



**COUNCIL OF  
THE EUROPEAN UNION**

**GENERAL SECRETARIAT**

**Brussels, 23 July 2007**

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<b>COPEN</b>	<b>115</b>
<b>EUROJUST</b>	<b>43</b>
<b>EJN</b>	<b>23</b>

**OUTCOME OF PROCEEDINGS**

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of: Working Party on Cooperation in Criminal Matters (Experts on the European Arrest Warrant)

on: 17 July 2007

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Subject: Outcome of proceedings of Working Party on Cooperation in Criminal Matters (Experts on the European Arrest Warrant) of 17 July 2007

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**1. Adoption of the agenda**

The agenda as set out in document CM 2433/07 REV 1 was adopted. The item 5 was dealt with in conjunction with the item 3.

**2. Presentation of the Eurowarrant -website by the Dutch Asser Institute**

Mr. Wouter van Ballengooij from the Dutch Asser Institute introduced the European Arrest Warrant Project and presented the Eurowarrant -website ([www.eurowarrant.net](http://www.eurowarrant.net)).

### **3. Report from the Commission on the implementation of the European arrest warrant and the surrender procedures between Member States in 2005, 2006 and 2007**

doc. 11788/07 COPEN 110 EJM 22 EUROJUST 41 + ADD 1

The Commission presented its report, adopted on 11 July 2007, concerning the implementation in 2005, 2006 and 2007 of the European Arrest Warrant and the surrender procedures between Member States. Furthermore, during the discussions on further topics on the agenda the Commission expressed its specific views on each of the issues concerned.

Some delegations pointed out that the annual Commission report, instead of only pointing to inadequate legislative implementation, could also address the actual implications in practice of these inadequacies.

Discussion was held on the following key issues:

#### **a) reintroduction of the double criminality test;**

Delegations exchanged views concerning the reintroduction, in implementing legislation and/or in practice, of the double criminality checks in respect of the list of offences. Some delegations confirmed that modifications to legislation are being drafted to the problems pointed out during the evaluation visits.

#### **b) grounds of refusal incompatible with the Framework Decision;**

Delegations exchanged views on cases where implementing legislation does not exactly reflect articles of the Framework Decision on grounds for refusal, such as:

- alteration of some grounds for mandatory non-execution
- introduction of new grounds of refusal that are incompatible with the Framework Decision
- situations where grounds of refusal which are mentioned as optional in Article 4 of the Framework Decision have been made mandatory grounds for refusal in the implementing legislation.

One Member State pointed out that transposition of a Recital, even if it was not reflected in articles of the Framework Decision detailing grounds for refusal, cannot be seen as an infringement in this respect.

Several delegations pointed out that some of the problems arising from these situations could be tackled by clarifying how to fill in the form. It seemed that there are different views between the Member States on how to fill in the form and what the meaning of certain 'boxes' in the form is.

**c) role of the central authority;**

Delegations did not express any specific problems related to the role of the central authority.

**d) surrender of nationals;**

The issue of surrender of nationals, in particular under Article 4(6) and 5(3), was discussed. Some delegations pointed out that the form does not provide enough information concerning the guarantees when applying the Article 5(3). It was repeatedly emphasised during the discussion that the draft Framework Decision on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union will solve some problems related to the surrender of nationals. Furthermore, it was noted that the reintroduction of a double criminality test is a reality. In addition, some delegations pointed out that as concerns the implementation of Article 5(3) of the EAW FD and the Council of Europe Convention of 21 March 1983 on the Transfer of Sentenced Persons there is an imbalance with regard to the legal basis for returning the person to the executing State.

**e) time-limits;**

The Commission pointed out that the time limits for execution of EAW in 2006 seems to have become longer than in 2005 mainly due to the fact that additional information is being systematically asked for in some executing Member States.

**f) surrender on accessory offences;**

The Commission pointed out that in several Member States it is possible to surrender a person for accessory offences while in some Member States it is not. One Member State stressed that if an EAW includes accessory offences, the question concerning the possible surrender for these offences should be solved according to the national legislation of the executing State.

**4. The consideration of the proportionality principle in the issuing of a EAW**

doc. 10975/07 COPEN 98

Delegations discussed the principle of proportionality on the basis of document 10975/07 COPEN 98. All delegations welcomed the Presidency initiative to launch a discussion on this issue.

Some delegations had difficulties with requiring a proportionality test at the stage of the issuing of the EAW and were of the opinion that the only condition is the minimum threshold set in Article 2 (1) of the FD. Some also indicated that the solution, if it is felt that Article 2 (1) of the FD is really not sufficient in itself, would be to increase that threshold. Most of these delegations pointed out that the principle of legality cannot be forgotten in this discussion.

The majority of delegations were of the view that the principle of proportionality is applicable. Most delegations indicated that it would be the task of the issuing authority to assess whether it is proportionate to issue an EAW regarding the offence(s) in question. It is not mandatory to issue an EAW (it "may" be issued according to the Framework Decision). Some insisted on the fact that proportionality does not offer an additional ground for refusal for the executing authority.

A few delegations indicated on the contrary that it is not possible to prevent judges, when acting as executing authority, to refuse the execution of an EAW because of lack of proportionality. Furthermore it was pointed out that, in the case of an EAW issued for a very minor offence, the execution will in any case be facilitated if the EAW includes an explanation on the reason why an EAW is necessary.

Several Member States pointed out that further discussion is needed in relation to the definition of the principle of proportionality.

**5. Particularities provided for in articles 4 (6) and 5 (3) in respect of own nationals**

doc. 11788/07 COPEN 110 EJM 22 EUROJUST 41 + ADD 1

See item 3 d).

**6. Manual**

**a) Common manual at the EU level to assist filling in the form**

doc. 11481/07 COPEN 105

**b) Presentation of a Portuguese handbook for practitioners - how to develop one for Member States?**

The Portuguese delegation presented its handbook "How to issue and send European Arrest Warrants", which is drafted in order to assist judges and prosecutors in issuing and executing EAWs.

Delegations exchanged views on the basis of 11481/07 COPEN 105 and in general were in favour of creating common guidelines on how to fill in the form. Those delegations (FR/PT/HU/DK/FI) which have drafted a national manual or guidelines shared their experiences with other delegations. The Presidency invited Member States to send their manuals to the Council Secretariat in order to take them into account while working on the proposal for a manual together with the expertise of EJM, Eurojust and other practitioners.

The Presidency concluded that there is general consensus among the delegations on the need to draft an EU manual how to fill in the EAW form. Thus, the Article 36 Committee will be invited to endorse the Presidency proposal at its meeting on 6 - 7 September 2007.

Furthermore, the draft proposal will be discussed later during the Portuguese Presidency in the Working Party on Cooperation in Criminal Matters (Experts on the European Arrest Warrant).

**7. Language problems and time limits in transmission of the EAW after the arrest of a person pursuant to an alert**

doc. 7208/05 COPEN 52 EJM 18 EUROJUST 17

This issue was not discussed due to the lack of time.

**8. State of play of the implementation of the Framework Decision of the Council of the European Union of 22 July 2003 (2003/577/JHA) on the execution in the European Union of orders freezing property or evidence**

doc. 5937/2/06 REV 2 COPEN 12 EJM 3 EUROJUST 7

The Presidency urged delegations to speed up the implementation process of the Framework Decision of the Council of the European Union of 22 July 2003 (2003/577/JHA) on the execution in the European Union of orders freezing property or evidence. The deadline of the implementation is 2 August 2005 and only 18 Member States seem to have implemented the instrument.

**9. Information on EAW in SISone4all**

The Presidency informed the delegations of the future developments of SISone4all and its implications in EAW.

**10. AOB**

The Presidency reminded delegations that national EAW statistics of the year 2006 should be sent to the Council Secretariat as soon as possible, the initial deadline being 1 May.

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