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NOTE

from:	Italian delegation
to:	Delegations
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Subject:	Follow-up to the report on Italy within the framework of the fourth round of mutual evaluations on practical application of the European arrest warrant

With reference to the recommendations contained in the report on Italy within the framework of the fourth round of mutual evaluations on practical application of the European arrest warrant, the action taken is set out below.

In general, procedures have speeded up considerably thanks to ongoing interpretation by the courts and the fact that the authorities involved in carrying out the procedures, including the Central Authority, have improved implementation practice, in part at the report's instigation.

As regards individual recommendations, please see below.

GENERAL

Recommendation 1 – Examine the possibility of increasing measures to promote training, for judges, prosecutors and judicial staff, in languages other than Italian, in particular in those languages that can assist in making direct contact with competent authorities in other Member States and that can facilitate the members of the judiciary and of the MoJ to attend seminars in other Member States and participate in exchanges [see 7.1.2.2.]"

The programme of English courses organised by the Ministry of Justice and the Superior Council of the Judiciary (*Consiglio Superiore della Magistratura*) has been stepped up; the training is given at central headquarters (Rome) and on a decentralised basis (in each of the 26 Appeal Court districts which make up the territory of the Italian Republic). These courses are followed by magistrates and administrative officials.

"RECOMMENDATIONS TO ITALY AS ISSUING MEMBER STATE

Recommendation 2 – Examine the possibility of bringing the thresholds for issuing an EAW closer to those set out in Article 2 of the Framework Decision, in particular as regards conviction cases [see 7.2.1.1.]"

The Ministry of Justice is studying possible legislative amendments to lower the threshold of the penalty for issuing an EAW, but is now assessing these amendments carefully in the light of the new debate at the European Union on whether the criteria for issue of an EAW should be tightened up (principle of proportionality).

"Recommendation 3 – Envisage making more use of Article 95 alerts when the whereabouts of the requested person are unknown and there are not yet "solid indications" that the requested person is in one of the (other) Member States [see 7.2.1.3.]"

The Ministry of Justice has recommended all judicial authorities to issue Article 95 SIS alerts in addition to EAW alerts.

"Recommendation 4 – Consider, in the situation where more than one EAW has been issued in respect of the same person, mentioning the existence of the other EAWs on the M form [see 7.2.1.4.]"

This recommendation is hard to carry out, since individual EAWs (and the relevant A + M forms) can be issued by various judicial authorities, without the others knowing. For this reason, when an EAW is executed abroad, the Italian Ministry of Justice immediately informs the foreign authorities that other EAWs may have been issued in respect of the same person.

"Recommendation 5 – Envisage installing a national register of EAWs on which, if possible, national arrest warrants and other international arrest warrants are also entered [see 7.2.1.6.]"

Pursuant to Article 4 of Law 69/2005, all EAWs issued by Italian judicial authorities and the main details of all EAWs carried out in Italy are kept at the Ministry of Justice. In addition, the Ministry of Justice is the only authority which can extend inquiries for execution of an international arrest warrant outside the European Union. Although the Ministry of Justice's internal archive is not exactly a register, it is computerised. An international arrest warrant or EAW issued for a given person can therefore be traced quite easily.

"Recommendation 6 – Ensure that the competent authorities keep SIRENE informed of any changes (revision, withdrawal, etc.) regarding EAWs that have been issued by Italian issuing authorities [7.2.1.7.]"

The Ministry of Justice has reminded public prosecutors that they should comply with Article 31 of Law 69/2005, and thus inform the Ministry, which is in constant contact with SIRENE, of any change to an EAW.

"Recommendation 7 – Monitor the situation of providing guarantees in respect of "in absentia" judgments; make sure that appropriate guarantees can be provided in good time [see 7.2.1.8]."

The Ministry of Justice has prepared a standard note, for adjustment case by case, to provide the guarantees requested in the event of a judgment given *in absentia*.

"Recommendation 8 – Ensure that existing SIS alerts based on International Arrest Warrants and (where appropriate) Interpol alerts based on EAWs are replaced with (Article 95) SIS alerts based on EAWs [see 7.2.1.11.] "

All updates to SIS alerts issued by the competent judicial authorities have been forwarded to SIRENE. Furthermore, continual updating of the positions of wanted persons has in practice minimised the possibility of SIS alerts not based on an EAW.

RECOMMENDATIONS TO ITALY AS EXECUTING MEMBER STATE

Recommendation 9 – Limit the grounds for refusal to those set out in the Framework Decision, and hence delete Article 18(1)(b), (c), (e), (f), (g), (s), (t), (u) and (v) of Law 69/2005 [see 7.3.2.1. (a)]"

"Recommendation 10 – Consider deleting Article 7(2), second sentence, of Law 69/2005 [see 7.3.2.1.(b)]"

"Recommendation 11 – Consider deleting Article 18(1)(a) and (d) and Article 18(1)(h) of Law 69/2005 [see 7.3.2.1.(c)]"

"Recommendation 12 – In Law 69/2005, consider the conversion into optional grounds for refusal of those grounds for refusal that are based on Article 4 of the Framework Decision [see 7.3.2.1.(d)]"

"Recommendation 22 – Consider bringing Article 40 of Law 69/2005 in line with Articles 31 and 32 of the Framework Decision [see 7.3.2.12.]"

"Recommendation 15 – Align the wording of the list of offences in Article 8(1) of Law 69/2005 with the description of the categories of offences set out in Article 2(2) of the Framework Decision [see 7.3.2.4.(a)]"

"Recommendation 16 – Consider deleting Article 8(3) of Law 69/2005 [see 7.3.2.4.(b)]"

"Recommendation 17 – Consider the deletion of Article 7(3), second sentence, as well as of 4 words in the heading of Article 8(1) of Law 69/2005 ("escluse le eventuali aggravanti" – "excluding any aggravating circumstances") [see 7.3.2.5.]"

"Recommendation 20 – Consider the deletion of the possibility of appeal in consent cases in Law 69/2005 [see 7.3.2.8.]"

The Ministry of Justice is considering possible amendments to the provisions of Law 69/2005, including provisions on some grounds of refusal and on transitional arrangements.

"Recommendation 13 – Delete Article 6(3), (4), (5) and (6) of Law 69/2005 [see 7.3.2.2.]"

"Recommendation 14 – In conformity with the developments in the case-law of the Court of Cassation, bring Article 17(4) of Law 69/2005, regarding the verification of guilt, in line with the Framework Decision [see 7.3.2.3.]"

"Recommendation 18 – In conformity with developments in the case law of the Court of Cassation, consider modifying Article 1(3) of Law 69/2005 in order to bring it in line with the Framework Decision [see 7.3.2.6.]"

"Recommendation 19 – Bring Article 2(2) in line with the Framework Decision, so that it only refers to the guarantees that can be requested by Italian executing authorities under the Framework Decision [see 7.3.2.7.]"

Acting on the principle of "conforming interpretation", the Supreme Court of Cassation (*Suprema Corte di Cassazione*) has brought the above domestic provisions into line with the Framework Decision, so that these recommendations are no longer of any practical relevance. However, possible legislative amendments are being considered to bring the law into line with established jurisprudence.

"Recommendation 21 – Inform Eurojust in a case of a breach of the 90-day period for execution of an EAW, in conformity with Article 17(7) of the Framework Decision; consider involving Eurojust more to facilitate contacts with competent authorities in other Member States [see 7.3.2.11.]"

Owing to better management of the procedures, there have not been any cases recently in which the 90-day limit for execution of an EAW has been exceeded. However, EUROJUST has been involved in a large number of cases, especially to coordinate simultaneous execution, in several Member States, of EAWs based on the same investigation.
