision on the EAW should be applied in light of those other instruments, with a view to ensuring consistent operation of the system.

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

1 OJ L 196, 2.8.2003, p. 45.
2 OJ L 328, 24.11.2006, p. 59.
3 OJ L 350, 30.12.2008, p. 72.

3.19. Follow-up to evaluations

The exercise has confirmed the positive aspects of the evaluation method already identified in previous rounds. One of them is that Member States use the evaluation mechanism as an opportunity to take stock of their situation and, as already outlined in the key findings, to take action to seek to improve their system. Moreover, the evaluation process itself provides an incentive to take recommendations into account. In that connection, the follow-up to individual evaluations should be envisaged as a request to the Member States to notify either the action taken since the evaluation as regards the recommendations expressly addressed to them, or the reasons for their inaction.

Recommendation 20: The Council asks the Presidency to prepare a letter on the basis of the recommendations 1, 2, 3, 4, 5, 6, 8, 11, 13, 16, 17 and 18 and conclusions of the evaluation report on each Member State and to forward it to the Member States so that each State informs the Council by mid of 2011 on the action and measures it has taken or will take in response to the recommendations addressed to it. The outcome could then be passed on to the Council by means of a Presidency report to be submitted by the end of 2011 containing, where appropriate, recommendations,.

Recommendation 21: The Council instructs that the recommendations 7, 9, 10, 12, 14, 15, 16 and 19 addressed to its preparatory bodies shall be further analyzed. Focused meetings of the EAW experts should be held in the upcoming period in order to continue the examination of the identified issues and to exchange the practical experiences, with a view to taking concrete action so as to ensure that the issue is dealt with effectively and promptly. Among all other issues, the issue of proportionality should be addressed as a matter of priority in the context of such examination.

On the basis of a report from the Presidency the Council should take note of progress made following implementation of the recommendations set out in this report.