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ADDENDUM TO THE NOTE

from : General Secretariat

to : Delegations

No. prev. doc.: 11788/07 COPEN 110 EJN 22 EUROJUST 41 + ADD 1

Subject : Report from the Commission on the implementation of the Council Framework Decision on the European Arrest Warrant and the surrender procedures between Member States since 2005 and accompanying Commission Staff Working Document
- Comments on the report

Delegations will find attached the observations of the Republic of Bulgaria with regard to the Commission Report and the accompanying Commission Staff Working Document¹.

¹ 11788/07 COPEN 110 EJN 22 EUROJUST 41 + ADD 1

Observations of the Republic of Bulgaria
with regard to the implementation of Art. 5 (2) of FD 2002/584/JHA on European Arrest
Warrant and the Surrender Procedures between Member States

1. Following the discussion on the Report from the Commission on the implementation of the European arrest warrant and the surrender procedures between Member States in 2005, 2006 and 2007 and the Annex to it (doc. 11788/07 COPEN 110 EJM 22 EUROJUST 41 ADD 1) that took place in the course of the meeting of the Working Party on Cooperation in Criminal Matters (Experts on European arrest warrant), held on 17 July 2007 in Brussels, the Republic of Bulgaria would make the following observations.
2. On p. 15, last paragraph of the abovementioned document it is written: *“Moreover in BU, such a review may only be done ex officio, and not on request for the first 20 years of serving a sentence. Again, this appears to be contrary to the provision of Article 5(2) of the Framework Decision.”* The conclusion is not correct under the following arguments.
3. Bulgaria has transposed Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States through the Law on Extradition and the European Arrest Warrant, promulgated in State Gazette No 46/3.6.2005 and effective from 4 July 2005. This Law was subsequently amended, published in State Gazette No 86/28.10.2005, and came into effect on 29 April 2006. The internal legal provisions implementing Framework Decision 2002/584/JHA of 13 June 2002 entered into force on the date of Bulgaria's accession to the European Union, i.e. on 1 January 2007.

4. The relevant provision that transposes Art. 5 (2) of the FD in the national legislation is Art. 41 (2) of the Law on Extradition and the European Arrest Warrant, which reads as follows:

"Guarantees to be given by the issuing Member State in particular cases

Art. 41. (Comes into operation from the date The Treaty of Accession of Bulgaria to European Union is in force)

.....

(2) If the offence on the basis of which the European arrest warrant has been issued is punishable by custodial life sentence or life-time detention order, the execution of the said arrest warrant shall be subject to the condition that the issuing Member State has provisions in its legal system for:

1. a review of the penalty or measure imposed, upon the request of the person, or

2. a review of the penalty or measure imposed done ex officio at the latest after 20 years,

or

3. for the application of measures of clemency.

....."

5. The provision of Art 5 (2) of the FD provides for:

"The execution of the European arrest warrant by the executing judicial authority may, by the law of the executing Member State, be subject to the following conditions:

2. if the offence on the basis of which the European arrest warrant has been issued is punishable by custodial life sentence or life-time detention order, the execution of the said arrest warrant may be subject to the condition that the issuing Member State has provisions in its legal system for a review of the penalty or measure imposed, on request or at the latest after 20 years, or for the application of measures of clemency to which the person is entitled to apply for under the law or practice of the issuing Member State, aiming at a non-execution of such penalty or measure;"

6. Comparing the texts of Art 5 (2) of the FD and of Art 41 (2) of the Bulgarian implementing law and analysing their meaning shows that the Bulgarian article 41 (2) is repeating the text 5 (2) FD only dividing different options into separate items.
 7. Thus it could be concluded that the Bulgarian legislation is fully in compliance with Art. 5 (2) of the FD, because it is explicitly envisaged a possibility to be asked a review of the penalty or measure imposed, upon the request of the person, which is not conditional on any time limit.
 8. Moreover Art 5 of the FD and respectively Art. 41 of the Bulgarian Law on Extradition and the European Arrest Warrant refer to the guarantees that should be given by the issuing Member State in particular cases. Where these provisions shall be applicable Bulgaria would be in a position of an executing State and the rules for revision of the custodial life sentence or life-time detention order in Bulgaria are not relevant.
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