

TABLE OF CONTENTS

1	Introduction	1
1.1	The <i>ImprovEAW</i> project	1
1.2	Genesis of the report	4
1.3	Brief outline of the report	6
2	Transposition and implementation of the Framework Decision	9
2.1	Introduction	9
2.2	Infringement procedures	11
2.3	Grounds for refusal and guarantees	11
2.3.1	Mandatory grounds	12
2.3.2	Optional grounds	12
2.3.3	Guarantees	13
2.3.4	Incorrect transposition of optional grounds to mandatory ones and vice versa	14
2.3.5	Additional grounds for refusal	18
2.3.6	Distinction based on nationality	19
2.4	Human rights concerns and detention conditions: the two-step test	20
2.5	Issuing an EAW	21
2.5.1	Issuing judicial authorities	21
2.5.2	Preparation of the EAW	22
2.5.3	National judicial decision (proportionality)	23
2.5.4	Proportionality of issuing an EAW	24
2.5.5	Execution-EAWs: coherence between legal instruments	27
2.5.6	Proportionality revisited	30
2.5.6.1	Introduction	30
2.5.6.2	Proportionality of the EAW is more than proportionality of a NAW	30
2.5.6.3	Factors determining proportionality and the interests of justice	30
2.5.6.4	Formal requirement: judicial review	36
2.5.7	Dual level of protection	37
2.6	Executing an EAW	39
2.6.1	Executing judicial authorities	39
2.6.2	Prosecutors as executing judicial authority	41

TABLE OF CONTENTS

2.6.3	Proportionality of executing an EAW	41
2.7	Central authorities	42
2.8	Language requirements	42
2.9	Conditional surrender	44
2.10	Recommendations	46
3	The EAW-form	51
3.1	Introduction	51
3.1.1	EAW-form	51
3.1.2	Validity of the EAW	53
3.1.3	EAW-form and the decision on the execution of an EAW	58
3.1.4	Recommendations regarding the EAW-form in general	61
3.2	Section (a) of the EAW-form	63
3.2.1	Legal framework	63
3.2.2	Section (a) in practice	64
3.2.2.1	Difficulties on the issuing side	64
3.2.2.2	Difficulties on the executing side	64
3.2.3	Recommendations regarding section (a)	65
3.3	Section (b) of the EAW-form	66
3.3.1	Legal framework	66
3.3.1.1	Introduction	66
3.3.1.2	Judicial decision	66
3.3.1.3	Enforceable judicial decision	68
3.3.1.4	Judicial decision ‘coming with the scope of Articles 1 and 2’	71
3.3.1.5	Objectives of Art. 8(1)(c) of FD 2002/584/JHA	72
3.3.1.6	Arrest warrant or enforceable judicial decision having the same effect	75
3.3.1.7	Enforceable judgment	76
3.3.2	Section (b) in practice	80
3.3.2.1	Difficulties on the issuing side	80
3.3.2.2	Difficulties on the executing side	83
3.3.3	Recommendations regarding section (b)	86
3.3.3.1	Revocation of a suspended sentence/parole	86
3.3.3.2	Offences not covered by the national arrest warrant	86
3.3.3.3	‘Finality’ and ‘enforceability’	87
3.4	Section (c) of the EAW-form	87
3.4.1	Legal framework	87

3.4.1.1	Introduction	87
3.4.1.2	Accessory surrender	90
3.4.1.2.1	Accessory extradition	90
3.4.1.2.2	Potential scope for accessory surrender	92
3.4.1.2.3	Accessory surrender allowed?	94
3.4.1.3	Sentence which may be imposed	95
3.4.1.3.1	Length of the sentence	95
3.4.1.3.2	Inchoate offences and participation	96
3.4.1.3.3	Multiple offences	96
3.4.1.4	Sentence which was imposed	97
3.4.1.4.1	Length of the sentence	97
3.4.1.4.2	Adding up sentences to reach the threshold	99
3.4.1.4.3	Single sentence for multiple offences: partial refusal	100
3.4.2	Section (c) in practice	103
3.4.2.1	Accessory surrender in practice	103
3.4.2.2	Sentence which may be imposed	105
3.4.2.2.1	Length of the sentence	105
3.4.2.2.2	Inchoate offences and participation	105
3.4.2.2.3	Multiple offences	105
3.4.2.3	Sentence which was imposed	106
3.4.2.3.1	Length of the sentence	106
3.4.2.3.2	Adding up sentences to reach the threshold	108
3.4.2.3.3	Single sentence for multiple offences: partial refusal	108
3.4.3	Recommendations regarding section (c)	109
3.4.3.1	Correlating offences with sentences; cumulative sentences	109
3.4.3.2	Accessory surrender	110
3.4.3.3	Thresholds of Art. 2(1) of FD 2002/584/JHA	110
3.4.3.4	Sentence which was imposed	111
3.4.3.4.1	Length of the sentence	111
3.4.3.4.2	Adding up individual sentences of less than four months	111
3.5	Section (d) of the EAW	111
3.5.1	Legal framework	111

TABLE OF CONTENTS

3.5.2	Section (d) in practice	113
3.5.3	Recommendations regarding section (d)	114
3.6	Section (e)	115
3.6.1	Legal framework	115
3.6.1.1	Introduction	115
3.6.1.2	The concept ‘offence’	116
3.6.1.3	The structure of section (e)	117
	3.6.1.3.1 The structure in general	117
	3.6.1.3.2 Description of the offence	118
3.6.1.4	Listed offences	119
	3.6.1.4.1 Introduction	119
	3.6.1.4.2 Custodial sentence of three years	123
	3.6.1.4.3 Description	124
	3.6.1.4.4 Review	124
3.6.1.5	Ne bis in idem	128
	3.6.1.5.1 Introduction	128
	3.6.1.5.2 The ‘same acts’	130
	3.6.1.5.3 <i>Ex officio</i> application?	131
3.6.1.6	Double criminality	131
	3.6.1.6.1 Introduction	131
	3.6.1.6.2 Assessment of double criminality	134
	3.6.1.6.3 Temporal point of reference	136
	3.6.1.6.4 Refusal on account of lack of double criminality	140
3.6.1.7	Prosecution in the executing Member State for the same acts	142
	3.6.1.7.1 Introduction	142
	3.6.1.7.2 The ‘same act’	143
3.6.1.8	Statute-barred criminal prosecution or punishment	143
	3.6.1.8.1 Introduction	143
	3.6.1.8.2 Temporal point of reference	146
3.6.2	Section (e) in practice	147
3.6.2.1	The structure of section (e)	147
	3.6.2.1.1 The structure in general	147
	3.6.2.1.2 Description of the offence	147
3.6.2.2	Listed offences	148
	3.6.2.2.1 Introduction	148
	3.6.2.2.2 Custodial sentence of three years	151

	3.6.2.2.3	Description	151
	3.6.2.2.4	Review	151
	3.6.2.3	Ne bis in idem	152
	3.6.2.3.1	Transposition	152
	3.6.2.3.2	The ‘same acts’	152
	3.6.2.3.3	<i>Ex officio</i> application?	153
	3.6.2.4	Double criminality	153
	3.6.2.4.1	Transposition	153
	3.6.2.4.2	Assessment of double criminality	155
	3.6.2.4.3	Temporal point of reference	155
	3.6.2.4.4	Refusal on account of lack of double criminality	158
	3.6.2.5	Prosecution in the executing Member State for the ‘same acts’	159
	3.6.2.5.1	Transposition	159
	3.6.2.5.2	The ‘same act’	159
	3.6.2.6	Statute-barred criminal prosecution or punishment	160
	3.6.2.6.1	Transposition	160
	3.6.2.6.2	Temporal point of reference	160
3.6.3		Recommendations regarding section (e)	162
	3.6.3.1	Structure of section (e)	162
	3.6.3.2	Listed offences	163
	3.6.3.3	Ne bis in idem	164
	3.6.3.4	Double criminality	164
	3.6.3.5	Statute-barred criminal prosecution or punishment	165
3.7		Section (f) of the EAW-form	165
	3.7.1	Legal framework	165
	3.7.1.1	Introduction	165
	3.7.1.2	Information about extraterritoriality	166
	3.7.1.3	Information about (interruption of periods of) time limitation	169
	3.7.1.4	Other information	169
	3.7.2	Section (f) in practice	170
	3.7.2.1	Information provided by the issuing side	170
	3.7.2.2	Information encountered by and wished for by the executing side	172

TABLE OF CONTENTS

3.7.2.3	Difficulties with Art. 4(7)(b) of FD 2002/584/JHA	173
3.7.3	Recommendations regarding section (f)	175
3.8	Section (g) of the EAW-form	176
3.8.1	Legal framework	176
3.8.2	Section (g) in practice	176
3.8.2.1	Difficulties on the issuing side	176
3.8.2.2	Difficulties on the executing side	176
3.8.3	Recommendations regarding section (g)	177
3.9	Section (h) of the EAW-form	178
3.9.1	Legal framework	178
3.9.2	Section (h) in practice	181
3.9.2.1	Difficulties on the issuing side	181
3.9.2.2	Difficulties on the executing side	181
3.9.3	Recommendations regarding section (h)	182
3.10	Section (i) of the EAW-form	183
3.10.1	Legal framework	183
3.10.1.1	Introduction	183
3.10.2	Section (i) in practice	185
3.10.2.1	Difficulties on the issuing side	185
3.10.2.2	Difficulties on the executing side	185
3.10.3	Recommendations regarding section (i)	186
4	Problems not directly related to the EAW-form	187
4.1	Introduction	187
4.2	Supplementary information – Art. 15(2)-(3) of FD 2002/584/JHA	189
4.2.1	Legal framework	189
4.2.1.1	When to use Art. 15 (2) and (3) of FD 2002/584/JHA	189
4.2.1.2	Type of information	191
4.2.1.3	Which authority should provide the information?	192
4.2.2	Legal practice	193
4.2.2.1	Authority that requests or provides supplementary information	193
4.2.2.2	Authority requesting the supplementary information	194
4.2.2.3	<i>Proprio motu</i> – Art. 15(3) of FD 2002/584/JHA	195

4.2.2.4	Type of information requested with Art. 15(2) of FD 2002/584/JHA	196
4.3	Detention conditions and deficiencies in the system of justice	201
4.3.1	Legal framework	201
4.3.1.1	Detention conditions	201
4.3.1.2	Deficiencies in the system of justice	205
4.3.2	Legal practice	208
4.3.2.1	Uneven trigger – uneven effect	208
4.3.2.2	<i>Aranyosi</i> and <i>Căldăraru</i> test	211
4.3.2.3	Minister for Justice and Equality (Deficiencies in the system of justice) <i>test</i>	213
4.3.2.4	Sources to establish <i>in abstracto</i> risk	214
4.3.2.5	Supplementary information	215
4.3.2.6	Miscellaneous issues	222
4.4	Guarantee of return – Art. 5(3) of FD 2002/584/JHA	223
4.4.1	Legal framework	223
4.4.2	Legal practice	226
4.4.2.1	Implementation	226
4.4.2.2	Which instrument covers the return?	227
4.4.2.3	Consent and distinction between nationals/non-nationals	227
4.4.2.4	Authority	230
4.4.2.5	Uniform text for the guarantee	231
4.4.2.6	Other procedural steps and procedure of return	232
4.5	Time limits – Art. 17 of FD 2002/584/JHA	234
4.5.1	Legal framework	234
4.5.2	Legal Practice	236
4.5.2.1	Availability of data	236
4.5.2.2	The special case of the Netherlands	238
4.5.2.3	Informing Eurojust	238
4.5.2.4	Fixing a time limit for complying with the request of Art. 15(2) of FD 2002/584/JHA	240
4.6	Recommendations	242
4.7	New structures of cooperation in criminal matters with and within the EU	244
4.7.1	Surrender to and from Iceland and Norway	245
4.7.1.1	The legal framework	245
4.7.1.2	The Agreement in practice	246
4.7.1.3	Recommendations	247

TABLE OF CONTENTS

4.7.2	The application of the Petruhhin case and Ruska Federacija case	247
4.7.2.1	The legal framework	247
4.7.2.2	The consequences of the judgments in practice	251
4.7.2.3	Recommendations	254
4.7.3	Surrender to and from the United Kingdom	254
4.7.3.1	The legal framework	254
4.7.3.2	The Agreement in practice	255
4.7.3.3	Recommendations	257
4.7.4	The investigations by the European Public Prosecutor`s Office	257
4.7.4.1	The legal framework	257
4.7.4.2	The consequences of the Regulation in practice	258
4.7.4.3	Recommendations	260
4.8	Speciality rule	260
4.8.1	The legal framework	260
4.8.2	Speciality rule in practice	261
4.8.2.1	The content of the decision to execute an EAW	261
4.8.2.2	The formalities of the decision to execute an EAW	263
4.8.2.3	Ensuring the compliance with the speciality rule	264
4.8.2.4	Difficulties in the issuing state	265
4.8.2.5	Difficulties in the executing Member State	268
4.8.3	Recommendations	270
5	Synthesis	271
5.1	Introduction	271
5.2	The legal framework	272
5.2.1	Introduction	272
5.2.2	Observations	272
5.2.2.1	FD 2002/584/JHA	272
5.2.2.1.1	Amending/replacing the FD	272
5.2.2.1.2	Improving the application of the FD	275
5.2.2.2	FD 2002/584/JHA and other instruments	277
5.2.3	Conclusions	281
5.2.4	Recommendations	282
5.3	Organisation and communication	284
5.3.1	Introduction	284
5.3.2	Observations	284

5.3.3	Conclusions	285
5.3.4	Recommendations	286
5.4	Supplementary information and mutual trust	287
5.4.1	Introduction	287
5.4.2	Observations	287
5.4.3	Conclusions	290
5.4.4	Recommendations	290
5.5	The Handbook (a window of opportunity)	291
5.5.1	Introduction	291
5.5.2	Observations	291
5.5.3	Conclusions	292
5.5.4	Recommendations	292
5.6	COVID-19	293
5.6.1	Introduction	293
5.6.2	Observations	293
5.6.3	Conclusions	294
5.6.4	Recommendations	294
6	An Integrative Approach to Decisions and a Coordinated Application of Legal Instruments	297
6.1	Introduction	297
6.2	Starting point	303
6.3	Debating the need for a national arrest warrant and the need for an EAW	304
6.4	Where to hear the requested person and by whom?	305
6.5	Final stage: the executing authority assessing the EAW	307
6.6	Recommendations to the European Union	308
	<i>Annex I: Recommendations per chapter</i>	309
	<i>Annex II: Common Practical Guidelines</i>	323
	<i>Annex III: Questionnaire Improving Mutual Recognition of European Arrest Warrants through Common Practical Guidelines</i>	349
	Biographical notes	401