



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 28 May 2010

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NOTE

from:	Presidency
to:	Coreper/Council
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Subject:	Follow-up to the recommendations in the final report on the fourth round of mutual evaluations, concerning the European arrest warrant, during the Spanish Presidency of the Council of the European Union - Draft Council Conclusions

The Working Party on Cooperation in Criminal Matters (EAW experts) met on 29 March 2010 in order to discuss the follow-up to the recommendations in the final report on the fourth round of mutual evaluations, concerning the European Arrest Warrant.

Further discussions took place at the level of JHA Counsellors at meetings on 21 and 26 May 2010.

**COUNCIL CONCLUSIONS ON FOLLOW-UP TO THE RECOMMENDATIONS IN THE
FINAL REPORT ON THE FOURTH ROUND OF MUTUAL EVALUATIONS
CONCERNING THE EUROPEAN ARREST WARRANT AND SURRENDER
PROCEDURES AMONG THE MEMBER STATES OF THE EU**

The Council,

HAVING REGARD to Article 8 (5) of the Joint Action of 5 December 1997 establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organized crime;

HAVING REGARD to the Council Final Report on the fourth round of mutual evaluations, concerning the European arrest warrant and surrender procedures among the Member States of the EU, based on individual evaluation reports, which contains recommendations addressed both to individual Member States and to the preparatory bodies of the Council of the EU;

BEARING IN MIND the need to further ensure efficient application of the EAW on the basis of the recommendations addressed to the Council preparatory bodies, as to the possibility of taking action at EU level in order to enhance uniform application of the EAW and to overcome the difficulties experienced so far;

BEING AWARE that on some matters further reflection is needed and action should be taken in the near future;

WISHING TO ENCOURAGE the competent authorities of the Member States to adopt all the measures necessary to improve the application of the EAW in accordance with these Council conclusions;

Has adopted the following conclusions:

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.

2. In relation to Recommendation 9 of the final report, and with a view to reaching a coherent solution at European Union level regarding the proportionality requirement for the issuing of any EAW, in point 3 of the European Handbook on how to issue a EAW ¹ (Criteria to apply when issuing an EAW – principle of proportionality) the following modifications should be introduced into the first, second and forth paragraphs, and last paragraph should be deleted:

"It is clear that the Framework Decision on the EAW does not include any obligation for an issuing Member State to conduct a proportionality check and that the legislation of the Member States plays a key role in that respect. Notwithstanding that, considering the severe consequences of the execution of an EAW with regard to restrictions on physical freedom and the free movement of the requested person, the competent authorities should, before deciding to issue a warrant consider proportionality by assessing a number of important factors. In particular these will include an assessment of the seriousness of the offence, (...) the possibility of the suspect being detained, and the likely penalty imposed if the person sought is found guilty of the alleged offence. Other factors also include ensuring the effective protection of the public and taking into account the interests of the victims of the offence.

¹ 8216/2/08 REV 2 COPEN 70 EJM 26 EUROJUST 31.

The EAW should not be chosen where the coercive measure that seems proportionate, adequate and applicable to the case in hand is not preventive detention. The warrant should not be issued, for instance, where, although preventive detention is admissible, another non-custodial coercive measure may be chosen – such as providing a statement of identity and place of residence – or one which would imply the immediate release of the person after the first judicial hearing. Furthermore, EAW practitioners may wish to consider and seek advice on the use of alternatives to an EAW. Taking account of the overall efficiency of criminal proceedings these alternatives could include:

- Using less coercive instruments of mutual legal assistance where possible.
- Using videoconferencing for suspects.
- By means of a summons
- Using the Schengen Information System to establish the place of residence of a suspect
- Use of the Framework Decision on the mutual recognition of financial penalties

Such assessment should be made by the issuing authority.

This interpretation is consistent with the provisions of the Framework Decision on the EAW and with the general philosophy behind its implementation, with a view to making the EAW an effective tool for combating serious and organised crime in particular. Prosecutors may also wish to have reference to *the Advocaten voor de Wereld case in Annex VII and Article 49 of the EU Charter on Fundamental Rights.*"

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.

3. In respect of Recommendation 10 of the final report, regarding the issue of surrender in respect of accessory offences, Member States should endeavor 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.

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.

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.

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.

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.

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.

ANNEX

STANDARD FORM ON EAW DECISION

This form shall not be understood as replacing the decision on surrender to be transmitted in accordance with article 22 of the FD 2002/584/JHA as well as, where applicable and so requested by the issuing authority, the full text of the judicial decision on the European Arrest Warrant.

I.-IDENTIFICATION OF THE EAW					
ISSUING REF.:		EXECUTING REF.:		SIS REF.:	
ISSUING AUTHORITY:			DATE OF ISSUE:		
EXECUTING AUTHORITY:		REQUESTED PERSON			
NATIONALITY OF THE PERSON					
II.- FINAL DECISION ON THE EAW					
AUTHORITY REF., JUDGMENT OR DECISION No			DATED		
-A- <input type="checkbox"/> EXECUTED:					
CONSENT OF REQUESTED PERSON (Art. 13 EAW FD)	<input type="checkbox"/> YES <input type="checkbox"/> NO		RENUNCIATION OF SPECIALITY RULE (Art. 13(2) EAW FD)	<input type="checkbox"/> YES <input type="checkbox"/> NO	IN CASE OF PARTIAL SURRENDER, PLEASE INDICATE FOR WHICH OFFENCES THE EAW IS NOT ACCEPTED:
PERIOD OF DETENTION PENDING SURRENDER IN EXECUTING MEMBER STATE (Art. 26 EAW FD)	<input type="checkbox"/> DETENTION <input type="checkbox"/> NONE	BEGINING (DATE/ HOUR OF ARREST):	TRIAL <i>IN ABSENTIA</i> (Art. 4a EAW FD)	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> NEW NOTIFICATION <input type="checkbox"/> NEW TRIAL <input type="checkbox"/> NEITHER NECESSARY (requirements under Article 4a met)
		END (DATE/ HOUR OF SURRENDER): ¹			

¹ This footnote shall be reproduced in the form: "This date is to be completed when available by the surrendering authority. It may also be completed by the receiving authority."

GUARANTEES (Art. 5 EAW FD)	<input type="checkbox"/> REVIEW OF LIFE SENTENCE (Art. 5(2) EAW FD) <input type="checkbox"/> RETURN OF NATIONALS OR RESIDENT OF EXECUTING MEMBER STATE (Art. 5(3) EAW FD)	POSTPONED (Art. 24(1) EAW FD)	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> FOR PROSECUTION IN EXECUTING MEMBER STATE <input type="checkbox"/> TO HAVE SENTENCE SERVED IN EXECUTING MEMBER STATE	TOTAL DURATION OF THE SENTENCE IMPOSED
TEMPORARY SURRENDER	<input type="checkbox"/> NO <input type="checkbox"/> YES UNTIL (DATE) (Art. 24(2) EAW FD)				
1.1.1. MANDATORY GROUNDS FOR REFUSAL: <input type="checkbox"/> RES JUDICATA (Art. 3(2) EAW FD) <input type="checkbox"/> MINOR (Art. 3(3) EAW FD) <input type="checkbox"/> AMNESTY (Art. 3(1) EAW FD)			1.1.2. GROUNDS UNDER NATIONAL LEGISLATION: <input type="checkbox"/> <u>PLEASE SPECIFY:</u>		
III.- COMMENTS:					

Place, date and signature of the competent authority in the executing Member State
TO THE COMPETENT AUTHORITY IN THE ISSUING MEMBER STATE
