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NOTE

| | |
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| from: | Presidency |
| to: | Delegations |
| No. prev. doc.: | 8302/4/09 REV 4 CRIMORG 55 COPEN 68 EJN 24 EUROJUST 20 |
| Subject: | Follow-up to the evaluation reports on the fourth round of mutual evaluations: practical application of the European arrest warrant and the relevant surrender procedures between Member States - Presidency Report |

1. INTRODUCTION

1.1. Following the adoption of the Joint Action of 5 December 1997, a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime was established. On 11 July 2005, the MDG (Multidisciplinary group on organised crime) adopted the topic of the fourth round of mutual evaluations¹, namely "the practical application of the European Arrest Warrant and corresponding surrender procedures between Member States".

¹ 9602/05 - Orientation debate on a proposed Mutual Evaluation exercise.

- 1.2. At its meeting on 28 October 2005 the MDG approved the evaluation questionnaire for the fourth round of mutual evaluations¹ as well as the sequence for the mutual evaluation visits².
- 1.3. The evaluation process was conducted from March 2006 to April 2009 and followed a pattern consistent with that of the preceding rounds of evaluation. To that end, following each evaluation visit a report was drafted. Each report 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. It also identified both areas requiring improvement and areas of good practice as well as 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.
- 1.4. Many of the recommendations contained in the national reports relate to the unique setup of individual countries. These recommendations differ significantly from each other. They can however be categorized in the following way: recommendations concerning legal or institutional adjustments, recommendations requiring changes of national authorities' practice and recommendations on awareness-raising activities.
- 1.5. However, some common issues emerged during the evaluations and the Final Report on the fourth round of mutual evaluations with recommendations (hereinafter referred to as the Final Report) was adopted by the Council on 4–5 June 2009³. This Final Report contains a number of recommendations either aimed at a number of Member States or explicitly addressed to preparatory bodies of the Council. The first set comprises recommendations referring to the basic principles of cooperation (role of judicial authorities and direct contacts), aimed at updating the relevant information (training, *fiches françaises*, ATLAS data base), at facilitating cooperation (language flexibility, acceptance of the EAW copy) or at influencing EAW execution (grounds for non-execution, resignation from speciality rule, use of SIS) as well as recommendations connected with requesting and providing information on EAW. The second set of recommendations includes references to the time limits for the provision of language-compliant EAWs, the proportionality check, accessory surrender, the speciality rule, the use of the SIS, provisional arrest and seizure and handover of the property.

¹ 14272/05 CRIMORG 131 COPEN 175 EJN 57 EUROJUST 77.

² 13824/05 CRIMORG 118 COPEN 171.

³ 8302/4/09 REV 4 CRIMORG 55 COPEN 68 EJN 24 EUROJUST 20.

2. FOLLOW-UP TO THE REPORTS

- 2.1 Recommendation No 20 of the Final Report indicates that in response to the letter from the Presidency, the Member States will transmit to the Council information on the actions and measures taken or planned in response to recommendations addressed to them in that report as well as in the countries' reports by mid-2011. 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 either general in nature or addressed to specific Member States.
- 2.2. 23 Member States (BE/BG/CZ/DE/DK/EE/ES/ FR/LV/LT/LU/HU/NL/AT/PL/PT/SI/FI/SE/IE/RO/SK/IT) responded to the Presidency letter requesting updated information with regard to recommendations, and only eight of them (AT/DE/DK/LT/PL/SI/FI/FR) covered the actions taken on the recommendations included in the Final Report.
- 2.3. Some of the Member States were late in sending in their replies, thereby rendering a detailed analysis more difficult. Despite the limited amount of information available when preparing the report, the Presidency felt it appropriate to prepare it in accordance with recommendation No 20 of the Final Report. However, bearing in mind that the report may not reflect the whole picture of Member States' compliance with the recommendations, the Presidency refrains from including any recommendations therein. The nature of the report is, therefore, purely descriptive. It does not aim to evaluate the level or accuracy of Member States' implementation of recommendations.
- 2.4. The Presidency report covers information on Member States' actions on the recommendations both of the Final Report and of individual country reports. It also refers to the reports prepared so far by the European Commission. Moreover, it quotes some statistical data collected in the form of the Member States' replies to the questionnaire on quantitative information on the practical operation of EAW, which may illustrate the actual scale of selected problems as well as some current trends. It is worth mentioning that the European Commission is going to prepare the report on possible modifications to the existing quantitative EAW questionnaire.

- 2.5. The annexes attached to the report present the state of implementation of the recommendations by each of the 23 Member States that replied to the Presidency's letter.

Final Report on the fourth round of mutual evaluations

Recommendations addressed to the Member States

- 2.6. It appears from the seven Member States' responses that the recommendations addressed to them (recommendations No 1, 2, 3, 4, 5, 6, 8, 11, 13, 16, 17) have been complied with, though with some exceptions, either through practical measures (such as training, consulting, guidelines, access to databases, reference to the case-law of national courts or the Court of Justice) or legislative ones. Those Member States did not raise problems connected with their implementation.
- 2.7. The seven Member States' replies also demonstrate that the following recommendations still require further actions: central authorities (No 1), flexible approach to language requirements (No 5), reconsidering the practice of requiring the original EAW (No 6), grounds for non-execution (No 8) and the speciality rule (No 11). The two latter issues merit additional attention since they may have the broadest influence on the practical application of the EAW.

Grounds of non-execution

- 2.8. The recommendation on grounds for non-execution calls upon the Member States to review their legislation in order to ensure that only grounds for non-execution under the framework decision are used as a basis for refusal of surrender.¹ As regards the implementation of the grounds for non-execution, the Member States present different approaches. Some of them introduced additional bases. Other Member States changed optional grounds for non-execution into an obligation for judicial authorities to refuse the execution of an EAW.

¹ See also points 2.31 and 2.32 on the grounds for non-execution.

Those Member States, when providing the reasons for such modifications, point mainly to the wording and the goal of the framework decision, especially with regard to the observance of fundamental rights (AT/NL/PL), as well as to the recent case-law of the Court of Justice¹ in relation to differentiation between nationals and non-nationals residing in the Member State concerned (AT/DE/PL). They also emphasised that these additional grounds were applied very rarely, if at all.²

Moreover, it emerges from the 2011 Commission report that some other Member States incorporated recital 12 (some of them also 13) of the framework decision on EAW, which refers to fundamental rights, into national legislation concerning EAW proceedings (AT/CZ/BE/CY/DK/FI/FR/IE/IT/LT/MT/SI).

- 2.9. In respect of fundamental rights as grounds for non-execution, it is worth noting that the European Commission in its report of 2006³ clearly stated that “a judicial authority is always entitled to refuse to execute an arrest warrant, if it finds that the proceedings have been vitiated by infringement of Article 6 of the Treaty on European Union and the constitutional principles common to the Member States. In a system based on mutual trust, such a situation should remain exceptional”. The European Commission maintains its position in the report of 11 April 2011⁴. This issue may be further clarified in the case-law of the Court of Justice.⁵

Taking into consideration the above, it may appear that recommendations concerning the nature of the grounds of non-execution and the fundamental rights clauses could, at least in some cases, be no longer valid for the Member States, in the light of their practice and guidance provided by the Court of Justice.

¹ Case C123/08 Wolzenburg – concerns Art. 4(6) and the possibility of applying it as an obligatory ground for refusal in case of nationals.

² Although statistical data are not comprehensive as regards grounds for refusal, one can observe e.g. that this ground was applied once by NL in 2007 (10330/3/08 REV 3), but no more in 2009 (7551/5/10 REV 5).

³ COM(2006)8 final.

⁴ COM (2011) 175 final, SEC (2011) 430 final.

⁵ Case C- 396/2011 Radu (not yet adjudicated by the ECJ) which somehow concerns the relation between the fundamental rights and possibility to refuse EAW.

Speciality principle

- 2.10. The recommendation on the speciality rule 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. Consideration should be given to the possibility of making the notifications envisaged in Article 27 (1) and 28 (1) of the framework decision. Moreover, it has to be noted that according to the Council conclusions on the follow-up to the recommendations in the Final Report¹, reflection upon this issue should continue at the EU level as well as the national level for the purpose of gradually removing the application of that rule, inter alia, by making use of the declaration under Article 27 (1) of the framework decision (recommendation 12).
- 2.11. The Final Report and country reports show that Member States were divided on the possibility of abandoning the application of the speciality rule. The responses from the seven Member States confirm those differences. While DK does not apply the possibility of abandoning the specialty rule at all, FR considers its application troublesome and others seem rather reluctant to abandon the application of that principle (some of them stress its significance for the procedural guarantees). Although more than two years have passed since the adoption of the Final Report, no significant change can be observed in the Member States' position on this issue.

Recommendations addressed to the preparatory bodies of the Council

- 2.13. Regarding the recommendations of the Final Report addressed to the preparatory bodies of the Council (recommendations 7, 9, 10, 12, 14, 15, and 19) it should be emphasised that they have already been discussed during the Swedish, Spanish, Belgian and Hungarian Presidencies. On 3 June 2010 the Council adopted Conclusions on the follow-up to the recommendations in the Final Report.

¹ 8302/4/09 REV 4 CRIMORG 55 COPEN 68 EJM 24 EUROJUST 20.

2.14. Moreover, according to these conclusions it was decided that some issues were to be reflected upon at the national level. This was the case, for example, for the time limits for the submission of a language-compliant EAW (recommendation 7), surrender in respect of accessory offences (recommendation 10) and a mechanism for provisional arrest under EAW in urgent cases (recommendation and 15).

2.15. As the European Commission stated in its 2011 report, time limits for receipt of EAWs differ among the Member States (from 24 hours to 40 days). Moreover, provisional arrest is possible in all Member States except CY and IE. As regards surrender for accessory offences, the report says that it is possible in 11 Member States while in another eight Member States it is not. Additionally, it may be noted that in four Member States accessory surrender is possible when that state is acting as an executing state and in one Member State only when acting as an issuing state.

Country Reports

2.16. The range of the recommendations addressed to the Member States in the country report is very wide. The recommendations are often very specific and address particular shortcomings in the Member States. They differ as to the nature of the issues, their scope and also the way in which they should be processed. The issues addressed in the recommendations could be categorised by taking into account for example whether they address institutional or legal changes, aim at changing the practice of national authorities or at facilitating their everyday work under EAW scheme.

Recommendations:

Recommendations covering practice, including clarification of legal bases

2.17. Many recommendations refer to the practice of the authorities involved in the EAW procedure and concern, inter alia, changing the bases of SIS alerts (NL/AT), providing information to Eurojust in case of non-compliance with the time limits provided for in the framework decision (e.g. BG/PL), consulting Eurojust in complex cases (e.g. PL), checking whether there are any other offences that should be covered by the EAW taking into account the speciality rule (e.g. HU), explaining some aspects of national law (e.g. FR courts' case-law on the execution of EAWs based on faxes). Some recommendations were also connected with the issue of proportionality (e.g. BG/NL/DE/SI/PL).

Recommendations concerning information sharing/instructions

2.18. Some Member States have prepared guidelines or handbooks which deal with questions of issuing and processing EAWs and address the role of the competent national authorities at the different stages of the procedure. Each Member State has also elaborated a *fiche française*, which has been used to inform other Member States of the practical operation of the EAW procedure in each Member State. Recommendations usually concern the updating of guidelines, handbooks and *fiche française* and its circulation among the authorities involved or, in the case of the latter, placing them on the ATLAS web site (e.g. NL/PL/EE/LV/ES/SI/DE/AT). Moreover, some recommendations also cover training on practical aspects of EAW application, exchange of experiences, coordination meetings between national authorities and language training. The latter is very much needed, especially to make possible the appropriate level of direct communication and cooperation among national authorities of the Member States (e.g. CZ/SE/BG/IT/LT/LU/DK/NL/EE).

Recommendations on institutional aspects

2.19. Some recommendations are devoted to strengthening national institutions' capacities or competences. These concern inter alia the capacities of courts to deal with EAWs within the prescribed time limits (e.g. NL), to issue EAWs in conviction cases (e.g. SE), or to provide 24/7 access to practitioners dealing with EAW cases (e.g. PL/HU). They also address the translation capacities of central authorities, access to some databases and facilities for police or judicial authorities (e.g. EE/PT). Sometimes the issue of limiting the central authorities' involvement in the EAW procedure is also addressed (e.g. DK).

Recommendations on legal aspects

2.20. This set of recommendations constitutes the largest group. They concern inter alia the time limits to be complied with and clearly established, as the period can include appeal procedures (e.g. PL/NL/SE), the need for the grounds for non-execution to be in line with those in the framework decision (e.g. AT/PL/DE/HU/NL), the distinction between extradition and surrender procedures (e.g. CZ), the introduction of coercive powers to ensure that a person is actually surrendered (e.g. FR), the waiving of the speciality rule before the judicial authority (e.g. SE), the distinguishing of consent to surrender from automatic waiving of the speciality rule (e.g. NL) and the introduction of accessory surrender (e.g. BG).

Implementation of the recommendations

2.21. When complying with recommendations, the Member States applied different measures, not always those envisaged in the recommendations concerned. Some recommendations required practical measures rather than legislation, some just the opposite, depending on the individual Member State's system and the nature of the recommendations. The 2011 European Commission report indicates that legal reforms have been undertaken by some Member States. Many of them addressed the recommendations. However, not all of the recommendations were implemented through legal amendments. According to the European Commission the extent of improvement varies greatly between Member States.

Improved practices/clarified legal bases

2.22. In some cases Member States have simply endeavoured to improve their daily practices in order to address some issues highlighted during the evaluations. These could be e.g. practices of police, prosecutors or courts. A case in point which has been touched upon in various Member States replies is the fact that several Member States have now ensured that all Article 95 SIS alerts are now based upon an EAW (NL/AT) or at least that the number of alerts for which this is not the case has been drastically reduced (SE). In cases where some legal issues were not clear to evaluation teams, these have sometimes been clarified through an improved practice or through new case law (e.g. FR).

Information sharing/instructions

2.23. Many Member States have also used the issuing or amending of internal instructions to implement some of the recommendations. In some cases (CZ) it has been indicated that legislative or other regulatory measures (circulars) would not be appropriate, as the topics addressed by the relevant recommendation are dealt with by the courts and it would be inappropriate to issue instructions to the courts.

Institutional capacity

2.24. Some Member States provide the 24/7 on-duty system, allowing national authorities to process EAWs speedily (e.g. CZ/PL). Others have strengthened the capacities or role of judicial authorities (e.g. NL/BG).

Legal amendments

2.25. As it appears from the responses of the 18 Member States, they have relatively often found it possible to amend their legislation at a "technical" level with a view to remedying practical deficiencies found by the evaluation teams, but in most cases they have chosen not to amend their legislation when it comes to more fundamental policy choices made. Areas in which legislative changes have been made concern, for example, accessory surrender, the transposition of some grounds for non-execution, the powers of the competent judicial authorities and temporary surrender. With regard to the problems connected to the execution of sentences passed against nationals, various Member States have referred to the pending transposition of Framework Decision 2008/909/JHA (DE/NL). In some Member States fundamental legal changes have been made, such as the abolition of temporal limitations introduced outside the period allowed by Article 32 of the EAW Framework Decision (LU and SI, planned in CZ), constitutional change regarding the abolition of double criminality (HU) or the limitation of some grounds for non-execution (EE, planned in CZ).

2.26. It should be noted that, due to a problem which arose in one case, the application of Article 32 of the Framework Decision has recently been discussed at the political level. A special bilateral working group was set up to deal with the issue. The European Commission invited the relevant Member States to withdraw the declarations made under Article 32.¹ This issue was also discussed at the experts' level during the meeting of the Working Party on Co-operation in Criminal Matters on 4 November 2011. Several delegations agreed that after seven years of operation of the Framework Decision, the relevant Member States should examine whether there is an ongoing need to maintain the statements made pursuant to Article 32 (1). A large majority of the Member States applying the EAW system to all cases expressed a positive attitude towards this Commission's proposal, given that the application of the Framework Decision should be based on the unified regime increasing legal certainty and mutual trust. Certain Member States also informed about their actions taken to extend the application of the European arrest warrant to situations covered by their statements through national implementing measures.

¹ 15607/11 COPEN 273 EJM 133 EUROJUST 159.

2.27. Article 32 provides that statements may be withdrawn at any time and makes no provision for statements to be made or modified after the Framework Decision has been adopted. However, it is necessary to ensure that the persons sought are effectively extradited to the other Member States, in particular the third country nationals prosecuted for serious crimes committed in the EU. Therefore, in cases where statements made under Article 32 (1) are still applicable, Member States might also wish to consider other measures, including amendments of national legislation, aimed at further facilitating the extradition procedures and strengthening cooperation between the authorities, in order to ensure that the persons sought are effectively extradited to the other Member States.

Recommendations concerning particular issues

Proportionality

2.28. In the light of the 2011 European Commission report and expert discussions held (Working Party on Co-operation in Criminal Matters) in June 2011, the question of judicial authorities' practice as regards proportionality needs to be addressed in more detail.

2.29. Some Member States indicate that the proportionality principle was not included in the text of the Framework Decision; hence it cannot be assessed in the context of the proper implementation. The Member States concerned argued that the fact that numerous EAWs were issued does not in itself mean that these were used disproportionately in relation to less serious offences. At the same time there is not sufficient evidence that the Member States refuse EAWs on the basis of that principle. Nevertheless, some Member States have already taken actions to improve their practice as regards use of the EAW (e.g. meetings among practitioners to discuss the practical aspects of the EAW, including proportionality, notes to courts addressing this issue). In some cases (e.g. PL/SK/LV), where the problem of observance of the proportionality principle had been observed, the number of issued EAWs has since decreased ¹. In that context it is also worth mentioning that the follow-up to the recommendations in the Final Report included an amendment to the handbook on the EAW in respect of proportionality with a view to reaching a coherent solution at EU level (Council conclusions of 3 June 2010).

2.30. In its 2011 report, the European Commission stated that the changes made to the EAW Handbook were the appropriate way to address the issue of proportionality. Based on this report, the question of proportionality was also the subject of experts' discussions at the Working Party on Cooperation in Criminal Matters in June 2011, where the majority of the Member States supported this approach. At the same time some of them indicated that in the future an assessment could be conducted so as to ascertain how effective the application of the new handbook is in practice.

¹ See the replies to the questionnaire on quantitative information on the practical operation of EAW (documents 9734/6/09 REV 6 COPEN 87 EJM 28 EUROJUST 28, 7551/7/10 REV 1 COR 1 COPEN 64 EJM 5 EUROJUST 34, 9120/2/11 REV 2 COPEN 83 EJM 46 EUROJUST 58).

Grounds for non-execution

2.31. As regards grounds for non-execution, in particular the protection of fundamental rights, it is worth noting that at the expert level (Working Party on Cooperation in Criminal Matters) in June 2011, the issue of general prison conditions was discussed as a potential ground for refusing execution of an EAW. The question arose in the light of the ECtHR judgment given in a case concerning the expulsion of an asylum-seeker by one Member State to another Member State under the Dublin Convention. Member States were unanimous that such grounds for non-execution cannot be accepted. They were reluctant to make any amendments to the Framework Decision. Moreover, mechanisms are already in place to enable national authorities to check prison conditions.

2.32. With regard to the question of prison conditions, it should be mentioned that, in accordance with the Roadmap on fostering protection of suspected and accused persons in criminal proceedings (hereinafter the roadmap on procedural rights), adopted in November 2009 ¹, the European Commission prepared the Green Paper on the application of EU criminal justice legislation in the field of detention. ² It covers the interplay between detention conditions and mutual recognition instruments such as the European Arrest Warrant as well as pre-trial detention.

¹ OJ C 295/1 of 4.12.2009.

² COM (2011) 327.

Non-implemented recommendations

2.33. Apparently not all recommendations have been implemented. In some cases Member States have chosen not to implement a recommendation because they deem that their current law already allows them to achieve what the relevant recommendation is aiming at (e.g. BG/CZ/EE/HU). In other cases, however, Member States have indicated that they disagree with the recommendation mostly because they think the recommended change is not necessary or is impracticable (e.g. SE/FI/NL). In some cases Member States have indicated that they disagree with recommendations because they are outside the scope of the EAW Framework Decision (accessory surrender, proportionality) or because the topics they touch on should be addressed at EU level instead (speciality rule) (e.g. AT/PL). Some Member States have stated that the proposed changes regarding the thresholds referred to in the Framework Decision would not be in line with the proportionality rule (e.g. NL/SI/BG).

3. FINAL REMARKS

3.1. It is difficult to draw general conclusions from the responses provided by the Member States and even more so to address the recommendations to them, since not all Member States have replied. Moreover, only 1/3 of the Member States responded to the recommendations of the Final Report.

3.2. Therefore, the Presidency at this juncture intends to limit itself to some general remarks. It clearly emerges from the replies from the Member States that the evaluations conducted in the context of the fourth round have assisted Member States in identifying a number of weaknesses in their practical implementation of the Framework Decision on the European Arrest Warrant.

All Member States that have replied in the follow-up that they have given to the recommendations have clearly used the report to address some of these problems. In this context it is worth noting that the effectiveness of the EAW system is increasing, taking into account the tendency in the proportion of EAW executed as compared to the EAW issued (2008 – 21%, 2009 – 27%, 2010 – 39%).¹ Generally it can be said that the fourth evaluation round has allowed the Member States to overcome some of the "growing pains" surrounding the implementation of the European Arrest Warrant.

3.3. The follow-up to the fourth evaluation round shows that some progress has been achieved through the Member States' efforts but at the same time there is still work ahead. Discussions on the application of the EAW should continue, and they should be also held in the broader context of their interrelation with other legislative or non-legislative instruments like those envisaged under the roadmap on procedural rights. Each of the instruments provide rights that should be specifically addressed not only in national criminal proceedings but also in EAW proceedings. New questions may also arise in the application of those rights in the latter proceedings. Some of them would probably be solved by Court of Justice case-law within the preliminary ruling procedure.² Member States could also discuss them at the experts' level.

3.4. The Presidency, while presenting this report in accordance with the recommendation No 20 of the Final Report, encourages Member States to continue their efforts to attain smoother cooperation under the EAW procedure. The Presidency also encourages those who have not yet done so to respond to the recommendations addressed to them. Any problem arising from the implementation of the recommendations could then be discussed at the expert level.

¹ See the replies to the questionnaire on quantitative information on the practical operation of EAW (documents 9734/6/09 REV 6 COPEN 87 EJM 28 EUROJUST 28, 7551/7/10 REV 1 COR 1 COPEN 64 EJM 5 EUROJUST 34, 9120/2/11 REV 2 COPEN 83 EJM 46 EUROJUST 58).

² Most of the Member States already recognise the jurisdiction of the Court. As from end 2014 (unless the framework decision is amended before that time) the Court will exercise full competence with regard to police and judicial cooperation in criminal matters.

| EAW TABLE FOLLOW UP REPORT | | | |
|---|------------------------------|--------------------------|----------------------------------|
| Evaluation report on the fourth round of mutual evaluations "the practical application of the European Arrest Warrant and corresponding surrender procedures between Member States" | | | |
| COUNTRY | DATE EVALUATION VISIT | DATE REPORT No | DATE REACTION DOCUMENT No |
| BELGIUM | 19-22/06/2006 | 7/01/2007 16454/1/06 | 25/10/2011 15994/11 |
| BULGARIA | 21-24/10/2008 | 29/04/2009 8265/1/09 | 13/09/2011 14111/11 |
| CZECH REPUBLIC | 17-20/06/2008 | 5/12/2008 15691/1/08 | 09/09/2011 13743/11 |
| DENMARK | 3-5/05/2006 | 10/12/2006 13801/1/06 | 02/09/2011 13702/11 |
| GERMANY | 9-12/09/2008 | 5/04/2009 7058/1/09 | 21/09/2011 14446/11 |

| | | | |
|---------|---------------|--------------------------|------------------------|
| ESTONIA | 12-14/09/2006 | 1/04/2007 5301/1/07 | 15/09/2011 14276/11 |
| GREECE | 8-11/04/2008 | 5/11/2008 13416/1/08 | |
| SPAIN | 26-30/06/2006 | 20/04/2007 5085/1/07 | 05/10/2011 15111/11 |
| FRANCE | 22-26/01/2007 | 15/07/2007 9972/1/07 | 15/09/2011 14286/11 |
| IRELAND | 21-23/03/2006 | 18/10/2006 11843/1/06 | 12/11/2007 14309/07 |
| ITALY | 15-18/07/2008 | 26/02/2009 5832/1/09 | 17/11/2011 17113/11 |
| CYPRUS | 2-4/05/2007 | 18/11/2007 14135/1/07 | |

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|-----------------|-----------------|--------------------------|--|
| LATVIA | 20-22/05/2008 | 14/01/2009 17220/08 | 11/02/2011 6389/11 (6392/11+COR 1) |
| LITHUANIA | 20-22/02/2007 | 18/11/2007 12399/1/07 | 18/11/2011 17135/11 |
| LUXEMBOURG | 6-8/02/2007 | 14/10/2007 10086/1/07 | 01/09/2011 13324/11 |
| HUNGARY | 2-5/07/2007 | 17/02/2008 15317/1/07 | 16/09/2011 14243/11 |
| MALTA | 15-17/01/2008 | 25/09/2008 9617/1/08 | |
| THE NETHERLANDS | 11-13/03/2008 | 5/12/2008 15370/1/08 | 13/10/2011 15383/11 |
| AUSTRIA | 6-8/11/2007 | 6/03/2008 7024/08 | 13/06/2011 12822/11 |
| POLAND | 29/05-1/06/2007 | 10/12/2007 14240/1/07 | 02/09/2011 13691/11 |

| | | | |
|-----------------|---------------|-------------------------|------------------------------|
| PORTUGAL | 25-27/10/2006 | 25/05/2007 7593/1/07 | 01/09/2011 13706/11 |
| ROMANIA | 18-21/11/2008 | 29/04/2009 8267/1/09 | 15/11/2011 16934/11 |
| SLOVENIA | 2-4/10/2007 | 25/09/2008 7301/1/08 | 12/09/2011 14032/11 |
| SLOVAK REPUBLIC | 11-13/11/2008 | 5/04/2009 7060/1/09 | 15/11/2011 16895/11 |
| FINLAND | 23-25/01/2007 | 4/10/2007 11787/1/07 | 16/09/2011 14282/11+COR 1 |
| SWEDEN | 3-6/12/2007 | 25/09/2008 9927/1/08 | 29/09/2011 14876/11 |
| UNITED KINGDOM | 11-15/12/2006 | 17/10/2007 9974/1/07 | |

| IMPLEMENTED RECOMMENDATIONS¹ | | | | | | |
|--|--------------------------------|--|--|------------------------------------|--|---|
| | LEGISLATION AMENDED | NEW LEGISLATION UNDER PREPARATION | INSTRUCTION ISSUED MODIFIED | FORMS ISSUED/ REDRAFTED | PRACTICE IMPROVED/ LEGAL BASIS CLARIFIED | TRAINING ORGANISED |
| BELGIUM | | | | | <p>R. 1 (National guidelines for the registration of EAWs applicable since 1 January 2011)</p> <p>R. 2. (National system for prosecutor's offices makes it possible to examine if a person is the subject of an ongoing investigation - includes also info on EAWs)</p> <p>R. 4 (new national judicial network on international cooperation has been set up)</p> | <p>R. 7 (During trainings of magistrates emphasis is put on the need to accept, as far as possible, the information contained in the EAW)</p> <p>R. 12 (During trainings of magistrates emphasis is put on the need to develop communications with the issuing State throughout the execution procedure)</p> |

¹ The Presidency is aware that the categorisation of these recommendations, presented in a very concise manner, may not always adequately and sufficiently reflect the measures undertaken by the relevant Member State, but hopes that this attempt at categorising would nevertheless be useful for presenting at least the state of implementation of recommendations.

| | LEGISLATION AMENDED | NEW LEGISLATION UNDER PREPARATION | INSTRUCTION ISSUED MODIFIED | FORMS ISSUED/ REDRAFTED | PRACTICE IMPROVED/ LEGAL BASIS CLARIFIED | TRAINING ORGANISED |
|----------|---|--|--|------------------------------------|---|-------------------------------|
| BULGARIA | R.5 (accessory surrender was introduced) R.12 (extension of prosecutor's functions with a view to requesting additional information) | R.4 (acceptance ECJ jurisdiction) | R. 6 (fiche française being prepared) R.9 (information of Interpol NCB on the issuance of EAW) R.10 (information to Eurojust on the delays) | | R.11 (acceptance of documents sent also by fax/email) | R. 7 (language training) |

| | LEGISLATION AMENDED | NEW LEGISLATION UNDER PREPARATION | INSTRUCTION ISSUED MODIFIED | FORMS ISSUED/ REDRAFTED | PRACTICE IMPROVED/ LEGAL BASIS CLARIFIED | TRAINING ORGANISED |
|-------------------|--------------------------------|---|--|------------------------------------|---|--|
| CZECH REPUBLIC | | R.1 (establishing separate procedure for EAW and extradition) R.3 (enabling the issuing of EAW based on a warrant of apprehension of a suspect) R. 5 (abolition of reciprocity rule under discussion) R. 6 (temporal limitation for surrender of CZ citizens removed from the draft) R. 7 (abolition of the clause of protected interests of CZ for the EAW procedure) R. 8 (abolition of the ground for refusal - statute barred in the issuing state) R. 9 (introduction of simplified surrender when the person consents to surrender) R. 10 (introduction of time limits for the execution of EAW) R. 12 (introduction of the grounds for refusal in a summary transfer proceedings) | R. 4 (check on respect for speciality principle partially implemented within the internal rules of the Prison Service) | | | R.2 (language courses, e-learning training, exchange training schemes) |

| | LEGISLATION AMENDED | NEW LEGISLATION UNDER PREPARATION | INSTRUCTION ISSUED MODIFIED | FORMS ISSUED/ REDRAFTED | PRACTICE IMPROVED/ LEGAL BASIS CLARIFIED | TRAINING ORGANISED |
|---------|--------------------------------|--|--|------------------------------------|---|--|
| DENMARK | | | | | R. 1 (EAW forms available to police in all languages and in electronic format, guidance) R. 2 (EAW form posted on POLNET) | R. 4 (training police and prosecutorial authorities) |
| GERMANY | | | R.2 (amended Guidelines on International Communication in Criminal Matters to make the EAW practice uniform) R. 3 (revision of fiche francaise) | | R. 4 (since 2011 all Länder have judicial authorities for EAWs) R. 5 + 6 (case law on strengthening lawyer assistance + legislative measures under consideration) R. 10 (observing proportionality) R. 12 (10-days time limit better observed) | |

| | LEGISLATION AMENDED | NEW LEGISLATION UNDER PREPARATION | INSTRUCTION ISSUED MODIFIED | FORMS ISSUED/ REDRAFTED | PRACTICE IMPROVED/ LEGAL BASIS CLARIFIED | TRAINING ORGANISED |
|---------|---|--|--|--|--|-------------------------------|
| ESTONIA | <p>R. 1 (competent authority designated for issuing EAWs against absconded persons)</p> <p>R. 4 (requirement of travel documents for surrender abolished)</p> <p>R. 7 (procedure for giving consent to surrender has been clarified)</p> <p>R. 12 (clarification that no verification of double criminality is required for list offences)</p> <p>R. 13 (grounds of non-execution are exhaustively laid down in the law)</p> <p>R. 15 (humanitarian grounds for postponing surrender inscribed in domestic law)</p> | | R. 8 (Fiche française) | | R. 6 (increased screening of Interpol notices through increase of personnel) | R. 16 (training judges) |

| | LEGISLATION AMENDED | NEW LEGISLATION UNDER PREPARATION | INSTRUCTION ISSUED MODIFIED | FORMS ISSUED/ REDRAFTED | PRACTICE IMPROVED/ LEGAL BASIS CLARIFIED | TRAINING ORGANISED |
|--------|--------------------------------|--|--|------------------------------------|---|-------------------------------|
| GREECE | | | | | | |
| SPAIN | | | R.6 (fiche française) | | R.1 (significant increase in receipt by Central Authority of copies of EAWs issued by Spanish Courts) R.5 (periodical list of translators and interpreters, language courses for prosecutors and court clerks) | |

| | LEGISLATION AMENDED | NEW LEGISLATION UNDER PREPARATION | INSTRUCTION ISSUED MODIFIED | FORMS ISSUED/ REDRAFTED | PRACTICE IMPROVED/ LEGAL BASIS CLARIFIED | TRAINING ORGANISED |
|--------|---|--|--|------------------------------------|---|-------------------------------|
| FRANCE | R. 9 (competence to put a person under judicial supervision within judiciary) R. 13 (speciality rule - Article 27 (3g) FD) R. 16 (introduction of police coercive powers to effectively surrender a person) | | R. 1 (threshold of the sentence for issuing EAW) R. 3 +6 (circular for surrender of persons) | | R. 2 (use of EAW forms) R. 3 (updated intranet) R. 4 (improvement of compiling information on EAW at central level) R. 7 (case law clarification on examination of the substance of EAW) R. 8 (expert advice to courts on coordination of EAW procedures) R. 10 (case law clarification on the division of competence on ordering a stay of surrender for humanitarian grounds) R. 15 (guide on surrender of persons clarifies temporary surrender) R. 17 (rights of the defence specified by the Supreme Court of Appeal) | |

| | LEGISLATION AMENDED | NEW LEGISLATION UNDER PREPARATION | INSTRUCTION ISSUED MODIFIED | FORMS ISSUED/ REDRAFTED | PRACTICE IMPROVED/ LEGAL BASIS CLARIFIED | TRAINING ORGANISED |
|---------|--------------------------------|--|--|------------------------------------|--|---|
| IRELAND | | R. 4 (clarification of possibility to use Interpol and email channels) R. 8 (powers to photograph and fingerprint persons) R. 11 (dealing with typographical errors) R. 16 (standard undertaking regarding transfer of sentenced person against whom EAW has been issued) | | | R. 1 (systems under consideration to monitor work flow) R. 2 (staff level increased) R. 3 (coordination in preparation of SIS II) R. 5 (consideration to be given to real time access to data for officers) R. 6 (role of the Central Authority made clear by the court decision) R. 7 (shorter time for endorsement of EAW) R. 10 (surrender hearing) R. 12 (improved appeal practices by prioritising EAW cases + procedure for notifying Eurojust of time limit breaches) R. 14 (statistics kept) | R. 2 (training solicitors) R. 15 (EU Criminal law Educational programme) |

| | LEGISLATION AMENDED | NEW LEGISLATION UNDER PREPARATION | INSTRUCTION ISSUED MODIFIED | FORMS ISSUED/ REDRAFTED | PRACTICE IMPROVED/ LEGAL BASIS CLARIFIED | TRAINING ORGANISED |
|-------|------------------------|---|--|----------------------------|---|---|
| ITALY | | | <u>R. 3 (MoJ recommended issuing Article 95 SIS alerts in all EAW cases)</u> <u>R. 6 (MoJ has requested the Prosecutor General to ensure that all EAW changes are conveyed to SIRENE)</u> | | <u>R.7 (The MoJ has prepared a standard form for guarantees for in absentia cases)</u> <u>R. 8 (SIS alerts have been updated so that are only very few SIS alerts left which are not based on EAWs)</u> <u>R. 13 +14+18+19 (Supreme Court of Cassation has interpreted the impugned provisions in conformity with the EAW Framework Decision)</u> <u>R. 21 (there have been no more cases of breach of 90-days period - Eurojust is involved for coordination)</u> | <u>R.1 (Language training is being organised at both a central and decentralised level)</u> |

| | LEGISLATION AMENDED | NEW LEGISLATION UNDER PREPARATION | INSTRUCTION ISSUED MODIFIED | FORMS ISSUED/ REDRAFTED | PRACTICE IMPROVED/ LEGAL BASIS CLARIFIED | TRAINING ORGANISED |
|-----------|--|---|---|----------------------------|--|---|
| CYPRUS | | | | | | |
| LATVIA | R. 5 (EAW issued by public prosecutor) | | R. 17 (Fiche française drawn up) | | | |
| LITHUANIA | | | <u>R. 6 (LT notification pursuant to Article 6(3) in conjunction with Article 2 on the designation of the execution authority was modified)</u> | | <u>R. 2 (liaison and coordination between institutions is regular and sufficient)</u> <u>R. 3 (IT equipment updated - EAW prosecutors have direct access to databases)</u> <u>R. 4 (LT provides EAW statistics)</u> <u>R. 5 (delimitation of powers between Prosecutor General Office and Vilnius courts has been clarified in practice)</u> <u>R. 9 (State Border Guard now allows surrendered persons to cross borders without international travel documents)</u> | <u>R. 10 (Every year there are EAW training courses by the Centre of the National court Administration)</u> |

| | LEGISLATION AMENDED | NEW LEGISLATION UNDER PREPARATION | INSTRUCTION ISSUED MODIFIED | FORMS ISSUED/ REDRAFTED | PRACTICE IMPROVED/ LEGAL BASIS CLARIFIED | TRAINING ORGANISED |
|----------------|---|--|--|------------------------------------|---|---|
| LUXEM BOURG | R.1 and R. 5 R. 5. (domestic law brought in line with Art. 32 EAW FD) R. 6 (acceptance of the EAW in forms other than original or a certified copy) R. 9 (abolition of derogatory Benelux regime) R.10 (notification of Eurojust on the delays) R.13 (access to databases) | | | | R.2. (drafting methods of SIS forms improved) R. 3 (grounds for detention in case of temporary surrender clarified) | R. 12 (training sessions for all practitioners) |

| | LEGISLATION AMENDED | NEW LEGISLATION UNDER PREPARATION | INSTRUCTION ISSUED MODIFIED | FORMS ISSUED/ REDRAFTED | PRACTICE IMPROVED/ LEGAL BASIS CLARIFIED | TRAINING ORGANISED |
|---------|--|--|--|------------------------------------|---|-------------------------------|
| HUNGARY | R. 2 (indication of date of EAW issuance) R. 7 (compliance with Article 4(4) EAW FD R. 8 (abandonment of double criminality for nationals - constitutional change) | | | | | |
| MALTA | | | | | | |

| | LEGISLATION AMENDED | NEW LEGISLATION UNDER PREPARATION | INSTRUCTION ISSUED MODIFIED | FORMS ISSUED/ REDRAFTED | PRACTICE IMPROVED/ LEGAL BASIS CLARIFIED | TRAINING ORGANISED |
|-------------|--------------------------------|--|---|------------------------------------|---|----------------------------------|
| NETHERLANDS | | R. 5 (future transposition under FD 2008/900/JHA will address issue of in judgments) | R.1 (internal guidelines on filling out EAW form) | | R. 3 (SIS alerts reviewed and based on EAWs) R. 6 (case law NL Supreme Court no longer requires full text of EAW legislation of issuing MS) R. 7 (SIRENE asks prior judicial authorisation before flagging) R. 11 (no longer requirement of original EAW or authenticated copy) R.13 (expansion of trial capacity of Amsterdam court) | R. 2 (training for issuing EAWs) |

| | LEGISLATION AMENDED | NEW LEGISLATION UNDER PREPARATION | INSTRUCTION ISSUED MODIFIED | FORMS ISSUED/ REDRAFTED | PRACTICE IMPROVED/ LEGAL BASIS CLARIFIED | TRAINING ORGANISED |
|---------|--|--|--|------------------------------------|--|----------------------------------|
| AUSTRIA | R. 7 (ensuring the compliance of implementing law with the scope of EAW FD for conviction cases) | | R. 2 (future decree will refer to direct communications) R. 3 and 4 (future decree will refer to the criteria for issuing EAW (same as for national arrest warrant), including new Handbook) R. 5 (future decree will suggest checking availability of ID materials with SIRENE) R. 12 (future decree will require the Austrian judicial authorities to inform directly the issuing authority about the decision on surrender) | | R. 6 (for all Austrian SIS alerts an EAW has been issued) R. 14 (information sheet for detainees in 33 languages) | R. 1 (training already in place) |

| | LEGISLATION AMENDED | NEW LEGISLATION UNDER PREPARATION | INSTRUCTION ISSUED MODIFIED | FORMS ISSUED/ REDRAFTED | PRACTICE IMPROVED/ LEGAL BASIS CLARIFIED | TRAINING ORGANISED |
|--------|--|--|--|--------------------------------|--|--|
| POLAND | R. 7 (bill on amendments to EAW act adopted) R. 9 (new Regulation obliges courts to take into account all offences and EAWs when issuing EAW) R. 13 (courts can now order provisional detention on the basis of electronic EAW copy) R. 17 (no original EAW required for provisional detention, introducing time limit for provision of language complaint EAW) R. 21 (time limits for deciding on execution EAW more clarified) R. 15 (Regulations on flagging SIS alerts introduced judicial control of flagging) | | R. 1 (standardisation improved through regular instructions from supreme prosecutor's office) R. 2 (national prosecutor's guidelines updated) R.3 guidelines on the use of SIS forms sent to the courts R. 8 (Min of Justice note to courts on alternatives to use of EAW, amended Handbook on EAW available on the internet – proportionality issue) | | R. 4 (statistics provided) R. 12 (EJN Atlas data updated) | R. 3 (training emphasises use of SIS forms) R. 23 (training on information to be provided to issuing state) |

| | LEGISLATION AMENDED | NEW LEGISLATION UNDER PREPARATION | INSTRUCTION ISSUED MODIFIED | FORMS ISSUED/ REDRAFTED | PRACTICE IMPROVED/ LEGAL BASIS CLARIFIED | TRAINING ORGANISED |
|----------|--------------------------------|--|--|------------------------------------|---|-------------------------------|
| PORTUGAL | | R. 6 (draft bill which will take up recommendations) | | | R. 1 (AG recommends to inform PT Eurojust member in every case) R. 3 (prosecutors will be provided with access to SIS) R. 4 (SIRENE informs all judicial authorities of additional EAWs) R. 5 (EAW Handbook has been published) R. 7 (rota of Public prosecutors to give legal advice to SIRENE) R. 8 (judge appointed to WP on EAW) | |

| | LEGISLATION AMENDED | NEW LEGISLATION UNDER PREPARATION | INSTRUCTION ISSUED MODIFIED | FORMS ISSUED/ REDRAFTED | PRACTICE IMPROVED/ LEGAL BASIS CLARIFIED | TRAINING ORGANISED |
|---------|------------------------|---|--|----------------------------|--|---|
| ROMANIA | | <u>R.10 (legislative amendments on preventive measures as alternative to detention under EAW)</u> | <u>R.1(circular issued on direct transmission and communication under EAW)</u> | | <u>R.1 (direct contact between judicial authorities)</u> <u>R.3 (registry for incoming and outgoing EAWs. An electronic mechanism will be adopted)</u> <u>R.6 (uniform practice introduced to check whether the person is in Romania before issuing EAW)</u> <u>R.7 (checking the ongoing cases prior to issuing EAW - under progress)</u> <u>R.8 (establishing the uniform understanding of the effects of prosecutorial decision to close the case)</u> <u>R.9 (developing uniform practice on the apprehension and arrest)</u> | <u>R.4 (training covering also language skills for judges and prosecutors)</u> <u>R.5 (actions (will be) taken to organise training for lawyers)</u> |

| | LEGISLATION AMENDED | NEW LEGISLATION UNDER PREPARATION | INSTRUCTION ISSUED MODIFIED | FORMS ISSUED/ REDRAFTED | PRACTICE IMPROVED/ LEGAL BASIS CLARIFIED | TRAINING ORGANISED |
|----------|---|---|--|------------------------------------|--|---|
| SLOVENIA | R. 7 (correct transposition of list of offences) R. 8 (threshold for sentences has been amended) <u>R. 10 (obligation of mandatory issuance of order for provisional arrest (and conveyance) by investigative judge for the purpose of surrender procedure)</u> R. 12 (execution of sentences passed against Slovenian citizens) R. 13 (temporal limitation of surrender abolished (cf. Article 32 EAW FD)) | R. 4 (speciality principle will be included in legislation) R. 9 (provision which will rule out checking of double criminality for list offences) R. 15 + R. 16 (provision transposing Article 25 of the EAW FD on transit to be changed) | | | R. 11 (systematic electronic verification on current investigations or proceedings against the person under EAW) | R. 2 (various seminars) R. 9 (seminars, workshops undertaken regarding double criminality) |

| | LEGISLATION AMENDED | NEW LEGISLATION UNDER PREPARATION | INSTRUCTION ISSUED MODIFIED | FORMS ISSUED/ REDRAFTED | PRACTICE IMPROVED/ LEGAL BASIS CLARIFIED | TRAINING ORGANISED |
|-----------------|---|-----------------------------------|--|-------------------------|---|--|
| SLOVAK REPUBLIC | <u>R. 1 (greater clarity achieved by new Act on the European Arrest Warrant)</u> <u>R.8 (introduction of provision on proportionality check prior to issuance of EAW)</u> <u>R.9 (new provisions on the execution of EAW in line with FD on EAW)</u> <u>R.10 (new provisions on time limits for language – compliant EAW adopted)</u> <u>R.11 (removing of the compulsory detention as regards Article2 (2) offences)</u> <u>R.13 (converting the mandatory ground for refusal based on the territoriality into an optional one)</u> <u>R.14 (new provisions on the consent regarding speciality principle and subsequent surrender)</u> <u>R.15 (provision on temporary surrender introduced)</u> | | <u>R. 2 (currently using the European EAW Handbook with the explanatory report to the new Act and instructions by the Ministry of Justice and the General Prosecutor’s Office. A new handbook is planned after the further amendment of the EAW legislation transposing Framework Decisions)</u> | | <u>R. 3 (accessibility to EAW Atlas will be improved soon - preparation of information to be placed on the Atlas)</u> <u>R. 4 (new EAJN website available through link on MoJ website)</u> <u>R. 5 (Eurojust is being used by SK prosecutors)</u> | <u>R. 6 (Judicial Academy provides language courses)</u> |

| | LEGISLATION AMENDED | NEW LEGISLATION UNDER PREPARATION | INSTRUCTION ISSUED MODIFIED | FORMS ISSUED/ REDRAFTED | PRACTICE IMPROVED/ LEGAL BASIS CLARIFIED | TRAINING ORGANISED |
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| FINLAND | R. 7 (section 34(2) Extradition Act on mandatory onward surrender to other (issuing) Member States repealed) R. 8 (Coercive Measures Act and EU Extradition Act aligned) | R. 6 (translation provisions will be clarified) | R. 1 (EAW Handbook amended) | | R. 5 (amended EAW Handbook requires monitoring by General Prosecutor of EAW undertakings) | R. 9 (refresher training courses have been organised) |

| | LEGISLATION AMENDED | NEW LEGISLATION UNDER PREPARATION | INTERNAL INSTRUCTION ISSUED MODIFIED | FORMS ISSUED/REDRAFTED | PRACTICE IMPROVED/ LEGAL BASIS CLARIFIED | TRAINING ORGANISED |
|--------|--|--|---|-----------------------------------|---|-------------------------------|
| SWEDEN | R. 9 (legislation on SIS flags amended in context of SIS II) | R. 6 (different solutions for prolonging period for effecting temporary surrender are being considered) R. 7 + 11(draft bill addresses guarantees for renunciation to speciality rule) R. 13(including time limits also during the appeal procedure) | R. 10 (EAW Atlas and fiche française updated) R. 14 (prosecutors manual will be updated) | | R. 1 (statistics provided) R. 2 (EAW Manual published) R. 4 (written guidelines issued for authorities competent to issue EAWs for conviction cases) R. 8 (number of SIS alerts not based on EAWs has decreased) | |

| | LEGISLATION AMENDED | NEW LEGISLATION UNDER PREPARATION | INSTRUCTION ISSUED MODIFIED | FORMS ISSUED/ REDRAFTED | PRACTICE IMPROVED/ LEGAL BASIS CLARIFIED | TRAINING ORGANISED |
|-------------------|--------------------------------|--|--|------------------------------------|---|-------------------------------|
| UNITED KINGDOM | | | | | | |

| NON-IMPLEMENTED RECOMMENDATIONS | | | | | |
|--|--|--|---|--|----------------------------|
| | ALREADY POSSIBLE UNDER NATIONAL LAW | DISAGREE WITH RECOMMENDATION: IMPRACTICABLE OR UNNECESSARY | DISAGREE WITH RECOMMENDATION CONTRADICTING/ OUTSIDE SCOPE FD | ISSUE TO BE ADDRESSED AT EU LEVEL | NO REASON GIVEN |
| BELGIUM | R. 2 and 4 (Information on case law already ensured through the dissemination of MLA newsletters (MEMOs)) | R. 3 (impossible to lower threshold for execution of national sentences: no capacity) R.6. (amending legislation on consent to surrender and renunciation of the speciality rule is outside the competences of the current caretaker government) R. 8 (amending legislation on criteria for allowing the wanted person to remain at liberty is outside the competences of the current caretaker government) R. 9 (amending legislation to create legal basis for arrest of person whose surrender has been granted but who has been left at liberty is outside the competences of the current caretaker government) | R. 5 (checking double criminality for euthanasia and abortion is in conformity with the <i>ratio legis</i> of the EAW FD) R. 14 (the time-limits are in conformity with the Belgian procedural law and non-respect for Article 17 EAW FD occurs only in exceptional circumstances) | | |

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| | | <p>R. 10 (amending legislation so as to simplify the procedure for the return of nationals and compliance with Article 5(3) EAW FD is outside the competences of the current caretaker government)</p> <p>R. 10 (amending legislation so as to clarify the scope of the EAW for the purposes of arrest is outside the competences of the current caretaker government)</p> <p>R. 13 (amending legislation so as to integrate onward surrender into national legislation is outside the competences of the current caretaker government)</p> | | | |
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| | ALREADY POSSIBLE UNDER NATIONAL LAW | DISAGREE WITH RECOMMENDATION: IMPRACTICABLE OR UNNECESSARY | DISAGREE WITH RECOMMENDATION CONTRADICTING/ OUTSIDE SCOPE FD | ISSUE TO BE ADDRESSED AT EU LEVEL | NO REASON GIVEN |
|----------|---|---|---|---|----------------------------|
| BULGARIA | R. 11 (EAW proceedings can be launched before receipt of original EAW) R.13 (interpretative decree or judgment is possible in case of contradictory practices) R.15 (detention ordered by magistrate or prosecutor only) | R.14 (judges sufficiently qualified, enough experience) | | R.8 (common criteria regarding proportionality) | R.1 R. 2 R. 3 |

| | ALREADY POSSIBLE UNDER NATIONAL LAW | DISAGREE WITH RECOMMENDATION: IMPRACTICABLE OR UNNECESSARY | DISAGREE WITH RECOMMENDATION CONTRADICTING/ OUTSIDE SCOPE FD | ISSUE TO BE ADDRESSED AT EU LEVEL | NO REASON GIVEN |
|-------------------|--|---|--|--|----------------------------|
| CZECH REPUBLIC | | | R. 11(EAW FD allows for extensions of time limits if duly notified) R.13 (no abolition of requirement of original EAW, as this is a valid requirement under the EAW FD before the entry into force of SIS II) | | |
| DENMARK | | R. 3 (POLNET not suitable forum to distribute EAW information) R. 5 (no change to designation of MOJ as competent judicial authority) R. 6 (no problems in practice with EAW offences list) R. 7 (no need for further coordination in case of additional requests for information) | | | |

| | ALREADY POSSIBLE UNDER NATIONAL LAW | DISAGREE WITH RECOMMENDATION: IMPRACTICABLE OR UNNECESSARY | DISAGREE WITH RECOMMENDATION CONTRADICTING/ OUTSIDE SCOPE FD | ISSUE TO BE ADDRESSED AT EU LEVEL | NO REASON GIVEN |
|---------|--|---|--|--|----------------------------|
| GERMANY | | R. 1 (no need to distinguish EAW further from extradition) R. 7 (proportionality principle; requirement of 4 months executable sentence) R. 11 (reciprocity requirement has no practical significance in surrender cases within EU) | R. 8 (grounds of non-execution in cases where offence has no link with DE are in compliance with EAW FD as interpreted by ECJ in <i>Wolzenburg</i>) | R. 9 (problems regarding execution of sentences will be resolved by FD 2008/909/JHA) | |

| | ALREADY POSSIBLE UNDER NATIONAL LAW | DISAGREE WITH RECOMMENDATION: IMPRACTICABLE OR UNNECESSARY | DISAGREE WITH RECOMMENDATION CONTRADICTING/ OUTSIDE SCOPE FD | ISSUE TO BE ADDRESSED AT EU LEVEL | NO REASON GIVEN |
|---------|--|---|---|--|----------------------------|
| ESTONIA | R. 3 (authority competent for provision of guarantees under article 5(3) FD is court) R. 5 (withdrawal of EAWs is possible) R. 9 (bail possible in EAW proceedings) R. 11(lawyer participation during EAW proceedings obligatory) | R. 2 (very few translation problems in practice) R. 10 (timely release never poses problems in practice) R. 14 (authorities designated to authorise temporary or onward surrender works well in practice) | | | |
| GREECE | | | | | |

| | ALREADY POSSIBLE UNDER NATIONAL LAW | DISAGREE WITH RECOMMENDATION: IMPRACTICABLE OR UNNECESSARY | DISAGREE WITH RECOMMENDATION CONTRADICTING/ OUTSIDE SCOPE FD | ISSUE TO BE ADDRESSED AT EU LEVEL | NO REASON GIVEN |
|---------|--|--|---|--|----------------------------|
| SPAIN | R.4 (flagging /request for further info only after judicial scrutiny) | R.2 (no need for a general explanatory memorandum to explain legal requirement of hearing of persons - can be clarified on a case-by-case basis) R.3 (practical effectiveness of all prisoners being transported to Madrid) | | | |
| FRANCE | | | | | R. 14 |
| IRELAND | | R. 9 (adjournments robustly resisted by the State; judicial discretion cannot be regulated by guidelines) R. 10 (constitutional right to cross-examine must be safeguarded in the context of EAW proceedings) R. 13 (impracticable to deal with fees in an other (faster) way) | | | |

| | ALREADY POSSIBLE UNDER NATIONAL LAW | DISAGREE WITH RECOMMENDATION: IMPRACTICABLE OR UNNECESSARY | DISAGREE WITH RECOMMENDATION CONTRADICTING/ OUTSIDE SCOPE FD | ISSUE TO BE ADDRESSED AT EU LEVEL | NO REASON GIVEN |
|------------|---|--|---|---|--|
| ITALY | <u>R. 5. (MoJ already has a digitalised central archive in which all EAWs issued in Italy are stored and can be easily retrieved)</u> | <u>R. 4. (Impossible to mention several EAWs against same person on same alert form, as these EAWs are issued by different judicial authorities. MoJ undertakes to inform the executing authorities of such cases)</u> | | <u>R. 2 (ongoing examination of aligning statutory thresholds with those of the FD in the light of the ongoing debate on the proportionality principle)</u> | <u>R. 9+10+11+12+15+16+17+20+20+22(The MoJ is examining these recommendations)</u> |
| CYPRUS | | | | | |
| LATVIA | | | | | |
| LITHUANIA | <u>R. 7 (current provisions of Code of Criminal Procedure do not limit power of judges to gather information directly)</u> | <u>R.1 (entrusting judicial authorities with power to issue EAWs is under consideration)</u> | <u>R. 7 (human rights refusal clause in Code of Criminal Procedure in accordance with Article 1(3) and recital 12 FD)</u> | | |
| LUXEMBOURG | R.8 (release under judicial supervision) R. 13 (access to databases) | R. 7 (mutual recognition principle to be extended was considered in depth) R. 11 (transposition Art. 16(2) EAW FD not desirable at this stage)) | | | R. 4 (use of heading (g) EAW form) |

| | ALREADY POSSIBLE UNDER NATIONAL LAW | DISAGREE WITH RECOMMENDATION: IMPRACTICABLE OR UNNECESSARY | DISAGREE WITH RECOMMENDATION CONTRADICTING/ OUTSIDE SCOPE FD | ISSUE TO BE ADDRESSED AT EU LEVEL | NO REASON GIVEN |
|---------|---|--|---|--|----------------------------|
| HUNGARY | R. 1 (FD does not require previous national decision) R. 3 (24/7 on duty system) R. 4 (courts and MoJ already have the possibility to check the respect of the speciality principle) R. 6 (execution of EAWs can be refused only on the basis of statutory grounds of non-execution) | R. 5 (simplified surrender only takes place when the relevant information is available) R. 9 (HU citizens abroad cannot be surrendered, but criminal proceedings can be initiated against them) | R. 1 (EAW FD does not require previous national decision) | | |

| | ALREADY POSSIBLE UNDER NATIONAL LAW | DISAGREE WITH RECOMMENDATION: IMPRACTICABLE OR UNNECESSARY | DISAGREE WITH RECOMMENDATION CONTRADICTING/ OUTSIDE SCOPE FD | ISSUE TO BE ADDRESSED AT EU LEVEL | NO REASON GIVEN |
|-------------|--|--|--|--|----------------------------|
| MALTA | | | | | |
| NETHERLANDS | R. 10 (other elements than danger of absconsion may justify EAW detention) | R. 4 (no change in double threshold for executing EAWs because this safeguards proportionality principle) R. 9 (not convinced of negative causality between consent to surrender and relinquishment of protection specialty principle) R. 12 (not convinced of the need to make prosecutor's refusal to execute EAW judicially reviewable) R. 13 (no need to amend legal requirement of release of 910 days detention) R. 14 (no need to amend legal requirement of release after 90 days detention) | R. 11 (no abolition of human rights exception as this is now more commonly accepted by EU) | | |

| | ALREADY POSSIBLE UNDER NATIONAL LAW | DISAGREE WITH RECOMMENDATION: IMPRACTICABLE OR UNNECESSARY | DISAGREE WITH RECOMMENDATION CONTRADICTING/ OUTSIDE SCOPE FD | ISSUE TO BE ADDRESSED AT EU LEVEL | NO REASON GIVEN |
|---------|--|--|--|--|----------------------------|
| AUSTRIA | | R. 9 (very limited scope for checking EAW substance on the basis of suspicion) R. 10 (possibility of reopening surrender procedures safeguards fair decisions) R. 13 (ordering detention for less serious crimes counter to the proportionality principle) | R. 8 (no need to harmonise grounds of non-execution for Austrian citizens with those available to other EU citizens, as the ECJ (Kozłowski) allows for this distinction) R. 11 (time limit for offering surrender not incompatible with EAW FD) | | |

| | ALREADY POSSIBLE UNDER NATIONAL LAW | DISAGREE WITH RECOMMENDATION: IMPRACTICABLE OR UNNECESSARY | DISAGREE WITH RECOMMENDATION BECAUSE OUTSIDE SCOPE EAW FD | ISSUE TO BE ADDRESSED AT EU LEVEL | NO REASON GIVEN |
|--------|--|---|--|--|----------------------------|
| POLAND | R. 11 (contact with EUROJUST) R. 14 (prosecutors already available 7d/week) R. 16 (person arrested on the basis of an EAW has already access to lawyer) R. 22 (MoJ informs Eurojust of time limit breaches) | R. 5 and 6 (constitutional exception for double criminality has only a marginal importance and no case concerning political offences has occurred so far) R. 10 (impossibility to merge registers MoJ and National Prosecutor due to organisational changes) R. 18 (EAW can be accepted only in Polish although the new amendments allow the issuing state to provide EAW in Polish within longer period of time) R. 19 (application of the provision on exclusion of double criminality for non-nationals does not create any problem in practice, no need for amendment) R. 8 (there are reasons for great EAW No – emigration, legality principle, difficulties in assessment of the severity of case, great No does not mean disproportionate use of EAW) | R. 8 (principle of proportionality not part of EAW FD) | R. 20 (accessory surrender should be dealt with in FD) | |

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|----------|--|---|--|--|----------------------------|
| PORTUGAL | R. 2 (PT already requested rectification of PT version EAW FD ¹) | | | | |
| ROMANIA | <u>R.2 (issuing and executing EAW possible by specialised judges)</u> | | | | |

¹ Recommendation made redundant by the entry into force of Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/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.

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|----------|--|--|--|--|----------------------------|
| SLOVENIA | R. 5 (law already provides for implicit checking of respect for specialty principle) R. 12 (execution of sentences against SI nationals by SI courts instead of surrender) R. 14 (seizure of property partly implemented and partly existing under national law) | R. 1 (enough tools and handbook already available) R. 3 (threshold for issuing EAW not amended as it safeguards proportionality) R. 6 (national law already obliges person to be informed when renouncing specialty principle) | | | |

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|--------------------|--|--|---|--|----------------------------|
| SLOVAK REPUBLIC | | <u>R. 7 (requirement for prosecutor to obtain prior consent from Prosecutor General for proposing to issue an EAW is maintained as this guarantees proportionality principle)</u> | <u>R.12 (reference to “important interests of the Slovak Republic” should be kept since it in line with EU law on flagging)</u> | | |
| FINLAND | | R. 3 (grounds for refusal not provided in EAW FD are a political decision) R. 4 (no problems with territoriality clause that need to be addressed) R. 6 (no contradiction in translation provisions that would need to be clarified) | R. 2 (role of police not incompatible with EAW FD) | | |

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|-------------------|--|--|---|--|----------------------------|
| SWEDEN | | R. 3 (no reasons to change the system of international police co-operation division issuing conviction EAWs) R. 5 (abolition of requirement to summon person would not do away with danger of informing suspect) R. 12 (deadline for prosecutor to refer EAW to court is sufficient) | | | |
| UNITED KINGDOM | | | | | |