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NOTE

from:	Presidency
to:	Working Party on Cooperation in Criminal Matters
No. prev. doc.:	8436/2/10 REV 2 COPEN 95 EJN 8 EUROJUST 42
Subject:	Follow up to the recommendation in the final report on the fourth round of mutual evaluation, concerning the European Arrest Warrant – Exchange of views regarding the Council Conclusions adopted during the Spanish Presidency

Following the adoption, during the Spanish Presidency of the Council, of the Council conclusions of 3 June 2009 on the follow-up to the recommendations in the final report on the fourth round of mutual evaluations, concerning the European arrest warrant¹, the Belgian Presidency integrated the agreed amendments into the EAW Handbook². The Hungarian Presidency thinks it is now time to take stock of the situation regarding the implementation of the Council conclusions. This note seeks to provide the basis for an exchange of view between delegations on the follow up to the Council conclusions.

¹ 8436/2/10 REV 2 COPEN 95 EJN 8 EUROJUST 42.

² 17195/1/10 REV 1 COPEN 275 EJN 72 EUROJUST 139.

1. *In relation to Recommendation 7 of the final report and with a view to moving towards a common time limit for the submission of a language-compliant EAW, the Member States should adopt the measures necessary to establish an adequate time limit (...) for the submission of such EAW to the competent authority in the executing Member State. It would be desirable if such time limit could be set around 6 working days.*

The Presidency would like to know whether there has been any change in the practice or legislation of those Member States that operate shorter time period or whether any such changes are planned/envisaged for the near future.

2. (...)

Further examination should continue in the appropriate bodies in order to provide practitioners with efficient legal instruments so that, where appropriate, the testimony of suspects can be obtained by means of mutual legal assistance or instruments based on the principle of mutual recognition that would not entail the surrender of the person.

However, bearing in mind the differences between the Member States legal systems, in case where undertaking non-legislative measures will not be satisfactory, the Council agreed to re-examine this issue in the future on the basis of a report which, based on factual information, would be produced by the Commission, based on factual information and produced at its own initiative or on request of the Council. On that occasion the Council will decide on the necessary steps to be taken in order to foster a coherent solution at EU level.

The Presidency would like to know whether there has been any change in practice or legislation of those Member States that could not carried out any proportionality-test according to their domestic legislation when issuing an EAW. In those Member States undertaken any such legislative or non-legislative measures are envisaged for the near future

3. *In respect of Recommendation 10 of the final report, regarding the issue of surrender in respect of accessory offences, Member States should endeavour to take action at national level, if need be, in order to solve any difficulties that the absence of a rule in the Framework Decision might cause.*

The Presidency would like to know whether there has been any change in the practice or legislation of the Member States or whether any such changes are planned/envisaged for the near future.

4. *Regarding Recommendation 12 of the final report, on the possibility of removing the specialty rule in relations between Member States, reflection should continue at EU level as to the advisability of gradually removing the application of that rule, and also at national level, on the possibility to abolish its application (...), by making use of the declaration provided for under Article 27.1 of the Framework decision.*

As no initiative has been taken at EU level and no Member State has made any additional declaration under Article 27(1) of the Framework decision, the Presidency is of the opinion there is no further need for discussion of this conclusion.

5. *In relation to Recommendation 14, on the impact on the EAW underlying a SIS alert as a result of the obligation imposed on Member States by article 111(2) of the CISA, replaced by the Council Decision 2007/533/JHA, the evaluation carried out by the Commission in respect of domestic provisions implementing remedies foreseen pursuant to Article 59(3) of that Council Decision should take account of the need to ensure the efficiency of the EAW and pave the way to a common interpretation of the relevant provisions in the Member States.*

As SIS II has not yet been set up, the evaluation referred to in the 2007 SIS II Decision has obviously not taken place either and this recommendation can therefore not be evaluated.

6. *In respect of Recommendation 15, on the possibility of establishing a mechanism for provisional arrest under the EAW in urgent cases, Member States should take legislative action at national level, insofar as this matter creates particular difficulties in practice.*

The Presidency would like to know whether there has been any change in the practice or legislation of those Member States that have problems in making provisional arrest pending the receipt of the EAW or whether any such changes are planned/envisaged for the near future.

7. *In relation to Recommendation 16 of the final report, on the lack of timely and accurate information on the progress of the EAW procedure and on the final decision on surrender, executing authorities are strongly encouraged to use the form as set out in the Appendix to these conclusions, as a best practice when communicating the final decision on the EAW. The form will be also attached as Annex IV to the European Handbook on how to issue an EAW.*

The Presidency invites Member States to inform each other whether any Member State has used the form.

8. *Regarding Recommendation 19 on the application of Article 29 of the Framework Decision, a questionnaire should be distributed to Member States by the appropriate bodies in order to assess the need for a uniform approach on the seizure and handing over of property deriving from a EAW.*

The Presidency invites Member States to inform it on their views for action in this regard or of problems that they have encountered.
