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from:	French delegation
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Subject:	Evaluation Report on the fourth round of mutual evaluations "Practical application of the European Arrest Warrant and corresponding surrender procedures between Member States" – Report on France

Following the fourth round of mutual evaluations on "the practical application of the European Arrest Warrant and corresponding surrender procedures between Member States", the Swedish Presidency invited the French authorities, in a letter sent on 2 July 2009, to indicate the measures that have been taken in response to the recommendations of the Evaluation Report on France (9972/2/07 REV 2 CRIMORG 95) and recommendations 1-6, 8, 11, 13 and 16-18 of the Final Report (8302/4/09 REV 4 CRIMORG 55 + COR 1).

In response, the French authorities have made available the following:

- a table summarising the measures taken in response to the recommendations of the Evaluation Report on France;
- a table summarising the measures taken in response to the recommendations of the Final Report;

For any further information or details, the departments of the General Secretariat of the Council may contact:

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**I. Summary table of the measures taken in response to the recommendations of the
Evaluation Report on France**

Recommendations of the Report on France	Measures taken by France
(1) Consider the possibility – while respecting freedom to assess individual situations – of pursuing a policy on the execution of sentences which is reasonably homogenous, so as to ensure uniformity of treatment.	The circulars of 11 March 2004 and 20 July 2009 offer advice to the courts, in particular regarding the sentence threshold for the issue of a European Arrest Warrant for the purposes of enforcing a sentence (a 1 year sentence of imprisonment). In the same way, the Ministry of Justice and Liberties has indicated to the judicial authorities that it is not in favour of issuing European Arrest Warrants based on a sentence delivered by default and without an arrest warrant. Training is also regularly provided by the Ministry of Justice and Liberties (Office for International Mutual Assistance in Criminal Matters – BEPI) on the European Arrest Warrant in the Court of Appeal.
(2) As soon as possible, abide by the provisions in the Framework Decision relating to the standard form, and avoid introducing practices which condone the particular legal requirements of certain States, but which are not laid down in the Framework Decision and which go beyond the principle of mutual recognition.	The British European Arrest Warrant form, which had been published on the BEPI website, has been removed by the Ministry of Justice and Liberties. Courts are also reminded, in the course of training, that the European Arrest Warrant form must not be changed. Drafting advice on the European Arrest Warrant and the specific features of European Arrest Warrants addressed to British authorities is also available online on the BEPI website. Finally, a guide on the European Arrest Warrant and extradition has been produced and published on BEPI's website. It features a description of the procedure, practical advice and case-law.

<p>(3) Exploit to the maximum the potential of the support tools available to magistrates to facilitate the application of the EAW, particularly by carefully updating the departmental circular, distributing a consolidated version of that circular, and updating BEPI's intranet site in the light of the development of case-law in this area. Create a section on the intranet site including the case-law of the Court of Justice of the European Union. Encourage regular meetings of the monitoring group and distribute the results of its discussions to all national courts and to interested bar associations.</p>	<ul style="list-style-type: none"> – Two circulars were issued in July 2009; – A guide on the surrender of persons (European Arrest Warrant and Extradition) has been produced and published on BEPI's intranet site. It features a description of the procedure, practical advice and case-law; – A new circular presenting the new law of 14 April 2011 was issued on 31 May 2011; – The intranet site is updated every month; – The intranet site features a summary of the case-law of the Supreme Court of Appeal (Cour de cassation) as well as the case-law of the Court of Justice of the European Union; – All new documents that are published online are also sent to regional contact points of the European Judicial Network on a national discussion list provided to that end.
<p>(4) Improve the system for compiling information at the Ministry of Justice on EAWs dealt with directly by the French judicial authorities.</p>	<p>A structural mail box was created by the Justice Task Force (the department of the Ministry of Justice and Liberties responsible for validating European Arrest Warrants from France to be sent abroad, before circulation) in July 2009 (circular of 20 July 2009).</p> <p>Furthermore, reports on the execution of European Arrest Warrants are sent to the Ministry of Justice and Liberties (BEPI) by e-mail. These data are recorded in this department.</p>

<p>(6) Consider the possibility of amending or clarifying the Code of Criminal Procedure as regards the arrangements (acceptance of an EAW in a form other than the original or a certified copy of the original) and time limit (six-day rule) for receipt of an EAW, as allowed under the case-law of the Supreme Court of Appeal (Cour de cassation).</p>	<p>The guide on the surrender of persons (EAW and extradition), which was produced by the Ministry of Justice and Liberties, presents an analysis according to which, as indicated by the Supreme Court of Appeal (Cour de cassation) in a judgment of 25 January 2006, the Court of Appeal responsible for the execution of a European Arrest Warrant can rule on the basis of a fax as long as there is no doubt regarding the authenticity of the document. The Courts of Appeal generally agree to rule on the basis of a fax.</p> <p>Furthermore, a summary table on the deadlines and means of transmission of European Arrest Warrants in the 27 EU countries has been produced and published online on BEPI's intranet site (8858/10 COPEN 105).</p>
<p>(7) Keep to the information supplied by the issuing judicial authority in the EAW form and as far as possible avoid making any requests concerning the substance of the case, which are liable to interfere with criminal proceedings pending in the issuing State, with the possible result of refusal to surrender the wanted person to the requesting authorities.</p>	<p>Several judgements from the Supreme Court of Appeal (Cour de Cassation) have clarified the nature of the monitoring to be done by the executing judicial authority.</p>
<p>(8) Encourage coordination between the French authorities involved in the process of executing an EAW, so as to limit the number and extent of requests to the issuing authority for additional information.</p>	<p>The Justice Task Force (specialised department of the Ministry of Justice with competence inter alia for the European Arrest Warrant) and the Office for International Mutual Assistance in Criminal Matters (BEPI) give expert advice to the Courts, ensuring that the procedures of the European Arrest Warrant are followed and coordinated, particularly when difficulties arise.</p>

<p>(9) Consider amending the Code of Criminal Procedure as regards execution of an EAW, so as to enable the principal public prosecutor also to place a person under judicial supervision.</p>	<p>Since the Law of 12 May 2009, the public prosecutor can put a wanted person under judicial supervision (Articles 138 and 695-28 of the Code of Criminal Procedure).</p> <p>Since the Law of 14 April 2011, which entered into force on 1 June 2011, a judge attached (First President of the Court of Appeal or a Counsellor of the Court of Appeal whom he has designated) is henceforth able to order a coercive measure: detention in custody, judicial supervision or even, since the Law of 14 April 2011, house arrest under electronic surveillance (Article 142-5 of the Code of Criminal Procedure), rather than, as formerly, the public prosecutor (who is however responsible for notifying the European Arrest Warrant).</p>
<p>(10) Clarify and delineate precisely the powers of the principal public prosecutor and of the examining chamber as regards a stay of surrender, for serious humanitarian reasons.</p>	<p>The Supreme Court of Appeal (Cour de cassation) has specified in a judgement of 29 November 2006 that it follows from the provisions of the first subparagraph of Article 695-38 of the Code of Criminal Procedure that, after having ruled on the execution of the European Arrest Warrant, the examining Chamber alone, which requests to retain their responsibility for serious humanitarian reasons, has jurisdiction to determine the time limits within which the warrant can be executed, while the public prosecutor can only agree with the issuing judicial authority, on a date for surrender once the time limit so established has passed, under the conditions laid down in subparagraph 2.</p>
<p>(13) Go ahead with the planned amendment of Article 695-46 of the Code of Criminal Procedure as regards speciality.</p>	<p>Article 695-46 of the Code of Criminal Procedure has been amended by the Law of 12 May 2009 and henceforth conforms with Article 27 §3 g) of the Framework Decision.</p>

(14) Standardise practice on extension of the terms of surrender, by amending Article 695-46 of the Code of Criminal Procedure.	
(15) Clarify the domestic provision governing temporary surrender.	The guide on the surrender of persons (EAW and extradition) includes as an Annex a note on temporary surrender specifying that, with regard to the EAW, the agreement on temporary surrender is dealt with directly between one court and another, without intervention from the Ministry of Justice and Liberties. It should furthermore be remembered that the person is, within this framework, detained on behalf of foreign authorities.
(16) Amend the Code of Criminal Procedure to introduce coercive powers ensuring that the wanted person is actually surrendered to the requesting authorities.	Articles 695-26 and 695-37 of the Code of Criminal Procedure have been supplemented by the Law of 12 May 2009, which introduces the possibility for the police departments responsible for the execution of a European Arrest Warrant to use coercive powers (phone tapping, searching, etc.). Since the Law of 14 March 2011, Article 134 of the Code of Criminal Procedure has been supplemented so as to allow police departments responsible for the execution of a European Arrest Warrant to enter the person's home.
(17) Take the necessary measures to guarantee, in practice, that lawyers have access to information concerning an EAW in time to ensure that they are best able to put up an effective defence for their client.	Several decisions of the Supreme Court of Appeal (Cour de cassation) have specified the conditions under which the rights of the defence must be exercised.

II. Summary table of the measures taken following the recommendations of the Final Report;

Recommendations of the Final Evaluation Report	Measures taken by France
(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.	The central authority (Ministry of Justice and Liberties) does not intervene in the execution process of European Arrest Warrants, which are the responsibility of individual courts. Its role is restricted to the provision of tools available to the courts online and of technical advice when difficulties arise.
(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.	The Ministry of Justice and Liberties regularly draws attention to the principle of direct contacts between the French and foreign courts, in its EAW training activities. This principle is generally applied by the jurisdictions. The Ministry of Justice and Liberties can sometimes be consulted for help with linguistic problems which may arise.

<p>(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, methods to promote this training should be explored. This topic is in general one that the European Judicial Training Network could examine. Financial support should be provided for that kind of activities under EU JHA financial programmes.</p>	<p>The Ministry of Justice (Office for International Mutual Assistance in Criminal Matters – BEPI) leads training activities on the European Arrest Warrant in the Courts of Appeal, for magistrates, court officers and sometimes police officers and lawyers.</p> <p>Furthermore, a guide on the surrender of persons (European Arrest Warrant and extradition) has been produced and published online on BEPI's intranet site. It features a description of the procedure, practical advice and case-law.</p>
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<p>(4) The Council calls upon Member States and the EJP 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 EJP website, available in all EU official languages). Member States, EJP 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.</p>	<p>Numerous tools (advice on the drafting of EAWs, the collecting of case-law, practical issues...) are published online on BEPI's intranet site. Furthermore, a direct link refers back to to EJP website.</p>
<p>(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.</p>	<p>The guide for the surrender of persons (EAW and extradition), which was produced by the Ministry of Justice, presents an analysis according to which, as indicated by the Supreme Court of Appeal (Cour de cassation) in a judgment of 25 January 2006, the Court of Appeal responsible for the execution of a European Arrest Warrant can rule on the basis of a fax as long as there is no doubt regarding the authenticity of the document. The Courts of Appeal generally agree to rule on the basis of a fax.</p> <p>Furthermore, a summary table on the deadlines and means of transmission of European Arrest Warrants in the 27 EU countries has been produced and published online on BEPI's intranet site (8858/10 COPEN 105).</p>

<p>(8) The Council, however, calls upon Member States to review their legislation in order to ensure that only grounds for non-execution under the Framework Decision may be used as a basis for refusal to surrender.</p>	<p>The grounds for refusal to execute Articles 3 and 4 of the Framework Decision have been transposed to Articles 695-22 to 695-24 of the Code of Criminal Procedure. The Supreme Court of Appeal (Cours de cassation) has pointed out in several judgments that only these grounds can justify a refusal of surrender.</p>
<p>(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 Member States should be improved. Consideration should also be given to the possibility of making the notifications envisaged in Article 27(1) and 28(1) of the Framework Decision.</p>	<p>Difficulties linked to the speciality rule often arise because the executing authority does not notify the surrender decision to the French authority which issued the European Arrest Warrant. In contrast, the French authorities do generally communicate the decision to surrender and specify the duration of custody for extradition and, if applicable, the waiving of the speciality rule.</p> <p>Furthermore, a coordination meeting has to take place between the Prisons Department and the Office for International Mutual Assistance in Criminal Matters (BEPI) in order to ensure that the custodial criminal record of the person mentions the fact that he/she was surrendered on the basis of a European Arrest Warrant or an extradition request (in order to draw the jurisdiction's attention to the speciality rule).</p>

<p>(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.</p>	<p>The foreign European Arrest Warrants distributed in the SIS and Interpol are examined by the Justice Task Force (specialised department of the Ministry of Justice with competence <i>inter alia</i> for the European Arrest Warrant), which may decide to apply flagging where necessary. Flagging can thus only be done under the supervision of a judicial authority.</p>
<p>(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.</p>	<p>The French authorities generally communicate the decision to surrender and specify the duration of custody and, if applicable the waiving of the speciality rule.</p>

<p>(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 avoid 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.</p>	<p>Several judgements from the Supreme Court of Appeal (Cours de cassation) have clarified the nature of the monitoring to be done by the executing judicial authority.</p> <p>The Ministry of Justice and Liberties draws attention to these principles in the training activities for the Courts of Appeal.</p>
<p>(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.</p>	<p>The Ministry of Justice and Liberties, the central authority, maintains a statistical tool with the number of issued and executed EAWs (by country, by Court of Appeal, by type of offence).</p>
