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NOTE

from:	Hungarian delegation
to:	Delegations
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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 Hungary

The Ministry of Public Administration and Justice of the Republic of Hungary presents its compliments and referring to the letter of the General Secretariat of the Council dated 29 June 2011 has the honour to provide the following information concerning **the recommendations contained in the report on Hungary (doc. 15317/1/07 REV 2 CRIMORG 174 COPEN 162 EJN 37 EUROJUST 62):**

Recommendation 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 our view the relevant Hungarian legislation is in line with the Framework Decision.

According to Article 1 of the *Council Framework Decision of June 13, 2002 on the European arrest warrant and the surrender procedures between Member States* “The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.”

Section 25(1) of *Act No CXXX of 2003 on the Co-operation with the Member States of the European Union in Criminal Matters* states 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 an European arrest warrant (issued by a Hungarian judge) 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 judge is the national arrest warrant as well.

The 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 emphasized that problems which arised in this regard in practice has already been solved bilaterally.

Recommendation 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 the EAW form (see 7.2.1.3).

Section 26 of Act No CXXX of 2003 has been repealed by the Act No LXXX of 2008.

Recommendation 3 - To consider setting up appropriate mechanisms to deal with urgent EAW matters at weekends and on official holidays (see 7.2.1.4).

We are convinced that setting up appropriate mechanism to deal with urgent EAW matters at weekends and on official holidays should not be a solution for the wide-known problem concerning sending the language-compliant EAW within the time-limits set up by the Member States. This practical problem has to be solved by adopting reasonable time-limits in all Member States. In this regards the EAW Handbook can serve as a good basis with its proposal to set up at least a 6-working-day time-limit for receiving the EAW accompanied by due translation.

By the way, in Hungary there is a 24/7 on duty system at both the courts and prosecutor's offices, so the urgent EAW cases can be handled in a proper way.

Recommendation 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).

All courts in Hungary have access to the appropriate databases which allows them to check the conditions of the surrender in good time, with a view to respecting the speciality principle.

Moreover, whenever a person is arrested in abroad on the basis of a Hungarian EAW, the Ministry of Public Administration and Justice of the Republic of Hungary acting as central authority checks the database in order to verify whether there is other pending criminal proceeding or a sentence of imprisonment to be executed against the person. In case of a positive checking, the competent Hungarian judicial authority is always notified on the necessity of issuing an EAW taking into account the speciality principle.

In practice, Hungary has no experience of difficulties arising from this issue.

Recommendation 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).

According to the relevant Hungarian legislation, an EAW is not needed for a court to order the surrender in the simplified surrender procedure (with the consent of the requested person). The simplified surrender procedure allows for a decision on surrender within the seventy-two hours following the arrest of the requested person on the basis of an Interpol or SIS alert. It covers not only cases in which the EAW has not been forwarded to the Hungarian authorities but also cases in which the EAW has not actually been issued even though there is an arrest warrant that serves as a basis for the Interpol notice.

The simplified procedure only took place when the available data are enough to verify all the important questions and conditions for the decision on surrender.

The relevant provisions of the Act No CXXX of 2003 read as follows:

1. *SECTION 10(1)* “A PERSON ARRESTED IN THE TERRITORY OF THE REPUBLIC OF HUNGARY SHALL BE TAKEN INTO CUSTODY AND BROUGHT BEFORE THE METROPOLITAN COURT IF AN EUROPEAN ARREST WARRANT HAS ALREADY BEEN ISSUED AGAINST HIM/HER, OR IF A PERSON IS WANTED ON THE BASIS OF AN INTERNATIONAL WARRANT ISSUED BY ANOTHER MEMBER STATES. SUCH DETENTION MAY EXTEND TO SEVENTY-TWO HOURS.”

According to Section 10(2), subpara (1) shall be applied also when regarding the person arrested in the territory of the Republic of Hungary an alert has been issued in the SIS provided that such an alert is equivalent to an EAW, ie. the SIS alert and the additional information attached to the alert contains all the necessary information.

2. *SECTION 11(1)B)* “THE METROPOLITAN COURT SHALL HOLD A HEARING WHERE THE COURT INFORMS THE REQUESTED PERSON ABOUT THE OPTION OF SIMPLIFIED SURRENDER PROCEEDINGS (SECTION 12) AND THE LEGAL CONSEQUENCES THEREOF.”
3. *SECTION 11(2)* “THE PARTICIPATION OF THE PUBLIC PROSECUTOR AND DEFENCE COUNSEL AT THE HEARING IS MANDATORY.”

4. *SECTION 11(3)* “If the requested person does not have an authorized defence counsel, the court shall appoint a defence counsel for him or her, as well as an interpreter, if the requested person does not know the Hungarian language.”
5. *SECTION 12(1)* “The Metropolitan Court shall order the arrest for surrender and the surrender (simplified surrender) of the requested person if
6. *A)* the conditions for the execution of the European arrest warrant and surrender are met, and
7. *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, shall be recorded formally in minutes.
8. *12.2* The consent defined in paragraph (1) cannot be withdrawn.
9. *12.3* An order for simplified surrender is not subject to appeal.”

Recommendation 6 - To take appropriate measures to ensure that the execution of an EAW may only be refused on grounds expressly provided in the implementing law (see 7.3.1.3).

The execution of an EAW can only be refused on grounds expressly provided in the implementing law which cannot give any possibility to the executing judicial authority for different interpretation. *(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.)*

Recommendation 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 modified provision reads now as follows:

“Section 4. 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)”

Recommendation 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.

The Hungarian Constitution has been modified by Act No CLXVII of 2007 which now allows the Hungarian authorities to disregard the requirement of double criminality, also in relation to EAW cases. This new provision (para 57(4) of the Constitution) has to be applied from 1 December 2009 which coincides the entering into force of the Lisbon Treaty.

Recommendation 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. During the evaluation Hungary noted that 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.)

The Ministry of Public Administration and Justice of the Republic of Hungary takes this opportunity to express the renewed assurances of its highest consideration.
