COUNCIL OF THE EUROPEAN UNION

Brussels, 13 September 2011

14111/11

CRIMORG 146
COPEN 215
EJN 107
EUROJUST 129

NOTE

from:	Bulgarian delegation
to:	Delegations
No. prev. doc.:	7301/2/08 REV 2 CRIMORG 44 COPEN 48 EJN 17 EUROJUST 23
Subject:	Evaluation report on the fourth round of mutual evaluations "the practical application of the European Arrest Warrant and corresponding surrender procedures between Member States" - Follow-up to Report on Bulgaria

Recommendation 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 cooperation in criminal matters (see 2).

At present a working party of experts at the Ministry of Justice is drafting the texts for a law supplementing the Criminal Procedure Code (CPC) on the establishment of a procedure in connection with the recognition of the jurisdiction of the European Court of Justice to give preliminary rulings as regards police and judicial cooperation in criminal matters under subparagraphs 2 and 3(b) of Article 35 of the Treaty on European Union – the version prior to the entry into force of the Lisbon Treaty which extends the validity of Protocol 36 annexed to the Treaties. Following the entry into force of the additions to the CPC, the corresponding declaration will be transmitted to the European Commission.

Recommendation 5 – Introduce the possibility for accessory surrender in national practice/legislation (see 3.14 and 4.16).

With the amendment of Chapter 5 of the Law on Extradition and the European Arrest Warrant, "Surrender on the basis of the European Arrest Warrant", the possibility has been introduced of accessory surrender, thus the recommendation has been implemented.

"Accessory offences

Article 37a (*New – State Gazette No. 49, 2010). Whenever the European Arrest Warrant includes separate offences, at least one of which meets the requirements set out in subparagraphs 1 or 3 of Article 36, the issuing State shall have the right to authorise surrender for the other offences as well".*

Recommendation 6 – Ensure that the Fiche Française is available on the Council's website (see 7.3.4).

Following the latest amendments to its law on the EWA, the Republic of Bulgaria will shortly make available the updated practical information.

Recommendation 7 – Consider providing judges, prosecutors and judicial staff with language training free of charge (see 7.1.8).

Since 2006 the National Institute of Justice (NIJ) has been looking into suitable ways of holding and financing language training for judges and prosecutors.

Between 2007 and 2008 pilot courses were launched, jointly with the British Council, providing English language training to magistrates.

On the initiative of the NIJ and the French Cultural Institute in Bulgaria, French classes for magistrates have been running since 2010. In 2011, seeking new ways of financing language training with EU funds, the Institute joined forces with the Centre for Human Resources Development, the national coordinating body for the EU's Lifelong Learning Programme which deals with projects in the field of education and professional training. During the programming period 2014 to 2020 the possibility of financing a language-training project for magistrates has been envisaged. At present the NIJ is continuing to investigate different ways of funding language training for magistrates.

The Republic of Bulgaria attaches particular importance to language training for magistrates as an essential part of their professional training as a whole and considers that the possibility of adopting measures at EU level in this area should be examined.

Recommendation 8 – Consider developing common criteria regarding proportionality to guide judicial authorities when issuing an EAW (see 7.2.1).

The Republic of Bulgaria recognises the importance of developing common criteria regarding proportionality. Our view is that this issue should be decided at EU level and then subsequently introduced into the national laws of the Member States.

We will follow future developments in this area with interest and participate in any future discussions in a constructive manner.

Recommendation 9 – Ensure that the Interpol NCB is informed of all EAWs issued by the Bulgarian authorities (see 7.1.4).

By circular No. 11-05-13/08 dated 15.04.2009 the Minister of Justice, with a view to improving existing practices for issuing EWAs, instructed the district, provincial, appellate and military appellate courts to send a copy of all EWAs issued by Bulgarian courts to the International Cooperation Directorate at the Ministry of the Interior, which includes Interpol. The practice in the application of the Law on Extradition and the European Arrest Warrant shows that from April 2009 onwards Interpol has been informed of all EWAs issued by Bulgarian courts.

Recommendation 10 – Ensure the effective application of Article 49(2) of the implementing law, regarding the obligation to report delays to Eurojust (see 4.7).

In the circular mentioned in the previous paragraph the Minister of Justice, with a view to standardising the existing practice for issuing EWAs, recommended that the district, provincial, appellate and military appellate courts do their utmost to inform Eurojust in cases where the procedure for implementing the EWA is not completed within the time-limit laid down by law (Article 49(2) of the Law on Extradition and the European Arrest Warrant). The letter was also sent to the Chief Prosecutor of the Republic of Bulgaria.

The practice for implementing the Law on Extradition and the European Arrest Warrant shows that this recommendation is being followed strictly.

Recommendation 11 – Consider amending the implementing law in order to ensure 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).

Article 38a sets out the procedures for receiving the EWA at the provincial court and the documentation required, the procedures for establishing the authenticity of documents and the requirements for obtaining original documents. Under this procedure, documents may also be forwarded by fax or electronic mail; it is not necessary to await the originals for proceedings to be launched or for direct contact to be established between the judicial bodies of the EU Member States.

Recommendation 12 – Reconsider the role of the prosecutor prior to the initiation of proceedings by the court, in particular as regards the possibility of requesting additional information and the advisability of detention (see 7.1.4 and 7.3.1).

With the law amending and supplementing the Law on Extradition and the European Arrest Warrant (published in State Gazette No. 49 dated 29.06.2010), in particular the amendment of Article 42(2), prosecutors' functions were extended and they were given additional powers to check whether an EWA received pursuant to Article 42(2) meets the requirements of Articles 36 and 37. This control function is also envisaged in conjunction with the alerts in the Schengen Information System (SIS) - a new Article 38b has been created. Following these amendments of the Bulgarian Law on Extradition and the European Arrest Warrant we consider the recommendation to have been followed.

Article 42*(2) (Amended - State Gazette No. 52 of 2008, supplemented - State Gazette No. 49 of 2010). When a European Arrest Warrant for a wanted person has been received in cases other than those set out in subparagraph 1, the police shall detain the person for 24 hours and inform the prosecutor at the relevant provincial court immediately. In such cases, the prosecutor will check whether the European Arrest Warrant meets the requirements of Articles 36 and 37. The prosecutor may order that the person be detained for a period of up to 72 hours.*

Article 38b *(New - State Gazette, No. 49 of 2010). Upon receipt of a SIS alert, the prosecutor shall check and state whether the information accompanying the alert meets the requirements of Article 36 and Article 37(1).*

Recommendation 13 – Set up appropriate mechanisms for the harmonisation of court practice (see 7.1.6).

In accordance with the provisions set out in Articles 124 and 125 of the Law on the Judicial System, in the event of a contradictory or unlawful practice in the interpretation or application of the law, an interpretative judgment shall be adopted by the general assembly of:

1. The criminal, civil or commercial college at the Supreme Court of Cassation;
2. The civil and commercial colleges at the Supreme Court of Cassation;
3. A college at the Supreme Administrative Court;
4. The colleges at the Supreme Administrative Court.

In the event of a contradictory or unlawful court practice between the Supreme Court of Cassation and the Supreme Administrative Court the general assembly of judges of the corresponding colleges of the two courts shall jointly adopt an interpretative decree.

The request to adopt an interpretative judgment or decree may be made by the President of the Supreme Court of Cassation, the President of the Supreme Administrative Court, the Chief Prosecutor, the Minister of Justice, the Ombudsman or the President of the Supreme Bar Council.

The aforementioned provisions of the Law on the Judicial System also apply to the procedure under the European Arrest Warrant.

Recommendation 14 – Consider developing a practise of including one or more specialised judges in panels dealing with EAW cases (see 7.1.6).

The judges at the provincial and appellate courts and the prosecutors at the corresponding prosecutor's offices are qualified and sufficiently competent to apply the Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States. They already have four years of experience in applying the Law on Extradition and the European Arrest Warrant and from time to time undergo training under National Institute of Justice programmes on new developments in the practical application of the laws in this field in the EU Member States - exchanges of experiences with magistrates from Spain, France, the Netherlands and others.

Recommendation 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).

The prosecutor's power under Article 42(2) to order detention up to 72 hours corresponds to the same power under Article 64 of the Criminal Procedure Code. Court practice relating to temporary detention shows that this measure is used only to transport persons and bring them before the judge, not for other purposes.

The guarantee against the abuse of this time-limit, with a view to protecting the detainee's rights, is that detention may only be ordered by the magistrate or prosecutor.