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from:	Romanian delegation
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Subject:	Follow-up to the evaluation Report on Romania on the Fourth Round of Mutual Evaluations "The Practical Application of the European Arrest Warrant and Corresponding Surrender Procedures between Member States"

General Statements

The evaluation Report on Romania on the Fourth Round of Mutual Evaluations "The Practical Application of the European Arrest Warrant and Corresponding Surrender Procedures between Member States" was adopted on 13 May 2009 and was declassified on 20 May 2009 (hereinafter the Report).

The evaluation period for Romania was 1 January 2007 - November 2008, the Report having included the necessary and relevant information on the national legislation adopted in respect with the European Arrest Warrant and on the measures adopted at the national level in this matter.

The Report was prepared by the expert team with the assistance of the Council Secretariat, based upon their findings arising from the evaluation visit of 18 to 21 November 2008, and upon Romania's detailed responses to the evaluation questionnaire and a written request for further information.

The Report includes 10 recommendations addressed to Romania from both perspectives: issuing and executing state.

1. Implementing law

The FD on the European Arrest Warrant was implemented in the Romanian law in 2004, even if at that time Romania was not an EU Member State. The relevant provisions for the implementation of the EAW in Romania are contained in Title III of Law No. 302 of 28 June 2004 on the international judicial cooperation in criminal matters (hereinafter Law No. 302 of 28 June 2004). Law No 302 of 28 June 2004 represents the Romanian legal framework for the cooperation with the EU and non EU states on judicial cooperation in criminal matters.

Further on, in 2008, Title III (as well as other provisions) from the implementing law was amended by Law No 222/2008¹. The amendments that have been provided to the EAW procedures do not regard the substance of the implementing law. The substance remained, the amendments being done in order to improve and adjust some procedural aspects or to eliminate some procedural loopholes. These aspects are also reflected in the Report.

¹ By this law Romania implemented other three FD: (1) The Council Framework Decision No. 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence, published in the Official Journal of the European Union No. L 196 of 2 August 2003; (2) The Council Framework Decision No. 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties, published in the Official Journal of the European Union No. L 76 of 22 March 2005; (3) The Council Framework Decision No. 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders, published in the Official Journal of the European Union No. L 328 of 24 November 2006.

At this particular moment, a new legislation is under preparation. The main purpose is the implementation of other FD adopted at the EU level in the field of judicial cooperation in criminal matters. In this context, the EAW provisions will be re-evaluated with the purpose of amending them (if the case so requires) also from the perspectives of the recommendations made. .

2. Developments

Measures for the implementation of the 10 recommendations addressed to Romania (as an issuing and executing state) by the experts have been taken already.

In this respect, in the beginning of June 2009, the Ministry of Justice started a dialogue with the Romanian authorities responsible for the implementation of some recommendations: Ministry of Administration and Interior and the Superior Council of Magistracy.

Recommendation 1.- Encourage direct contacts of the competent judicial authorities with their foreign counterparts and devise measures necessary to establish such contacts (including appropriate telecommunications equipment)

Transposed. At this moment, the Romanian judicial authorities (courts and prosecution offices) are using direct contact in the dispatch and reception of European arrest warrants. The central authority of the Ministry of Justice is assisting the competent judicial authorities if so requested (and it happens only in exceptional cases).

The use of the European Judicial Network tools is encouraged and very much recommended.

On 29 January 2010, the Ministry of Justice issued **a circulaire** in connection with the direct contact on the European Arrest Warrant (direct transmission of the EAW issued by the Romanian courts and direct communication with the foreign authorities after the transmission and execution of the EAWs.).

Recommendation 2.- Promote specialization of judicial authorities in EAW cases

Transposed. According with the Romanian law, the EAW are issued by judges appointed especially for that purpose by the president of the court (art. 88 para. 2 from Law no. 302/2004). The execution of the EAWs is undertaken also by judges specialized in this matter.

No specialized *panel* exists. This would imply the amendment of the Regulation on the internal organization of the courts which it could be taken into account only in the context of the optimization of the courts' activity. At this moment, it is considered that it is premature to build up specialized panels for EAW (the caseload per judge has to be observed).

Recommendation 3.- Create appropriate mechanisms, able to provide complete, up-to-date and easily accessible information, for gathering and processing data on all incoming and outgoing EAWs

Partially transposed. For incoming and outgoing EAW, the courts have to keep a special Registry (article 88 para. 8 and 102 para. 3 from the Law No 302/2004). The same Registry is provided also for the Ministry of Justice.

An appropriate electronic mechanism accessible to all the parties involved in the EAW process is intended to be developed.

Recommendation 4.- Continue efforts to provide systematic training programme on EAW matters as well as language training for practitioners (judges, prosecutors and court staff)

Transposed. The Ministry of Justice provides since 2008 and updates information from the Intranet Portal on EAW and on the other entire EU legal instrument on judicial cooperation in criminal matters. The information is addressed only to the magistrates and clerks.

a. Workings Sessions on European Arrest Warrant within the meetings of the Romanian Judicial Network on judicial cooperation in criminal matters

The national Network was established in 2001 and it is a Romanian branch of the European Judicial Network (EJN). It was updated on June 2009. The secretariat of the Network is assured by the Directorate of International Law and Judicial Cooperation within the Romanian Ministry of Justice.

Its members are Judges from the Criminal Sections of each of the 15 Courts of Appeal, prosecutors from each of the 15 Prosecutors' Offices of the Courts of Appeal; two judges from the High Court of Cassation and Justice; prosecutors from the Prosecutors' Office of the High Court of Cassation and Justice; the national contact points for EJN of the Ministry of Justice and of the Prosecution Office of the High Court of Cassation and Justice and legal advisers from the Ministry of Justice.

Some of them are also trainees at the National Magistrates' Institute and National Court Clerks' School.

The tasks and the competences of the members are: providing specialized assistance to competent Romanian judicial authorities with outgoing European Arrest Warrants and with incoming and outgoing requests for judicial assistance directly to judicial authorities in other Member States of the European Union; acting as local contact points for foreign judicial authorities, collaborating with the national contact points for the EJN and with other persons working within the central authorities and having competences in this field, in order to improve judicial cooperation in criminal matters.

The Network meets at least twice a year and has on its agenda, each time, as one of the main topics the European Arrest Warrant.

b. Training seminar organized by National Magistrates' Institute, National Court Clerks' School and courts

In 2009-2011, the National Magistrates' Institute and National Court Clerks' School organized a series of seminars on the European Arrest Warrant (23 have been organized by the National Magistrates' Institute, and 12 by the National Court Clerks' School).

Also, between 2009-2011 within the courts of appeal and the High Court of Cassation and Justice, during the *professional training meetings*, legal practice aspects in the matter of the European Arrest Warrant were also discussed (adopting unitary jurisprudence).

Such professional training meetings were also organized at the level of the prosecution offices of the courts of appeal.

Recommendation 5.- Take measures, as considered appropriate, to promote training of lawyers on EAW matters

Under progress (the Ministry of Justice will approach the National Institute for Training of Lawyers with a view of organizing training sessions on this particular subject).

Recommendation 6.- Develop a uniform practice to verify if a wanted person is located on Romanian territory prior to issuing an EAW

Transposed. Several measures (technical and institutional) have been taken by the Ministry of Administration and Interior.

Recommendation 7.- Create mechanisms to enable judicial authorities to check the existence of pending cases against given individuals prior to issuing an EAW

Under progress.

Recommendation 8.- Promote the uniform understanding of the effects of the prosecutorial closure of the case under Article 881(5) of the implementing law, e.g. by issuing guidelines for prosecutors

Transposed. In the framework of the Romanian Judicial Network on judicial cooperation in criminal matters good practices have been established. A uniform practice is in place.

Recommendation 9.- Develop a uniform practice concerning the application of Article 883 of the implementing law on apprehension and arrest of the requested person based on an Interpol alert

Transposed. Good practices have been established in the framework of the Romanian Judicial Network on judicial cooperation in criminal matters. A uniform practice is in place.

Recommendation 10.- Take the necessary steps to promote the use of preventive measures alternative to detention in EAW cases where appropriate, including– if necessary – amending Article 90 of the implementing law

At this moment, new legislation in this field is under preparation. Article 90 is reanalyzed along with the existing practice.
