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THE EUROPEAN UNION**

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NOTE

from:	Belgian 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 Belgium

Delegations will find attached the reply from Belgium regarding the recommendations addressed to it in its evaluation report on the fourth round of mutual evaluations.

<p><i>Recommendations</i></p> <p><i>EAW report 19-3-2007</i></p> <p>(16454/2/06 REV 2 CRIMORG 196)</p>	<p><i>Follow up</i></p>
	<p>No amendments to the law since 1 April 2007.</p>
<p>Belgium as Issuing State</p>	
<p>1 - Establish a reliable statistical method of storing European Arrest Warrants issued, executed or rejected by the Belgian authorities (see 7.2.1.1.).</p>	<p>National guidelines for the registration of European Arrest Warrants sent to Belgian competent authorities have been drawn up and are applicable since 1 January 2011.</p>
<p>2 - In this context, pursue the aim of developing the PHENIX system or establishing a database accessible to all courts concerned by the European Arrest Warrant in order to share the main information items relating to, inter alia, current investigations and arrest warrants already issued. Ensure that case law on the European Arrest Warrant is circulated by means of a computer system accessible to all judicial authorities. The introduction of the internet system as suggested by the Federal Prosecutor would ensure that all information is disseminated (see 7.2.1.2).</p>	<p>A national system for the public prosecutor's offices has been created which makes it possible to examine if a person is the subject of an ongoing investigation carried out by another public prosecutor's office.</p> <p>Information on European Arrest Warrants are included in this system.</p> <p>Information on case law is already ensured through the dissemination of MLA newsletters (MEMOs) within the national network of experts on international cooperation. Those notes are available on the intranet of the Public prosecution.</p>

<p>3 - Consider the possibility of pursuing a reasonably flexible policy of executing sentences which would take account of the thresholds referred to by the Framework Decision, to ensure consistent treatment within the European Union (see 7.2.1.3).</p>	<p>Taking into account the capacities available at national level for the execution of sentences, the Belgian Government has no intention to modify its policy in this regard for the time being.</p>
<p>4 - Make maximum use of the potential of the instruments available to courts to facilitate application of the European Arrest Warrant, mainly by reference to the ministerial circular containing the directives to be followed in completing the form and by organising regular meetings of reference magistrates and of the multidisciplinary working group (see 7.2.2.1).</p>	<p>In this regard, the following information can be provided:</p> <ul style="list-style-type: none"> - Coordinating meetings between the Federal Public Service Justice, public prosecutor's offices and police are organised in due course. - MLA newsletters for prosecutors are regularly issued. These newsletters are available in French and Dutch and contain, among others, advice and case law on the EAW. - A new national judicial network on international cooperation has been set up. Its activities are mainly focusing on sharing information and documentation on national and European case law, as well as information on the practices in other States.

Belgium as Issuing State

<p>5 - Ensure that Belgian law on the EAW conforms to the Framework Decision in cases where the law re-establishes verification of double criminality for certain offences listed in Article 2 of the Framework Decision (see 7.3.1.1.).</p>	<p>The limitation of the list of offences with regard to euthanasia and abortion was made at the time of the legislative adoption of the Belgian implementing legislation. This exception is in conformity with the <i>ratio legis</i> of the Framework Decision, since it was the intention of the Member States to exclude euthanasia and abortion from the list of Article 2 of the Framework Decision. The objective of the partial abolition of the double criminality requirement is simplifying the cooperation by excluding a weighty and lengthy step in the procedure. This specific provision of Belgian law has never caused any problems in practice. There is therefore no political will to review the provision concerning euthanasia and abortion in the law on the EAW.</p>
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6 - Amend the provisions of Article 13 of the Belgian law transposing the EAW to make consent to surrender and renunciation of the speciality rule the subject of two separate questions requiring two separate replies, so that consent to surrender does not necessarily involve renunciation of entitlement to the speciality rule. Consider the introduction of a fixed period for revocation both of consent to surrender and of renunciation of the speciality rule (see 7.3.1.2).	Under consideration. Reviewing legislation is in principle outside the competences of the current caretaker government and it has therefore not been possible to put forward a draft law so far.
7 - Be satisfied as far as possible with the information contained in the European Arrest Warrant and avoid a proliferation of requests for additional information concerning description of the acts and legal qualification by different authorities and at various stages of the procedure (see 7.3.1.3).	This recommendation is in line with the position of Belgian authorities on this point. Special attention to this recommendation is given during trainings of magistrates at national level.
8 - Clarify the criteria to be taken into consideration by the court in taking a decision on allowing the wanted person to remain at liberty (possibly by requiring him to comply with one or more conditions) or placing him in custody within the framework of the EAW procedure (see 7.3.1.4).	Under consideration. Reviewing legislation is in principle outside the competences of the current caretaker government and it has therefore not been possible to put forward a draft law so far.

9 - Clarify or supplement the internal instrument by identifying the legal basis on which the person whose surrender has been granted but who has been left at liberty may be imprisoned the day before surrender (see 7.3.1.5).	Under consideration. Reviewing legislation is in principle outside the competences of the current caretaker government and it has therefore not been possible to put forward a draft law so far.
10 - Simplify the procedure for return of nationals and ensure that the principles set out in Article 5(3) of the Framework Decision are observed, in particular by eliminating the prior request of the person concerned (see 7.3.1.6).	Under consideration. Reviewing legislation is in principle outside the competences of the current caretaker government and it has therefore not been possible to put forward a draft law so far.
11 - Clarify the scope of the European Arrest Warrant for the purposes of arrest (see 7.3.1.7).	Under consideration. Reviewing legislation is in principle outside the competences of the current caretaker government and it has therefore not been possible to put forward a draft law so far.
12 - Encourage and develop communications with the issuing State throughout the execution procedure in order to optimise coordination at all stages (see 7.3.1.8).	Special attention to this recommendation is given during trainings of magistrates at national level.
13 - Consider the possibility of integrating further surrender into national legislation on the European Arrest Warrant (see 7.3.1.9).	Under consideration. This matter is outside the competences of the current caretaker government and it has therefore not been possible to put forward a draft law so far.
14 - Re-examine transposition into national law with regard to the time-limits referred to in Article 17(7) of the Framework Decision (see 7.3.1.10).	The delays set up in the implementing legislation are in conformity with the Belgian procedural law. Overrunning of the time limit fixed by the Framework Decision may only occur in exceptional circumstances.