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| From : | General Secretariat |
| To : | delegations |
| Subject : | Report on Eurojust's casework in the field on the European Arrest Warrant |

Delegations will find in the Annex the Report referred to in the subject matter.

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| From: | Eurojust |
| Date: | 26 May 2014 |
| To: | Presidency of the Council of the European Union and European Commission |
| Subject: | Report on Eurojust's casework in the field of the European Arrest Warrant |
| Annex: | Statistics on Eurojust's casework in the field of the European Arrest Warrant |

Report on Eurojust's casework in the field of the European Arrest Warrant (EAW)

This report concerns Eurojust's casework in the field of the European Arrest Warrant (EAW) in the period 2007-2013.

1. Role of Eurojust in the field of the EAW

Pursuant to Article 3(1)(b) of the Eurojust Council Decision¹ (EJD), *in the context of investigations and prosecutions, concerning two or more Member States, of criminal behaviour referred to in Article 4 of the EJD in relation to serious crime, particularly when it is organised, the objectives of Eurojust shall be to improve cooperation between the competent authorities of the Member States, in particular by facilitating the execution of the execution of requests for, and decisions on, judicial cooperation, including regarding instruments giving effects to the principle of mutual recognition.* The European Arrest Warrant is an instrument giving effect to the principle of mutual recognition.

¹ Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to facilitating the fight against serious crime as amended by Council Decision 2003/659/JHA of 18 June 2003, and Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust

Eurojust has throughout the years played a key role in improving cooperation in criminal matters between Member States, in particular by facilitating the execution of EAWs and the exchange of information between national authorities, clarifying legal requirements of both issuing and executing authorities, advising on drafting EAWs before their issuance and on their redrafting, advising in competing EAWs (Article 16(2) FD on the EAW²), reporting on breaches of time limits in the execution of EAWs and on their reasons (Article 17(7) FD on the EAW), coordinating the execution of EAWs, and generally in speeding up the execution of EAWs.

Eurojust plays a role in coordinating the issuance and execution of EAWs in various Member States and preventing possible conflicts of jurisdiction, and also in coordinating the exchange of information in connection with various ongoing criminal proceedings, with special attention having to be given to time limits for bringing indictments against suspects held in custody. The role of coordination meetings is key as they allow for discussion of state of affairs and existing problems in the case, and the agreement of concerted strategies.

Eurojust plays a general facilitation role in the execution of EAWs. It establishes lines of communication between national authorities with a view to clarifying diverging applications at national level of provisions of the FD on the EAW. Its assistance in urgent cases (which frequently arise as EAW fugitives are often in preventive detention) is all the more important. In one such case, assistance was swiftly provided in the margins of a College plenary meeting, and in another, Eurojust was able to provide advice and guidance through the On Call Coordination, leading to a timely surrender.

With a view to assisting practitioners, Eurojust has also developed guidelines concerning the operation of the EAW (*see* below Section 3), and has actively encouraged practitioners to use existing EAW tools such as the European handbook on how to issue an EAW and the EAW Atlas on the European Judicial Network website.

² Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States

Under Article 32 of the EJD, Eurojust reports annually on its activities and on the basis thereof identifies issues encountered in the practical application of the EAW (*see* below Section 2).

2. Practical and legal issues identified in the practical application of the EAW

Below are practical and legal issues in the execution of EAWs identified by Eurojust in its casework. The issues indicated firstly are of a more horizontal nature. The subsequent are mostly linked to different stages of the application of the EAW.

- ✓ Slow communication between competent authorities.
- ✓ Differences between legal systems: problems related to differences between common law and civil law systems. In these cases, Eurojust played an important role in assisting the national authorities, enhancing mutual understanding and providing practical solutions.
- ✓ Differences between legal systems, namely in relation to the conditions to be met under domestic law before an EAW can be issued, which sometimes have resulted in the non execution of an EAW because under the law of the executing Member State these have not been met in the issuing Member State (*e.g.* issue of a person being considered a suspect or an accused is linked to the separation between investigation and prosecution).
- ✓ Poor quality of the translation of the EAW. Inaccurate translations of EAWs have caused basic problems in understanding EAWs. Eurojust was able to overcome these practical difficulties given its combination of practitioner experience and language skills. *E.g.* the choice between the word “accused” and the word “suspect” could have far-reaching consequences for the execution of an EAW.
- ✓ Issues linked with conflicts of jurisdiction. At times, an EAW relates to a case where there is a parallel investigation in the executing Member State or where the executing Member State initiates an investigation against the requested person for the same facts, as a result of the receipt of the EAW. This has caused difficulties for the issuing Member State.

2.1 Scope and content of the EAW

- ✓ Proportionality issues in the executing Member State, linked with mandatory prosecution in the issuing Member State, giving rise to excessive issuance of EAWs, with increased difficulties in cases where the dual criminality requirement is not met (Article 2(2) FD on the EAW).
- ✓ Legal issues linked to whether a Ministry of Justice is considered a judicial authority pursuant to Article 6(1) FD on the EAW, and thus competent to issue EAWs.
- ✓ Delay as a result of insufficient or inadequate information in the EAW with regard to: (i) the description of the facts, including the nexus required to show the connection between the sought person and the criminal offence, (ii) the criminal offences, (iii) the sentence imposed or foreseen for all or some of the offences, or (iv) the aggregation of sentences into a final sentence after the execution of the EAW issued for the execution of several sentences.
- ✓ Requests for additional information: sometimes refusals to execute the EAW were linked to requests for additional information in situations where the need for such information was not obvious. In some cases, this could be interpreted by the issuing State as reflecting lack of trust in the issuing authority's decision, or differing views on how the principle of proportionality under Article 49(3) of the Charter of Fundamental Rights should be applied. Difficulties remain in the application of the mutual recognition principle.
- ✓ Delay in the provision by the executing judicial authorities of the information under Article 26(2) FD on the EAW, and consequent uncertainty about the remaining sentence to be served in the issuing Member State, and which entails a risk that the requested person is detained beyond the limits foreseen in the applicable legislation of the issuing Member State.

- ✓ Failure to notify withdrawal of an EAW in a timely fashion, especially when the requested person had been arrested.
- ✓ Cases where no reason has been given for non-execution of an EAW, even after the person had been released.

2.2. Grounds for non-recognition and guarantees

- ✓ Differences in legal systems with respect to life imprisonment have led to difficulties in the execution of EAWs. Eurojust supported national authorities to reach common agreements on the terms of the guarantee to be provided in accordance with Article 5(2) of the FD on the EAW.
- ✓ Difficulties were encountered in the return of national in application of Article 5(3) FD on the EAW. Different Member States, not considering the FD on the EAW as the appropriate legal basis for the return of nationals, sought to apply the 1983 Council of Europe Convention on the Transfer of Sentenced Persons.
- ✓ Return of nationals to serve sentence after surrender for trial: difficulties in this area caused delays in some proceedings. The execution of this type of EAW would be facilitated if the issuing authorities could clearly state in the EAW form, from the outset, whether they consent to the return of the requested person to the executing country under specified conditions.
- ✓ Delay in cases where guarantees linked with the surrender of own nationals are required and the authority competent to issue the guarantees (Ministry of Justice) is different from the authority (Public Prosecution Office) competent to issue the EAW and provide additional information in relation thereto.

- ✓ Different approaches to sentences *in absentia* and the right to a retrial, as not all Member States have implemented Council Framework Decision 2009/299/JHA amending the Framework Decision on the EAW on the right to retrial, resulting in possible refusal of execution of an EAW. A particular problem with convictions *in absentia* was still encountered in the early stages of the entering into force of this Framework Decision. In such cases, a guarantee of retrial on surrender raised the question of whether the EAW had been issued for the purpose of prosecution or for executing a sentence. The point was of practical importance because of the different information that the EAW should contain, depending upon whether it was issued for prosecution or for sentence.
- ✓ Refusal of temporary surrender, which may seriously impede the progress of the investigation in the issuing State.
- ✓ Obstacles to surrender have been identified when the requested person was serving a sentence in the executing Member State for which he/she had been convicted in a different Member State.

2.3. Surrender Procedure

- ✓ Use of different channels to transmit the EAW (Supplementary Information Request at the National Entry (SIRENE), Interpol, Liaison Magistrates, European Judicial Network (EJN) and Eurojust), without information that the EAW is being sent via a particular channel.
- ✓ Cases where the original or a certified copy of the translated EAW are requested through Eurojust on very short notice before the EAW hearing.
- ✓ Multiple EAWs, issued by different judicial authorities in the same Member State, create uncertainty as to which EAW forms the basis of the surrender.

- ✓ Delay linked to transit authorisation procedures, as Member States have different procedural rules and time limits in these procedures.
- ✓ Costs incurred with surrenders.

2.4. Effects of the surrender

- ✓ Differences between Member States regarding application of Article 27 FD on the EAW on prosecution for other offences committed prior to the surrender have created practical difficulties.
- ✓ Delay in receiving consent to prosecute for additional offences (speciality rule, Article 27 of the Framework Decision on the EAW). Eurojust frequently made good use of its cooperative relations with Supplementary Information Request at the National Entry (SIRENE) bureaux.
- ✓ Financial and other loss for the issuing State when the person whose surrender had been ordered has been released on bail, but failed to appear as directed, or when in custody cases the wrong person was handed over by the executing State.
- ✓ Practical organisation of the surrender of the suspect: in a number of cases, the arranged date for the surrender was not respected, which created practical difficulties.

3. Cases at Eurojust concerning multiple EAW requests

According to Article 16(2) of the FD on the EAW, Eurojust may be requested by the executing judicial authority to advise on where a person should be surrendered when subject to EAWs issued by two or more Member States. Eurojust often produces advice at an early stage and its expertise in this field, whether through negotiation or direct contact with the concerned authorities, is regularly sought and provided at coordination meetings.

Eurojust's casework shows that there have been instances where there is a need to ensure coordination of the execution of the EAWs when these conflict with national arrest warrants for the same types of criminal activities to ensure appropriate use of optional grounds for non-execution of EAWs, particularly in cases of parallel investigations and prosecutions for the same conduct, with a view to preventing *ne bis in idem* issues and conflicts of jurisdiction.

The role of Eurojust in the field of competing EAWs consists of *i*) assisting in securing a consensus between the Member States' authorities involved on the question of which EAW should be given priority, including, when at stake, arrangements for subsequent surrender and temporary surrender of the sought person, and *ii*) helping to avoid the issuance of multiple requests for the surrender of the same person.

National Desks often make use of the Eurojust *Guidelines for Deciding on Competing EAWs*³. In 2011, the College also adopted Guidelines for internal proceedings on the provision of Eurojust opinion in case of competing European Arrest Warrants for cases where Eurojust is requested to provide an opinion in accordance with Article 16(2) of the FD on the EAW.

Case example⁴

A Spanish court requested Eurojust opinion regarding the surrender of an Estonian citizen sought by both Estonia and Italy. The Spanish Desk at Eurojust consulted colleagues and an opinion was issued that the accused should be surrendered to Estonia, taking into account the relevant provisions of Spanish national law and Article 16(2) of the FD on the EAW. Among the factors considered were the following: the crimes for which the subject was requested by Estonia were more serious (homicide and armed robbery) than those for which he was requested by Italy (armed robbery, participation in criminal association and illegal possession of weapons), the Estonian EAW was issued before the Italian EAW (2006 and 2007, respectively); although both EAWs were issued for the purpose of prosecution, in the case of Estonia, the investigative stage of the proceedings had been closed in 2006, and, in the case of Italy, in 2007; and the facts for which the EAW was issued were committed, in the case of Estonia, in 2001, and, in the case of Italy, in 2004.

³ Published in Eurojust Annual Report 2004

⁴ Published in Eurojust Annual Report 2010

Case example⁵:

While dealing with the execution of three Greek EAWs concerning a Swedish national, Belgium authorities received a new EAW issued by the Cyprus authorities related to the same person. With the new request, the authorities were forced to suspend the execution of the Greek EAWs (already allowed by the Belgium Court of Appeal). The Belgium Federal Prosecutor requested Eurojust's advice on the Member State to which the individual should be surrendered. The Belgium Desk consulted both the Greek and Cyprus Desks to gain information on the legal possibilities, such as the option to transfer the person to the other Member State during the investigation, prosecution or execution of sentences. The Belgium Desk also consulted the participating Member States on the opinion of the involved home authorities. Taking into account the information received, the Belgium Desk advised surrendering the individual to Greece. The Belgium authorities agreed with the advice. After the acceptance of a supplementary fourth EAW, the individual concerned was surrendered to Greece which in turn ensured the execution of the Cyprus EAW. With the assistance of Eurojust, the three Member States involved were able to coordinate the execution of the requests in a swift and efficient manner.

4. Notifications of breaches of time limits (Article 17(7) of the FD on EAW)⁶

According to Article 17(7) FD on the EAW, where a Member State cannot observe the time limits provided for in Article 17, it shall inform Eurojust, giving the reasons for the delays.

⁵ Published in Eurojust Annual Report 2012

⁶ For more detailed information on this matter, see *Note on Notifications to Eurojust of breaches of time limits in the execution of EAWs (Article 17(7) of the FD on the EAW)*.

The main reasons reported to Eurojust for the delays in the execution of EAWs are *i)* the need on the part of the executing authorities to obtain additional/supplementary information from the issuing authorities in relation to: an ongoing procedure in the issuing Member State, the description of facts in the EAW, the legal classification of the criminal conduct, foreseen or imposed sentence for the offences or clarification of national legislation; *ii)* appeal procedures in EAW cases under national legislation; *iii)* when constitutional proceedings alleging breach of human rights as protected by national constitutional law or the European Convention on Human Rights are filed; *iv)* the requested person absconds while on bail; *v)* the requested person is serving a domestic sentence in the executing Member State; *vi)* the requested person is awaiting the outcome of legal action in the issuing Member State; *vii)* the volume of requests to particular Member States; and *viii)* limited resources in executing Member States.

5. General issues related to the application of the EAW

The College of Eurojust has also dealt with more general issues related to the application of the EAW. The general issues identified below have been dealt with by the College in the reference period:

- ✓ The gathering of information from Member States concerning the transmission of EAWs via SIS II. (2013)
- ✓ Practice of National Desks concerning registration of notifications of breaches of time limits in the execution of EAWs (Article 17(7) FD on the EAW). (2013)
- ✓ The gathering of information on whether an authority in the Member States that does not have the power to issue domestic warrants has the authority to issue EAWs, and on whether the authorities/courts of the Member States have refused to execute an EAW because the authority that issued it does not have the power to issue domestic arrest warrants. (2012)
- ✓ Whether since the introduction of the EAW scheme, any Member State has refused to surrender on the basis that the Ministry of Justice of the issuing state is not considered to be a “judicial authority” pursuant to Article 6(1) of the FD on the EAW by the authorities of the executing Member State. (2012)
- ✓ The gathering of information on how Member States deal in practice with the return of surrendered nationals or residents to the executing Member State (under Article 5(3) of the FD on the EAW). (2011)

- ✓ Whether an EAW should be categorised as having been issued for the purpose of prosecution or for sentencing when a right to a retrial after surrender existed. (2011)
- ✓ The implementation and practical application of Council Framework Decision 2009/299/JHA amending the FD on the EAW, and its provisions on rights following convictions *in absentia*. (2011)
- ✓ The gathering of information on whether Member States offer a guarantee of the right to a retrial where the requested person has not been informed in person of the trial. (2009)
- ✓ The gathering of information on whether the Member States grant the execution of an EAW for the surrender of a person for the purpose of executing the remainder of a sentence when the remainder is under four months. (2008)
- ✓ The gathering of information on Member States' experiences of cancellations of the hand-over at short notice, and related compensation issues. (2008)
- ✓ The gathering of information on Member States' experience in relation to the application of Article 4(6) of the FD on the EAW, and on the legal basis used when refusing to execute an EAW in respect of a national and offering to execute the sentence in respect of which the EAW has been issued. (2007)

Case example:⁷

In *Istanek v. District Court of Přerov*, a UK court needed to decide whether an EAW should be categorised as having been issued for the purpose of prosecution or for the execution of a custodial sentence or detention order when a right to a retrial after surrender was present (the case involved an *in absentia* sentence). Domestic authorities disagreed on the point and important procedural consequences (including possible dismissal of the warrant) followed from the decision to be taken. Given the conflicting judgements in its national law, the UK court asked Eurojust about the law and practice in other Member States. Within hours of the request being made, Eurojust provided information on how national courts in other member States would proceed in such a situation. The Czech National Desk also advised on the circumstances, under its law, in which a person convicted *in absentia* could ask for a retrial, and by extension whether the decision of the Czech court in the instant case could be regarded as final. Eurojust's assistance ensured that material on the general practice in other EU jurisdictions and the particular practice in one Member State was promptly and effectively available for consideration by a national court.

⁷ Published in the Eurojust Annual Report 2011

ANNEX

Statistics on Eurojust's casework in the field of the European Arrest Warrant (EAW)

Role of Eurojust in the field of the EAW

Below are the number of cases registered at Eurojust concerning the EAW, the vast majority of which related to requests for the facilitation of the execution of EAWs⁸:

- 2007: 218 cases
- 2008: 237 cases
- 2009: 256 cases
- 2010: 280 cases
- 2011: 263 cases
- 2012: 259 cases
- 2013: 217 cases

In **2007**, the UK Desk at Eurojust made the greatest number of requests (49), followed by the Dutch Desk (40), the Czech Desk (20), and the Portuguese Desk (14).

In **2008**, the Dutch Desk made the greatest number of requests (48) followed by the Portuguese Desk (23), and the Czech and UK Desks (19).

In **2009**, the UK Desk made the greatest number of requests (38), followed by the Greek Desk (23), the Polish Desk (20), and the Dutch Desk (19).

In **2010**, the UK Desk made the greatest number of requests (34), followed by the Dutch Desk (24), the Polish Desk (22) and the Spanish Desk (20).

In **2011**, the Polish Desk made the greatest number of requests (40), followed by the French Desk (28), the Bulgarian Desk (20) and the Spanish Desk (17).

In **2012**, the Polish Desk made the greatest number of requests (32), followed by the Belgian Desk (26), the Swedish Desk (20) and the UK Desk (18).

In **2013**, the Polish Desk made the greatest number of requests (29), followed by the Austrian Desk (19), and the Belgian and Bulgarian Desks (17).

⁸ Statistics referred to in this report have been provided by Case Analysis Unit.

Cases at Eurojust concerning multiple EAW requests

Below are the number of cases where Eurojust was *formally* asked to provide advice on multiple EAWs, and gave advice:

- 2007: 8 cases
- 2008: 4 cases
- 2009: 4 cases
- 2010: 3 cases
- 2011: 4 cases
- 2012: 6 cases
- 2013: 6 cases

In **2007**, the National Desks that have requested such advice were the Belgian Desk (3), the German and Portuguese Desks (two each), and the Italian Desk (one).

In **2008**, the National Desks that have requested such advice were the Belgian Desk (three) and the Czech Desk (one).

In **2009**, the National Desks that have requested such advice were the Belgian, the Bulgarian, the German and the Irish Desks (one each).

In **2010**, the National Desks that have requested such advice were the Belgian Desk (two) and the German Desk (one).

In **2011**, the National Desks that have requested such advice were the French Desk (two) and the Belgian and Danish Desks (one each).

In **2012**, the National Desks that have requested such advice were the Belgian Desk (two), and the Spanish, French, Hungarian and UK Desks (one each).

In **2013**, the National Desks that have requested such advice were the French Desk (two), and the Belgian, Czech, Portuguese and Slovak Desks (one each).

Notifications of breaches of time limits (Article 17(7) of the FD on EAW)

Below is the number of notifications of breaches of time limits in the execution of EAWs registered at Eurojust in the reference period:

- 2007: 31 notifications
- 2008: 28 notifications
- 2009: 30 notifications
- 2010: 85 notifications
- 2011: 116 notifications
- 2012: 94 notifications
- 2013: 78 notifications

In **2007**, the notifications were forwarded by the Czech Republic (14), Ireland (four), Portugal and Sweden (three each), Hungary and Romania (two each), and Belgium, Spain and France (one each).

In **2008**, the notifications were forwarded by the Czech Republic (10), Ireland (six), Hungary (three), Bulgaria and Romania (two), and Cyprus, France, Portugal, Sweden, and Slovakia (one each).

In **2009**, the notifications were forwarded by Ireland (18), the Czech Republic (five), Hungary (two), and Denmark, Spain, Romania, Sweden, and Slovakia (one each).

In **2010**, the notifications were forwarded by Ireland (70), the Czech Republic (seven), Sweden (three), and Belgium, Spain, France, Latvia, and Malta (one each).

In **2011**, the notifications were forwarded by Ireland (110), the Czech Republic and Sweden (two each), and Bulgaria and Slovakia (one each).

In **2012**, the notifications were forwarded by Ireland (90), and Bulgaria, the Czech Republic, Spain and Slovenia (one each).

In **2013**, the notifications were forwarded by Ireland (69), Spain (five), the Czech Republic (three) and Sweden (one).
