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NOTE

from:	Estonian 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 Estonia

Recommendation 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)

Amendments to the Estonian Criminal Procedure Code (hereinafter referred to as: KrMS) came into force on 23 May 2008 and the amended §507 prescribes the competent issuing judicial authority in EAW cases arising in respect of persons absconding during court proceedings in the court handling with concrete case (KrMS § 507 para 1).

Recommendation 2 – that a study be undertaken of the translation capacity available to Estonian’s Central Authority in EAW matters so that areas of weakness may be clearly identified and, if possible, rectified (see 7.2.1.2.)

In practice no problems arise concerning the translation issues, but to find a translator for all EU languages within a short time period could still give rise to some problems. But as already mentioned, there are no concrete problems in everyday work.

Recommendation 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.)

Such guarantees are always provided by the court – this is an obligatory part of the surrender decision, if the surrender concerns Estonian nationals. The legal ground is § 503 para 1 of KrMS.

Recommendation 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.)

The expert team has subsequently been advised that draft legislation has been prepared to address this recommendation.

The State Border Act has been amended as from May 23, 2008.

Recommendation 5 – that domestic legislation be put in place to permit EAWs to be withdrawn where the basis for the issue of the EAW no longer exists but the need to preserve domestic criminal proceedings remains (see 7.2.1.6.)

There is no need to amend the legislation because in practice this is possible under existing legislation and the possibility has also been used by Estonian prosecutors.

Recommendation 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)

Technical solution has been established for providing the access to the Interpol Automated Search Facility to all police authorities. It is planned to gradually increase the number of authorized personnel within LEA-s. And the main point is, that at the time Estonia was evaluated Estonia wasn't a part of Schengen Information System, but it is now.

Recommendation 7 – that the practice of police obtained consents be 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.)

The Criminal Procedure Code (KrMS) has been amended (§§ 499 para 3 and 502 para 4 subpara 1) as from May 23, 2008.

Recommendation 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 Estonian Fiche Française is revised from 02 July 2008 (11227/08 COPEN 131 EJA 48 EUROJUST 64).

Recommendation 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)

Actually Estonian legislation provides the possibility for bail (including in EAW proceedings). This is an issue of practice, not of amendments to the legislation. But in practice bail or release has never been used during surrender procedure.

Recommendation 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 is again a question of practice which does not require changing the legislation. In practice this issue did not arise before the evaluation of Estonia (September 2006) or after.

Recommendation 11 – that domestic legislation be amended to provide for the possibility that a requested person may elect not to be represented by a defense advocate during the surrender proceedings (see 7.3.1.6.)

The Estonian legislation remains unchanged. Article 501 of the Criminal Procedure Code states that the participation of defence lawyer during the surrender procedure is obligatory.

Recommendation 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)

Article 491 of the Criminal Procedure Code (KrMS) has been reworded and the legislation is now in conformity with the Framework Decision.

Recommendation 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)

Amendments of Article 492 of the Estonian Criminal Procedure Code (KrMS) are in force from May 23, 2008.

Recommendation 14 – that domestic legislation be considered whereby Estonia 's executing Jas are designated as the body competent to authorize temporary or conditional surrenders and onwards surrenders (see 7.3.1.9)

Upon reflections, the decision was taken not to change the legislation. In practice it works well.

Recommendation 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)

This provision of the Framework Decision is stated now in Article 505, para 4 of the Criminal Procedure Code.

Recommendation 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 Estonian Training Council to ensure that the necessary training regimes are put in place as soon as practicable (see 5.8.1)

There is Estonian Law Centre no longer exists but every year 2 training courses on EAW issues are still provided to judges, public prosecutors and defence lawyers. Also special courses regarding EAW issues are provided to relevant police officers.
