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THE EUROPEAN UNION**

**Brussels, 3 January 2007 (15.01)
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**16454/1/06
REV 1**

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COPEN 128
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**EVALUATION REPORT ON THE
FOURTH ROUND OF MUTUAL EVALUATIONS
"PRACTICAL APPLICATION OF THE EUROPEAN ARREST WARRANT
AND CORRESPONDING SURRENDER PROCEDURES
BETWEEN MEMBER STATES"**

REPORT ON BELGIUM

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1. INTRODUCTION

1.1. Following the adoption of the Joint Action of 5 December 1997, a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime was established.

1.2. Following discussion of a proposal introduced by the Luxembourg Presidency concerning the fourth round of mutual evaluations ¹, on 11 July 2005 the Multidisciplinary Group on Organised Crime (MDG) adopted the proposal for "the practical application of the European Arrest Warrant and corresponding surrender procedures between Member States". It was also agreed at the MDG of 11 July that the evaluation questionnaire was to be prepared by the UK Presidency.

1.3. Experts with substantial practical knowledge of the European Arrest Warrant were nominated by Member States pursuant to a written request to delegations made by the Chairman of the MDG on 9 September 2005.

1.4. At its meeting on 28 October 2005, the MDG approved the evaluation questionnaire for the fourth round of mutual evaluations. The objectives of the evaluation exercise and the questionnaire itself are set out in 14272/05 CRIMORG 131 COPEN 175 EJM 57 EUROJUST 77.

1.5. At its meeting on 28 October 2005 the MDG also discussed and approved 13824/05, containing the revised sequence for the mutual evaluation visits. Belgium is the third Member State to be evaluated during the fourth round of evaluations.

¹ 9602/05 – Orientation debate on a proposed Mutual Evaluation exercise.

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1.6. The experts charged with undertaking this evaluation were: Bertrand CHARPENTIER (Advocate General, Public Prosecutor's Office for the Court of Appeal at Aix-en-Provence, France), Nadia PLASTINA (judge, Chief of the Office for International Judicial Cooperation, Ministry of Justice, Italy), Martine SOLOVIEFF, First Advocate General, Public Prosecutor's Office for the Supreme Court of Justice of Luxembourg), together with the General Secretariat of the Council. Two observers also took part: Anne DELAHAIE (Eurojust) and Caroline MORGAN (European Commission).

1.7. This report was prepared by the team of experts with the assistance of the Council Secretariat, based upon findings arising from the evaluation visit of 19 – 22 June 2006, and upon Belgium's detailed and helpful responses to the evaluation questionnaire and a written request for further information.

1.8. The report makes reference to differing procedures for prosecution and for execution of a sentence only insofar as there is a divergence of practice between the two procedures.

1.9. The expert team's overarching purpose was to evaluate the different procedures operated and encountered by Belgium in practice in its role as both issuing and executing Member State, to assess the relevant training provision and the views of the defence, before moving on to conclude and to make such recommendations as they felt were appropriate to enhance the means by which the EAW and its corresponding surrender provisions may be further streamlined and improved.

2. THE AUTHORITIES AND THE LEGAL BASIS

The EAW procedure has been incorporated into the Belgian judicial system, under which it is administered by a decentralised procedure.

In general, territorial jurisdiction is divided among 5 Court of Appeal districts and 27 lower judicial districts, in which the judicial authorities and the Public Prosecutor's Office exercise the functions devolved upon them by law. The Federal Prosecutor's Office was set up with jurisdiction over the whole of Belgian territory for the coordination and exercise, restricted to certain offences, of public action. It also plays a coordinating and facilitating role in international mutual legal assistance regarding all criminal offences.

2.1. THE AUTHORITIES

Under Belgian law, the main players in the European Arrest Warrant procedure are:

- The examining magistrate (*juge d'instruction*), which is the authority competent to issue an EAW in prosecution cases (Article 32(1) of the Law of 19.12.2003 transposing the Framework Decision on the European Arrest Warrant).

Two specific cases are worthy of mention here. Where the pre-trial chamber (*Chambre du conseil*) hands over the case of a person in custody to the criminal court, it will be for the Public Prosecutor's Office, as part of its general duty of implementing judicial decisions, to issue a European Arrest Warrant, even if the person is sought for prosecution (the examining magistrate will then cease to be competent). Belgian law does not cover this particular case, but this interpretation is now commonly accepted by legal practitioners.

The same reasoning was applied in a case between Poland and Belgium where the Public Prosecutor validly issued the EAW as a result of an arrest warrant arising from a decision by a juvenile court. The decision to issue the EAW was taken because of the particularly serious acts of which a minor of over 16 years of age was accused (murder) which justified a probable removal from the juvenile court to the ordinary courts.

The examining magistrate also has competence in the procedure for execution of an EAW where a decision involving the deprivation of liberty is to be taken or the existence of a clear ground for refusal established.

- The Public Prosecutor (*Procureur du Roi*)¹, which is the authority competent to issue a European Arrest Warrant in execution of a sentence (Article 32(1) of the Law of 19.12.2003 transposing the Framework Decision on the European Arrest Warrant) and which defends the interests of the Belgian authority issuing the EAW.

The Public Prosecutor's Office, as the executing authority:

¹ This term extends to: the Public Prosecutor (at Criminal Court, Juvenile Court and Police Court level), the Principal Public Prosecutor (at Appeal Court level) and the Federal Prosecutor (with jurisdiction for the whole of Belgian territory under the conditions determined by law).

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- may be the addressee of an EAW;
- must take all action provided for by law;
- is competent in cases of consent to surrender;
- is responsible for actual surrender.

The Federal Prosecution Service (*parquet fédéral*) provides support for the Belgian judicial authorities involved in an EAW in the context of its remit to facilitate international cooperation, in particular by helping to sort out practical problems through direct contacts with the foreign judicial authorities. Again, as the contact point for the European Judicial Network, the Federal Prosecution Service may be contacted in order to ascertain the competent judicial authority to which the arrest warrant should be sent. The Federal Prosecution Service also has competence in specific areas relating to implementation of the Law on the EAW, viz. overrunning of time limits, multiple EAWs or conflict between an EAW and an extradition request.

Two magistrates at the Federal Prosecution Service have also been appointed as Eurojust national contact points, one for terrorism, the other for all other matters.

- The pre-trial chamber (*Chambre du Conseil*) and the indictments chamber (*Chambre des mises en accusation*), which are the authorities designated to decide whether an EAW is to be executed, each according to its own sphere of jurisdiction.
- The Federal Department of Justice (*Service public fédéral Justice*) (SPF Justice, new name of the Ministry of Justice), which is competent to receive and take decisions on transit requests (Article 40 of the Law on the EAW), also intervenes in cases of conflict between a EAW and an extradition request (Article 30 of the Law on the EAW). It is not designated as the mandatory channel for transmission of EAWs.

The Federal Department of Justice also has a part to play in the procedure for guaranteeing that Belgian nationals or residents are returned to Belgium to serve their sentence there.

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Apart from this, the Federal Department of Justice plays a purely supporting role: if the competent judicial authorities so request, it assists them in implementing the law (for example, as the contact point for the European Judicial Network, the Federal Department of Justice may be contacted to identify the competent foreign authority to which an arrest warrant should be addressed; it can also give opinions on the interpretation of the law).

The Federal Department of Justice also has a part to play in establishing statistics¹. In accordance with the ministerial circular on the EAW, the competent judicial authorities must inform the Federal Department of Justice of all EAW execution and issue procedures in Belgium. However, the judicial authorities are still not sufficiently aware of that obligation and efforts need to be made to ensure full, precise information.

- Directorate for operational police cooperation (DSO) - international alerts section (*Signalements internationaux*) (SIG). Within this directorate, the AEL (arrest, extradition, location) unit and the legal service deal with SIS alerts and prepare the files for the issue or execution of EAWs (data entry, changes to alerts on persons wanted for arrest or who are to be located, verification of the existence of multiple requests, time limits and validity of alerts, checking that the EAW has been correctly drawn up, etc.).
- FAST (Fugitive Active Search Team). This unit was set up in 2000 to seek fugitives for the purposes of prosecution or enforcement of sentences. It plays an operational role in locating and arresting persons who are the subject of EAWs. The FAST unit works closely with the Public Prosecutors' offices and the Federal Police. Under a recently-introduced law, it may employ specialist police techniques such as police surveillance, but it is not allowed to perform telephone taps or telephone tracking. Since 2000 the FAST unit has developed remarkable skills and operational capacities which have been most effective in implementing the EAW.

¹ Law of 19 December 2003 on the European Arrest Warrant.

2.2. THE LEGAL BASIS

- Law of 19 December 2003 on the European Arrest Warrant transposing Framework Decision 2002/584/JHA.

Under this law Belgium has, since 1 January 2004, used the EAW for the arrest and surrender of all persons in its relations with the other EU Member States, regardless of the date on which the offence was committed.

- Law of 15 March 1874 on extradition and extradition agreements. This law, which was replaced by the Law of 19 December 2003, remains applicable on a transitional basis for the surrender to Belgium of persons:

- (a) wanted for offences committed before 1 November 1993 and arrested in France;
- (b) wanted for offences committed before 7 August 2002 and arrested in Austria or Italy.

It should be noted that these three countries are expressly mentioned in the Law on the EAW. There is no legal provision that specifies the position that Belgium should adopt in relation to other countries which have made a later statement pursuant to Article 32 of the Framework Decision. With regard to these States, recourse should therefore be had to case law.

- Ministerial circular of 8 August 2005 on the European Arrest Warrant. It contains instructions for completing the EAW form and, more generally, implementing the EAW.
- Law of 23 May 1990 on the transfer between States of offenders, the taking over and transfer of the supervision of conditionally sentenced or conditionally released offenders and the taking over and transfer of the supervision of custodial sentences or measures involving deprivation of liberty, as amended by the Law of 26 May 2005.
- Law of 19 June 1990 transposing the Council of Europe Convention of 21 March 1983 on the Transfer of Sentenced Persons, done at Strasbourg, the Protocol thereto of 18 December 1997, and the Agreement of 25 May 1987 on its application between the Member States of the European Communities.

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- Law of 15 June 1935 on language use in judicial matters.
- Law of 20 July 1990 on remand in custody (published in the *Moniteur belge* on 14 August 1990).

3. ORGANISATION AND PRACTICES - AS ISSUING MEMBER STATE

The Belgian law transposing the Framework Decision on the EAW opted for a decentralised system. At the time when the evaluation was made, the Federal Department of Justice regretted that it did not have exhaustive information and complete statistics concerning the number of EAWs issued, received, executed or refused by Belgium in 2005 and 2006. It announced initiatives aimed at improving the statistical situation and resolving the difficulties encountered at national level. The Federal Department of Justice has been informed about 212 European arrest warrants issued by the Belgian authorities in 2005.

3.1. THE DECISION TO ISSUE

The decision to issue a European arrest warrant falls under the competent judicial authority's discretionary power.

In accordance with Belgian regulatory provisions concerning measures restricting individual freedom, when issuing a European arrest warrant, the judicial authorities must take account of certain prior conditions depending on whether prosecution or the enforcement of a sentence is concerned.

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Where the person is being sought for prosecution, the European arrest warrant must comply with the conditions laid down by the Law of 20 July 1990 on remand in custody ¹. In the case of a procedure for the enforcement of a sentence, any person who, without any legal reason, has not served a sentence imposed may be the subject of a European arrest warrant, provided that the threshold set in the Framework Decision is met.

The search for sentenced persons is nevertheless limited in practice by a circular on Schengen alerts which imposes a threshold of a minimum of 2 years (still to be served, i.e. after deduction of time already served).

With regard to the enforcement of sentences, the College of Principal Public Prosecutors has decided, in a circular dating from 1999 and still applicable, that sentences of less than 2 years should not be the subject of an extradition request or a SIS alert as such sentences at national level would not be enforced. However, it is still possible to derogate from this criterion when circumstances so justify, e.g. escape of a prisoner (who has less than 2 years to serve) sentenced for particularly serious offences. During the evaluation, the public prosecutor's office in Nivelles stated, however, that it would enforce sentences of 4 months or more.

3.2. VERIFYING THE POSSIBLE EXISTENCE OF MULTIPLE REQUESTS

It emerged from the discussions held during the evaluation visits that in Belgium there is no system or systematic procedure whereby the issuing authority is able to determine if additional EAWs, Interpol or Article 95 alerts have been issued or are pending in respect of the requested person.

¹ In accordance with Article 16 of the Law on remand in custody, the examining magistrate may issue an arrest warrant if the following conditions are met: (1) serious evidence of guilt; (2) absolute necessity on grounds of public security (for crimes incurring a prison sentence of no more than 15 years, one of the following three conditions must be met in addition to the acknowledgement of absolute necessity: risk of reoffending, possibility of absconding and risk of evidence disappearing or collusion with third parties); (3) the act must be such as to entail one year in prison or a heavier sentence.

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The judicial issuing authority (which does not have direct access to the SIS) can, however, ask the Sirene/Interpol bureau ¹ or any other police department having access to the national police database (BNG).

When an alert is requested, the issuing authority will automatically be informed by the Sirene/Interpol bureau of all existing alerts relating to the requested person, for the simple reason that it is technically impossible to enter more than one alert in SIS for the same person. A new alert is nevertheless produced manually by the Sirene/Interpol bureau and, when the person is intercepted, can then be forwarded, together with all pre-existing alerts, to the Sirene bureau in the country in which the person is located.

The issuing authority (which introduced the most recent alert) is thus informed of pre-existing alerts. On the other hand, the Belgian or foreign issuing authority which entered the first alert(s) is not automatically kept informed of later alert requests. That information can, however, be provided at their request or after the requested person has been intercepted.

Only the SIRENE Bureau has fairly complete statistics, provided that an alert was issued concerning the European arrest warrants.

When an EAW issued by the Belgian judicial authorities is received, the national police database (BNG) is consulted to check whether the requested person is the subject of ongoing subsequent inquiries, convictions or prosecutions at national level.

The judicial issuing authorities (either the examining magistrate or the public prosecutor) do not in fact have national judicial databases apart from the national criminal register, in which only convictions are recorded ².

¹ In Belgium the same department is both the Sirene bureau and the national Interpol bureau.

² At the level of the public prosecutors' offices, prosecutors have access to an Intranet system in which all cases handled by the public prosecutor's office are registered.

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All checks made by the SIRENE Bureau are carried out by the AEL unit as soon as the request is received. The unit, consisting of two policemen and ten civilian employees, is supported by a legal department and a round-the-clock back-up team (19 people). In addition to computerised means of research, the unit has paper archives in which all Interpol and Schengen files are classified according to country and in alphabetical order. Electronic archives which should facilitate searches are under consideration and, at the time of the evaluation, it was reckoned that the system would be introduced in 2007.

3.3. RULES FOR COMPLETING THE FORMS/COURT PAPERS

Article 2(4) of the Belgian law transposing the EAW provides that, to be valid, it must contain the information listed in paragraph 4, i.e. the same as that set out in the Framework Decision. In fact the law provides that the Belgian judicial authorities use the form adopted by the Council of the European Union (annexed to the law) for issuing an EAW.

At national level, guidance on the use of the form is contained in the ministerial circular on the application of the Law on the European arrest warrant¹. In this context, it should be pointed out that the circular has no mandatory legal or regulatory status and that it is binding only on the Public Prosecutor's Office whilst the examining magistrate and the pre-trial chamber are not obliged to apply it.

On the basis of the circular, it is recommended that the Belgian judicial authorities conform to the following instructions and criteria:

- *in accordance with the Framework Decision, Belgian law does not require any documents other than the EAW to be forwarded; the EAW must be addressed to the executing judicial authority as it stands and need not be accompanied by the internal ruling on which it is based;*

¹ Ministerial circular of 8 August 2005 on the application of the European arrest warrant.

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- *only one EAW may be issued per person, but one EAW may cover several offences by the same person. The operative criterion is one EAW per file or per referral. Where there are several charges against the accused, the recommendation is that the charges be numbered;*
- *where appropriate, if the person concerned is being prosecuted or has been sentenced in other cases, in the same or another district, two or more EAW must be drawn up and sent together;*
- *the recommendation is to be as complete as possible, particularly in listing the acts justifying the EAW, in order to take account of the speciality principle;*
- *if a heading on the form does not apply to the case in point, that must be clearly indicated by putting "not applicable";*
- *where a person is convicted in absentia, particular care must be taken in wording the guarantee that the person will have the right to lodge opposition in Belgium and to be re-tried in person (section (d) of the form).*

Given the decentralisation of the handling of individual cases in which the EAW system is applied and the absence of a standard interpretation at national or regional level in respect of prescribed elements of the form (definitions of offences, for example), practice may differ among public prosecutors' offices. For example, despite the instructions given in the circular, in the case of an escaped prisoner serving several sentences, some public prosecutors' offices issue an EAW for each sentence whilst others issue a single EAW grouping together the various sentences.

For EAWs sent through the SIS, checks on the formal requirements of the EAW (whether the form has been completed correctly and all the necessary information included, rewording of unintelligible parts, calculation of time-barring, etc.) are carried out by the legal department of the directorate for operational police cooperation (DSO) in accordance with its task of supporting the Belgian issuing authorities.

At the time of the evaluation, the Federal Department of Justice was informed about two Belgian EAWs that had not been executed owing to difficulties connected with the wording of the form and certain Member States' requirements. For example, difficulties were encountered with Ireland and the United Kingdom where the common law system requires a detailed description of the offences so that the threshold for deprivation of liberty and surrender is reached. In a case involving Ireland, five versions of the EAW had to be drawn up before the person concerned (of Russian origin) was finally repatriated to his country of origin, rendering surrender to Belgium impossible. An EAW had to be redrafted three times before being accepted by the United Kingdom but surrender was finally refused without any reason being given.

In most cases, nevertheless, corrections or additions to the original EAW were accepted.

3.4. THE APPLICATION PARTIES/PROCEDURE

As already mentioned in points 2.1 and 3.1, the decision to issue a European arrest warrant falls under the competent judicial authority's discretionary power and the issuing procedure must comply with the substantive and formal conditions laid down by Belgian national law.

In practice, the examining magistrate issues an EAW for the purposes of conducting a prosecution and the public prosecutor issues an EAW for the purposes of executing a custodial sentence or detention order.

With regard to the procedure, the original EAW should be drawn up in triplicate (the first original being retained by the issuing authority, the second being for the SIRENE Bureau's archives (if the issuing authority decides not to put it into the SIS system) and the third being for the executing authority). A copy of the EAW is for the Federal Department of Justice for information and statistical purposes.

3.5. TRANSLATION OF THE EAW

The EAW is translated into one of the languages accepted by the executing authority in accordance with the declarations made by States regarding their official language(s) and any other language or languages accepted by them.

The translation is generally done after the person has been arrested but is sometimes done at the stage when the person is being located. For certain States which require the EAW to be translated at extremely short notice, the Belgian issuing authority has sometimes preferred to prepare for this eventuality and request translation beforehand into the language of the State in whose territory the person is thought to be.

In a case involving Poland, which required the EAW to be transmitted into Polish within 48 hours, problems were encountered owing to the impossibility of meeting such a short deadline. The person's release was avoided through the intervention of the Belgian liaison officer in Warsaw.

3.6. TRANSMISSION OF THE EAW

Article 33 of the Belgian law transposing the EAW did not lay down obligatory or preferred modes of transmission for warrants. The judicial issuing authorities are able to choose, depending on the special features of each case, the most rapid and simplest way to send the EAW to the executing authority.

If the whereabouts of the requested person are known, or presumed, the European Arrest Warrant is transmitted directly to the executing authority. This is sometimes confirmed by sending an EAW via SIRENE or Interpol.

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If the whereabouts of the requested person are unknown, or the person is located in one of the new Member States of the European Union ¹, the Federal Police DSO unit uses the channel of Interpol and, in any case, automatically issues a Schengen alert in parallel with the Interpol alert. The Ministerial circular referred to above recommends that the issuing authority make out an EAW in all cases where the requested person is liable to be apprehended in an EU Member State.

In practice, the SIS channel is very frequently used.

To identify the executing judicial authority, as specified in Article 33(4) of the Law, the necessary searches can be carried out through the European Judicial Network contact points (within the federal prosecution service and the Federal Department of Justice). The issuing authority is, however, free to use any other search method available to it, such as professional contacts (for example, Belgium's Fugitive Active Search Team has regular contacts with its counterparts abroad), liaison officers, the SIRENE bureau, the European Judicial Network atlas, "fiches françaises", etc. In this connection, the experience of Belgian practitioners has shown that searches are facilitated by the European Judicial Network, liaison officers and the "fiches françaises" produced by Member States.

Whatever system of transmission is used, when the requested person is arrested in a Member State, the Ministerial circular recommends that the issuing authority transmit the original copy of the EAW, together with an official translation, within the period set by the the executing State, which varies from one State to another ².

¹ In this case, the Interpol alert is issued on the basis of an EAW. This transmission procedure will be used until the ten new Member States have access to the SIS.

² To facilitate the work of issuing authorities, a summary table of the periods stipulated by each Member State and the languages accepted is attached to the circular.

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3.7. QUESTIONS CONCERNING EXECUTING MEMBER STATES AND THE CHANNELS OF COMMUNICATION USED

The interviews with Belgian practitioners which were held during the evaluation visit indicated that in most cases problems could be resolved (inter alia by opting not to use the EAW procedure) by supplying additional information, by including further details on the form, by questioning the person to be surrendered by means of a request for judicial assistance or by reporting the act in question to the executing State, and exceptionally through the intervention of Eurojust.

It should be noted that coordination with the authorities in the executing State is carried out either directly, possibly through the federal prosecution service, or via the police (often via the liaison officer). Eurojust has never been involved.

The federal prosecution service is regularly contacted by national or foreign judicial authorities, owing to its specific role in facilitating international judicial cooperation. Bilateral meetings at the level of chief public prosecutors are sometimes held to discuss problems in cooperation and to find appropriate solutions.

In general, communication is by telephone, fax, e-mail or simply by exchange of letters, either directly or via the police. Current practice includes written replies and the sending of copies of additional documents (judgments, legislation, etc.) at the request of the executing authority. Generally, a translation into the official language(s) of the executing State is also made.

3.8. REQUESTS FOR ADDITIONAL INFORMATION SUBMITTED BY EXECUTING MEMBER STATES

The judicial authorities consulted reported cases in which requests for additional information were made.

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In most cases, requests for further information concerned the avenues of appeal which might be pursued in respect of judgments *in absentia* and the guarantees relating to serving the sentence in the country of origin. In some instances, further details were sought concerning the facts of the case (the person's level of participation, clarification of time and place, compliance with the legal classification of the act) or requests for additional documents (national arrest warrant or judgment forming the basis for the EAW). Translating these documents may give rise to a problem where a voluminous judgment is involved. Belgium suggests that only the enacting terms of the judgment be translated in such cases.

In particular, the United Kingdom and Ireland requested further details of the person's level of participation, beyond those given in the description of the acts. The Netherlands, especially when the request for surrender concerns one of its own nationals, has been very demanding with regard to the description of the acts and the person's level of participation in the criminal organisation. One particularly critical case with the Netherlands was mentioned during the evaluation visit: the procedure seemed so protracted and difficult, owing to the number of requests for further information, that the examining magistrate in charge of the case preferred to forgo the surrender of the person.

3.9. LEGAL REGIME APPLICABLE TO THE RETURN OF NATIONALS TO SERVE A SENTENCE

As regards the legal regime applicable in the case of nationals of the executing State being returned to that State to serve a sentence imposed by the issuing State, the subsequent transfer of the sentenced person is carried out pursuant to the Law of 23 May 1990 on the inter-State transfer of prisoners ¹.

¹ Law of 23 May 1990 on the Inter-State Transfer of Sentenced Persons (published in the *Moniteur belge* (State Gazette) on 20 July 1990). That law brings Belgian legislation into compliance with the provisions of the European Convention of 21 March 1983 on the Transfer of Sentenced Persons.

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The experts noted that the application of the 1983 Convention was chosen by certain Member States in order to secure guarantees for the return of nationals because of the absence of relevant provisions in the Framework Decision ¹.

In Belgium, the central authority for international judicial assistance in criminal matters in the Federal Department of Justice authorises the competent Belgian judicial authorities, on a case-by-case basis, to issue sufficient guarantees to assure executing States that their own nationals who have been sentenced will be returned to serve their sentence.

When the transfer request is made by the person concerned it is automatically granted, under a fast-track procedure. But the consent of the person concerned remains a precondition for his subsequent transfer to his country of origin; the absence of the person's consent may prevent his being returned to his country of origin to serve the sentence, and thus run counter to the guarantee provided by the Federal Department of Justice.

By way of example Belgium has reported two cases where problems were encountered with Germany and the Netherlands, in connection with the application of Article 4(6) of the Framework Decision. In the first case, the German authorities insisted on an express request to have execution of the sentence taken over in order to enable them to execute the sentence against one of their nationals; in the meantime the requested person was released ².

In the second case, there is a general problem with the interpretation of Article 4(6), since the Netherlands does not undertake to execute the sentence, in the absence of a treaty basis (the Framework Decision on the EAW not being considered an appropriate legal basis).

¹ Article 5 of the Framework Decision provides for the return of nationals to serve their sentence, but makes no mention of guarantees.

² Cf. Council documents 6993/05 COPEN 47 EJM 13 EUROJUST 13 and 7610/05 COPEN 59 EJM 20 EUROJUST 19. Article 4(6) of the Framework Decision should be interpreted to mean that the executing State should execute a custodial sentence or detention order on the basis of the EAW, and not that execution is a procedure separate from the EAW (in which case the EAW can be refused and the person freed because national law provides for a separate procedure).

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Under this interpretation, the Netherlands provides no guarantee under Article 4(6) for the execution of sentences imposed on their own nationals to States (such as Belgium) which have not ratified the European Convention of 28 May 1970 on the International Validity of Criminal Judgments.

3.10. SURRENDER OF MINORS AND THE ASSOCIATED GUARANTEES

The age of criminal majority in Belgium is 18.

An arrest warrant cannot therefore be issued for minors under 18.

As an exceptional measure, in serious cases involving minors aged over 16, Belgian law ¹ recognises that they are "doli capax" and ordinary law on remand in custody applies to the minor, for whom an arrest warrant can be issued.

3.11. EVOLUTION OF BEST PRACTICE

During the evaluation visit, the experts were able to assess the added value of certain practices established by Belgium during the first two years of application of the EAW.

Mention should be made, in particular, of the setting up, at the initiative of the Federal Department of Justice, of a multidisciplinary working group consisting of practitioners from various agencies (SIRENE-DSO, Brussels public prosecutor's office, Federal Department of Justice, Ghent chief public prosecutor's office, representative of the examining magistrate, federal prosecution service) which have competence with respect to the EAW. This group is tasked with discussing the specific problems encountered when applying the law relating to the EAW and identifying practical and effective solutions. The minutes of each meeting are circulated among the members of the group. The experts considered this a positive initiative, and encouraged the practitioners to exploit to the full the possibilities it offers in order to circulate information widely among magistrates.

¹ Law of 8 April 1965 on the protection of young people (published in the *Moniteur belge* (State Gazette) on 15 April 1965). Under Article 38 of the Law, the Juvenile Court may hand over jurisdiction to the Criminal Court.

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The experts also noted that the Ministerial circular on the EAW contains specific and quite detailed instructions on how to fill in the EAW form, which are a useful tool for issuing authorities. It is worth quoting what the circular has to say about the principle of mutual recognition:

"The principle of mutual recognition derives from the idea of a common area of justice, encompassing the territory of the Member States of the Union, within which there would be free movement of judgments. More concretely, it means that when a decision has been handed down by a judicial authority which has competence under the law of the Member State in which it is situated, in accordance with the law of that State, the decision becomes fully and directly effective throughout the territory of the Union and that the competent authorities in the Member States in the territory of which the decision may be enforced assist in the enforcement of the decision as if it were a decision handed down by a competent authority in that State".

Lastly, the experts valued the federal prosecution service's initiative of collecting all decisions handed down concerning the EAW and circulating them to all the courts. It has been announced that an intranet IT network will be established as from 23 June 2006.

The existence of a magistrate in each prosecutor's office acting as the focal point for international judicial assistance is a valuable initiative giving rise to beneficial specialisation.

It is worth mentioning the initiative by the Ghent prosecutor's office, which has already had the basic documents and legal provisions concerning *in absentia* proceedings translated into most official EU languages, to enable an immediate response to any request for additional information.

3.12. GENERAL COMMUNICATION WITH THE EXECUTING MEMBER STATE

The Belgian authorities consider that information is provided rather sporadically and often take the initiative of enquiring as to the stage which procedures have reached (or the number of days spent in detention by the person surrendered). An exception to this observation is the (local or chief) prosecutor's offices which already enjoy good relationships with their counterparts abroad and are consequently kept duly informed of the various stages in the procedure.

RESTREINT UE

The means of communication used are telephone, e-mail, fax and postal correspondence.
Information sometimes circulates via police cooperation channels.

3.13. ARRANGEMENTS FOR SURRENDER/TEMPORARY SURRENDER

Notification of a decision to surrender a requested person is generally sent by fax, via the SIRENE channel or by post.

As for the physical surrender process, it is for the public prosecutor's office to agree the surrender date with the competent foreign authority. The practical arrangements for surrender are generally made between the police departments which have custody of the person. The same procedures apply to temporary surrender.

The Belgian authorities reported some difficulties owing to the short time limit which the Framework Decision lays down for actual surrender (ten days from a positive decision to execute the EAW).

The following cases were highlighted, in particular:

- the executing authorities can take quite a long time to notify a positive decision. There have been instances, with Spain and Italy, where it took too long to send notification¹: four or five days sometimes passed before the Belgian authorities were informed, when a week-end intervened, leaving only a few days in which to make practical arrangements for surrender, which was liable to increase the cost considerably, especially because of the high fares charged by airlines;
- in some isolated cases, the ten-day limit was suspended on grounds of *force majeure* (e.g. no seats available on a flight). In this connection, Belgium favours a broad interpretation of the possibility of extending the time-limit for actual surrender on grounds of *force majeure*;

¹ Example of transmission route: executing authority → SIRENE foreign country → SIRENE Belgium → Belgian authorities.

- lack of coordination. In one case (with France), the person was taken to the border without the Belgian authorities being informed within a reasonable period.

The Belgian authorities highlighted some cases in which surrender was not possible within the ten-day time limit imposed, although there were no serious consequences such as the person being released. The authorities concerned agreed on a new surrender date, without informing Eurojust ¹.

3.14. ARRANGEMENTS FOR SURRENDER OF PROPERTY REQUESTED/DEADLINES/GUARANTEES

The Federal Department of Justice is not informed of requests to seize and hand over property. However, there would appear to be relatively few requests of that kind from the Belgian authorities. In any event, no problem case has been reported to the Federal Department of Justice.

In general, as to the admissibility of evidence thus obtained, the rule is that evidence lawfully obtained abroad may be produced before Belgian courts.

3.15. CONFLICTS BETWEEN EUROPEAN ARREST WARRANTS/REQUESTS FOR EXTRADITION/SURRENDER

- **Multiple EAWs issued by more than one Member State**

Under Article 29 of the Belgian Law transposing the EAW, where more than one European Arrest Warrant has been issued for the same person, the federal prosecution service is informed by the competent public prosecutor.

¹ The Belgian authorities are required to inform Eurojust only in cases where they are acting as executing authorities.

RESTREINT UE

The Federal Prosecutor may seek Eurojust's opinion on the choice to be made. This is indeed recommended in the circular by the College of Principal Public Prosecutors, given the role played by Eurojust ¹.

The pre-trial chamber must rule, within fifteen days, on which warrant is to be executed, on the basis of the Federal Prosecutor's opinion and of a number of factors listed, by way of indication, in the Law (the seriousness of the offences and the places where they were committed, the respective dates of the EAWs, whether the warrant was issued for the purpose of prosecution or for a sentence to be served). Other circumstances may be taken into account, such as the stage which the procedure has reached, whether the trial is imminent, etc. The priority to be given to the various criteria must be assessed case by case.

During the evaluation visit, the team of experts was informed that, to date, there had been no instance of multiple EAWs involving Belgium as the issuing State.

- **Conflict between a European Arrest Warrant and an extradition request**

Article 30 of the Belgian Law transposing the EAW stipulates that, given the executive's responsibility for extradition procedures, it is for the Minister for Justice to decide, within a period of thirty days, on the choice to be made in the event of a conflict between a European Arrest Warrant and an extradition request.

The decision is taken on the basis of the Federal Prosecutor's opinion and the observations made by the examining magistrate, taking into account all the circumstances of the case.

The time-limits within which the investigating authorities and the Supreme Court of Appeal (*Cour de cassation*) are required to issue a ruling are suspended until the decision has been taken as to which surrender request to act upon.

If priority is given to the European Arrest Warrant, it is for the pre-trial chamber to rule on the execution of the EAW. If, in this case, surrender is ultimately refused, the extradition procedure can be continued.

¹ In this connection, cf. Circular No COL 15/2004 by the College of Principal Public Prosecutors attached to the Courts of Appeal, of 8 November 2004, on "International cooperation in criminal matters – Eurojust", which recommends that the Federal Prosecutor "systematically" seek Eurojust's opinion in cases of multiple European Arrest Warrants issued by more than one Member State *"since Eurojust is responsible, inter alia, for promoting the coordination of investigations among Member States and therefore has an overview of them, so that its opinion may be extremely pertinent"*.

In practice, there has been no conflict of this kind involving Belgium as the State issuing an EAW.

3.16. EXPENSES

The Belgian Law transposing the Framework Decision on the EAW contains no provisions concerning expenses.

The practitioners met with during the evaluation had no specific comments to make on the subject.

4. ORGANISATION AND PRACTICES – AS EXECUTING MEMBER STATE

During the evaluation visit, the Federal Department of Justice supplied statistical data on 185 European arrest warrants received in 2005.

4.1. RECEIPT PROCEDURES

In accordance with the decision of the Belgian legislator to decentralise the processing of individual EAW cases, the central authority designated pursuant to Article 7(2) of the Framework Decision on the EAW is not the compulsory channel for transmitting an EAW but plays a supporting role; foreign authorities can also contact it to determine the authority having territorial jurisdiction in Belgium. If the central authority receives an EAW, it passes it on directly to the competent authority and informs the foreign issuing authority accordingly.

A role of intermediary in the receipt of EAWs is also assigned to the federal prosecution service, which receives about 30 EAWs a year from foreign authorities. These dossiers are not dealt with directly by the federal prosecution service but are passed to the competent Public Prosecutor's office.

Where a person has been arrested on the basis of an alert in the SIS or Interpol, the Public Prosecutor's office attached to the court of first instance is competent to receive the EAW. Where the person in question has not been arrested, but his whereabouts are known, the EAW may be transmitted directly to the Public Prosecutor's office attached to the court of first instance corresponding to the place of residence of the person requested.

RESTREINT UE

Based on the experience of the Brussels prosecution service, 90 % of EAWs are transmitted by the Schengen alert service and the rest are sent directly.

Article 9 of the Belgian Law on the European arrest warrant allows either an original or a true copy to be sent. In rare instances (particularly in the early months of application of the Law), some Belgian examining magistrates insisted on the original. In most cases, the copy is forwarded through the Sirene bureau.

The form can also be sent by fax and/or by post. E-mail transmission is also valid but is not very common in practice.

The practitioners interviewed during the evaluation confirmed that, on receipt of an EAW, they generally agree to start work on the basis of faxes in view of the very short deadline (24 hours after arrest) for ruling on remand in custody. The pre-trial chamber of the Brussels court has approved surrenders solely on the basis of a certified fax of a European arrest warrant, even though Article 9(2) of the Law stipulates that an original or a true copy must be sent.

Even though the Belgian law does not stipulate a deadline for receipt of the original or true copy of the EAW, the time limits inherent in the procedure mean that the translated EAW must be available at the time when the person concerned has access to the dossier before going before the pre-trial chamber, i.e. within 10 days of arrest. The authorities interviewed indicated that there was no penalty in the event of non-compliance with the deadline laid down for receipt of the EAW, the decision on whether to release the person in question being left to the discretion of the judicial authorities.

4.2. FORM OF WARRANT AND REVIEW PROCEDURES

There are no requirements other than that provided for in Article 9 of the Belgian law. In principle, it is up to the executing judicial authority to check the EAW for accuracy in respect of form and content and to make the appropriate checks if there is any doubt.

During the evaluation, the experts were able to evaluate the checks carried out by the legal service of the federal police directorate for operational police cooperation (DSO) and by the executing judicial authorities in relation to the form and content of the EAW.

RESTREINT UE

When the SIRENE bureau receives an EAW from abroad, a number of checks and verifications are carried out as part of the preparation of the dossier for the executing judicial authority:

1. check on the Belgian databases by the operators ¹;
2. check by the legal service on the form of the EAW, in particular to verify that all the necessary data are included in the form;
3. check by the legal service on the description of the acts in the form in order to identify the equivalent Belgian legal classification; request for additional information from the issuing authority, if necessary;
4. check by the legal service on the mandatory grounds for refusal and, where appropriate, the posting of a validity flag.

For their part, the judicial authorities interviewed confirmed, in their capacity as executing authorities, their policy of requesting additional information in the event of doubts regarding legal classification.

The analysis of the checks carried out in executing an EAW gave rise to an interesting discussion between the team of experts and the Belgian practitioners, particularly with regard to the following points:

- the appropriateness of the checks carried out by the legal service of the federal police directorate for operational police cooperation regarding legal classification and the grounds for refusal, both of which entail examining the substance of the EAW (line of argument: it is for the issuing authority to rule on the legal classification, the executing authority not having discretionary powers in the spirit of the principle of mutual recognition). In this regard, the Ministerial Circular (p. 9) stipulates that *"It will be for the executing judicial authority to verify that, generically, the act for which the arrest warrant is issued is one of those contained in the list. It will carry out that verification on the basis of the description of the circumstances contained in the European Arrest Warrant form. Once the judicial authority has confirmed that the offence is included in the list, it will be bound by the definition of the offences in question under the law of the issuing State, i.e. by the constituent elements as provided for in that legislation, and without verification of the double criminality of the act";*

¹ The databases checked are the Belgian national police database (BNG), the Belgian national register (RRN), the Register of Belgian prisons (SIDIS), the Schengen Information System (SIS) and the Interpol database (e-ASF).

RESTREINT UE

- the necessary coordination between the federal police directorate for operational police cooperation and the judicial authorities to avoid a proliferation of requests for additional information and when posting flags.

In principle, Belgium does not accept European arrest warrants in languages other than its official languages (French, Dutch and German).

In rare cases, a new translation has had to be requested owing to the illegibility of the first version transmitted. It is sometimes necessary to request a second translation at national level if the language regime of the executing judicial authority does not correspond to that in which the translation was furnished (e.g. French translation, Flemish language regime).

The translation of the EAW must reach the Belgian authorities within 10 days of arrest. That time limit is not determined by Belgian law but is necessary to enable the pre-trial chamber to rule within the time limits.

No cases of transmission after the deadline of the translation of a EAW have been reported to the Federal Department of Justice.

4.3. REQUESTS AND RESPONSES TO REQUESTS FOR FURTHER INFORMATION/CLARIFICATION

In accordance with the Framework Decision on the EAW and judicial control over the system in Belgium, it is for the examining magistrate, and also the pre-trial chamber or the indictments chamber (*Chambre des mises en accusation*) at their level, to evaluate whether it is appropriate to request more detailed additional information. This evaluation is made in order to prepare for the oral hearing in the pre-trial chamber. To this end, the examining magistrate may set a time limit for the receipt of additional information in order to meet the deadline for the decision by the pre-trial chamber (Articles 15 and 16 of the Law on the European arrest warrant).

In practice, the legal service of the federal police directorate for operational police cooperation may also request additional information.

RESTREINT UE

On the basis of Belgium's experience as an executing State, such requests generally concern the guarantees that may be required pursuant to Article 5(1) of the Framework Decision and, on occasion, information concerning the legal classification, the description of the acts, etc. The Belgian executing judicial authority also sometimes asks for documents (judgments, legislation, etc.) to be sent.

At the time of the evaluation, the Federal Department of Justice did not have information concerning any problems encountered in the context of requests for information on the legal classification of abortion or euthanasia, which are excluded under Belgian law from the concept of murder (indirectly re-establishing verification of double criminality for cases of that kind).

In the view of the Federal Department of Justice, if no satisfactory response was received to questions put, the EAW must be regarded as inadmissible.

In this connection, it is worth highlighting a practical case. When an EAW issued by the French authorities was examined, it emerged that it was based on a sentence ordering immediate arrest.

Immediate arrest in France is a "continuation" of the arrest warrant issued in absentia by the examining magistrate. That warrant was not attached to the documents supplied and, despite several requests (fax, e-mail, etc.), was never transmitted.

4.4. INVESTIGATIONS CONCERNING THE LOCATION OF THE REQUESTED PERSON

As soon as an alert/EAW is received, the Sirene/Interpol bureau consults the national police database (BNG). All Schengen alerts received are verified to establish with certainty the identity of the requested person, to locate him or her, etc. If the person concerned has an address in Belgium or is in custody, or if the alert mentions a possible location for the person, the prosecuting service having territorial jurisdiction is informed and it carries out the checks. The same checks are carried out if the request is made directly to the prosecuting service having territorial jurisdiction.

It should be noted that the FAST unit set up by Belgium within its federal police force systematically carries out searches for persons sentenced to more than 5 years in prison.

RESTREINT UE

In the context of the procedure for executing EAWs, the FAST unit reports a significant number of cases which raise interesting questions.

4.5. CIRCULATION PROCEDURES

The SIRENE/INTERPOL bureau indicated that all Schengen area alerts are systematically circulated to the new Member States of the European Union through the Interpol channel.

4.6. ARREST/FIRST HEARING PROCEDURES

The procedure is the same whether the EAW is issued for prosecution or for the purposes of enforcing a sentence.

Authorities responsible for arrest:

The public prosecutor's office is responsible for all the necessary measures to locate and arrest the person requested on the basis of a SIS alert or an EAW. It does not have power to assess the advisability of arrest, which is subject to the conditions laid down by the Belgian law of 20 July 1990 on remand in custody ¹.

An international alert (Interpol) ² is a sufficient basis for the temporary detention of a person for a period not exceeding 24 hours (Article 12 of the Constitution). Once that time limit has passed the person must be brought before an examining magistrate who will inform him of the grounds for detention (Article 11 of the Law on the European arrest warrant). The existence of an EAW as the basis for the Interpol alert must therefore be confirmed within 24 hours of the time at which the person is actually deprived of liberty and, in all cases, the issuing authority has 10 days to provide a translation of the EAW in one of Belgium's three official languages.

¹ Article 2 of the Law of 20 July 1990 on remand in custody provides that, excepting the case of a flagrant crime or offence, a person in respect of whom there is serious evidence of guilt may be held for a period of no longer than 24 hours following a decision by the Public Prosecutor and in compliance with certain procedural rules.

² Paragraph 5.1.1.3 of the Ministerial Circular: *Initially, Interpol will retain an important role in the transmission of the European arrest warrant by the new Member States. The 10 new Member States will not participate in the SIS until after the implementation of SIS II, scheduled for 2007.*

RESTREINT UE

First hearing

Within 24 hours of effective detention, the person concerned is brought before an examining magistrate who decides on whether to hold him in custody (Article 11 of the Law on the European arrest warrant) on the basis of conditions laid down in the Law on remand in custody. The examining magistrate may also order his release subject to conditions or on bail. In that case, he must ensure that the person remains at the disposal of the court.

It was reported during the evaluation that the release could be accompanied by the condition of appearing before the judicial authority which issued the European arrest warrant.

Under Belgian law, the person concerned is informed during the hearing of the following:

1. the existence and content of the European arrest warrant;
2. the possibility open to him of agreeing to be surrendered to the issuing judicial authority;
3. the right to choose a lawyer and an interpreter in accordance with the relevant provisions of Belgian law.

In relation to the procedure, following the first hearing the examining magistrate hands down a reasoned ruling concerning detention and, where appropriate, the existence of a clear ground for refusal.

Immediately after the first hearing, the person arrested may communicate freely with his lawyer. In this respect, it should be noted that the arrested person is not assisted by a lawyer on his first appearance before the examining magistrate, as he would be in the context of any national procedure; in the opinion of the lawyers consulted, this would appear to curtail the individual's real rights of defence.

4.7. DECISION ON SURRENDER

A schematic outline of execution procedures in Belgium is given in Annex A to the report.

RESTREINT UE

In principle, under the normal procedure, the pre-trial chamber is competent to decide on the execution of an EAW whether it has been issued for prosecution or with a view to executing a sentence (Article 16 of the Law on the European arrest warrant).

Pre-trial chamber decisions are open to appeal before the indictments chamber, which is then competent to rule with a time-limit of 15 days (Article 17 of the Law on the European arrest warrant).

Decisions by the indictments chamber are open to further appeal (Article 18 of the Law on the European arrest warrant) within a time-limit of 15 days.

If the examining magistrate concludes at the first hearing that there is a clear ground for refusing to execute the EAW, he is authorised to take a reasoned decision to refuse immediately (emergency procedure).

The person is then released unless the enforcement refusal decision is appealed by the public prosecutor's office within 24 hours (Article 14 of the Law on the European arrest warrant). It is then for the indictments chamber to rule within a time-limit of 15 days.

In the event of consent to surrender, the public prosecutor records the consent of the person in the presence of his lawyer and informs him of the consequences. Under Belgian law, consent to surrender entails renunciation of entitlement to the speciality rule. The two questions are thus cumulative, a factor that certainly reduces the attractiveness of this simplified procedure in the opinion of the lawyers consulted during the evaluation and also in the opinion of some magistrates. It is for the public prosecutor's office to decide to execute the EAW (simplified procedure: Article 13 of the Law on the European arrest warrant). Under Belgian law, the person's consent to surrender may be revoked up to the time of actual surrender.

In the event of the person revoking the consent given, there are no provisions in Belgian law concerning the impact of the refusal on the procedural deadlines. The practitioners interviewed during the evaluation emphasised that, according to case law which was reasonably consistent across the courts, revocation of consent entailed suspension of the deadlines.

4.8. REFUSAL OF SURRENDER

If at a first hearing the examining magistrate concludes that there are clear grounds for refusal to execute the EAW, he is obliged to take a reasoned decision to refuse without delay and to release the person. The examining magistrate may invite the interested party to remain at the disposal of the Belgian judicial or police authorities.

This emergency procedure is intended to avoid unnecessary detention of the person concerned.

If the final decision on the execution of the arrest warrant is negative, the SIRENE bureau is informed and it places a validity flag on the alert relating to the person concerned.

During the evaluation, the experts noted that no statistics were available regarding the application of the mandatory and optional grounds for refusal by judicial authorities. Reference was made to a case involving refusal on the grounds of the statute of limitations, which is a mandatory ground for refusal under Belgian law.

4.9. APPEAL PROCEDURES AND THEIR EFFECTS ON THE TIME-LIMITS

Judicial control over the EAW procedures has required the introduction into the Belgian system of appeal mechanisms open to the person concerned and to the public prosecutor's office. The Belgian legislator has opted for fairly strict deadlines so that appeals, including an appeal to the highest instance, can be dealt with by the courts within the 60 days provided for in the Framework Decision.

In general, the time limits imposed by the Framework Decision are respected. In exceptional cases, however, difficulties have arisen, essentially in relation to the following:

- exhaustion of all avenues of appeal;
- failure to comply with time-limits (e.g. because the hearings were postponed at the request of the defence or because the courts failed to comply with the deadlines for ruling).

As regards the time-limit of 10 days following consent during which the decision to execute must be taken, the practitioners indicated that it was complied with in nearly all cases (even to the extent of surrender before the deadline), because consent is given before the public prosecutor, who decides almost immediately on execution of the European arrest warrant (Article 13 of the Law on the European arrest warrant).

In the event of failure to comply with the time limit of 60 days following arrest for taking the decision to execute, the Public Prosecutor's office is obliged to inform the person concerned and the issuing authority, and give the reasons for the delay. During the evaluation, it was noted that, very frequently, there is a lack of communication regarding delays in the procedure.

If the 90 day time limit for the decision to execute the EAW following the person's arrest is not met, the public prosecutor's office is obliged to inform the federal prosecution service which then informs Eurojust (Article 19(2) of the Law on the European arrest warrant). Since the Law on the European arrest warrant came into force, five cases have been reported to the federal prosecution service (including three in 2005). In each case, Eurojust has been informed and given the reasons for the delay. Generally, these are complex cases for which all avenues of appeal have been exhausted (sometimes with several referrals to the Supreme Court of Appeal).

Under Belgian law only breaches of the 90-day time limit can be notified to Eurojust (Article 19 of the Law on the European arrest warrant). In this respect, the team of experts identified a discrepancy vis-à-vis Article 17(7) of the Framework Decision, which stipulates that information on all failures to observe the time limits provided for in that Article (10, 60 and 90 days) be transmitted to Eurojust.

4.10. ARREST AND SURRENDER OF OWN NATIONALS AND MINORS

Under the Belgian law transposing the European arrest warrant, the Belgian nationality of the person arrested can constitute grounds for optional non-execution of a EAW in the circumstances provided for in the Framework Decision and the decision is left to the discretion of the executing judicial authority. The provisions relating to nationality are extended to persons who reside (residence or domicile) on Belgian territory.

RESTREINT UE

European arrest warrant issued for the purposes of execution of a sentence

In cases in which the European arrest warrant was issued for the purposes of execution of a sentence or detention order, the executing judicial authority may refuse to execute the EAW when the person requested is Belgian or resident in Belgium. The decision of the executing judicial authority entails the taking over of execution of the sentence by the Belgian authorities ¹.

European arrest warrant issued for the purposes of prosecution

In the case of European arrest warrants issued for the purposes of prosecution, the nationality or residence of the person may also be taken into account.

The executing Belgian judicial authority may make surrender subject to the condition that the person concerned be returned to Belgium to serve the custodial sentence or detention order passed against him in the issuing State. This possibility, provided for in Article 5 of the Framework Decision, is set out in Article 8 of the Belgian law of 19 December 2003 on the European arrest warrant.

This request for an official guarantee of the return to Belgium of the person concerned after sentencing comes within the framework of the supplementary information that can be requested from the issuing State (Article 15).

In relation to the subsequent transfer of the person to Belgium for execution of the sentence, reference needs to be made to the Law of 23 of May 1990 on the transfer of sentenced persons between States and the Convention of 21 March 1983 on the transfer of sentenced persons.

¹ This ground for refusal is applicable under Belgian law following the adoption of the Law of 26 May 2005 amending the Law of 23 May 1990 on transfers (*Moniteur belge*, 10.6.2005). Pursuant to the new Article 18(2) of the Law of 23 May 1990, Belgium can henceforth execute the foreign sentence on its territory.

RESTREINT UE

With regard to the surrender of minors, an interesting case arose with Sweden, which requested the surrender of a minor (aged 17 at the time of arrest) accused of particularly serious offences at a time when the person in question was only 15 years of age. The surrender of a minor of over 16 years of age not being contrary to Belgian law, the question arose of when to take the minor's age into account. It was decided that, for the purposes of assessing the age of criminal majority, the age on the date on which the alleged offence took place was the relevant one. Consequently, in this particular case, surrender was refused.

4.11. SPECIALITY RULE

As already mentioned in point 4.7, Article 13 of the Belgian Law on the EAW, which transposes Article 13 of the Framework Decision, provides that the consent of the requested person to surrender also entails renunciation of entitlement to the speciality rule; consent may be revoked up to the time of actual surrender.

4.12. SURRENDER/EXTRADITION

The Belgian authorities reported two cases in which Belgium encountered difficulties pertaining to the question of the subsequent extradition of a requested person to a third country.

1. The first was an EAW issued by the Luxembourg authorities for a Belgian national requested for prosecution for the possession of child pornography images and film extracts at a time when Luxembourg had already received a request for extradition from the United States for stock exchange fraud and association to commit offences involving large amounts of money. Since the case arose in the early months of application of the Law, there were several points of uncertainty regarding the procedures applicable to the guarantee of return to Belgium, the authority competent to grant consent to subsequent extradition, etc. In this instance, surrender was granted to Luxembourg on condition that the person concerned was returned to Belgium to serve his sentence and at the same time the Belgian Minister for Justice refused consent to the subsequent extradition from Luxembourg to the United States on grounds of the person's Belgian nationality.

2. In a second case (with Italy), a person of Albanian nationality was surrendered to the Belgian authorities. However, in view of the seriousness of the acts, of the nationality of the persons involved (both the suspects and the victims) and the fact that one of the person's two accomplices was in custody in Albania and the other in Serbia and Montenegro, the Belgian authority subsequently considered it preferable, in the interests of proper administration of justice, for the proceedings to take place in Albania. A report setting out the facts was sent to the Albanian authorities and, at the same time, a request was made to the Italian authorities for their consent to have the person extradited to Albania. The Italian authorities refused their consent until such time as they received an official request for extradition directly from Albania. Following the evaluation visit, the experts were informed that in the meantime the re-extradition request had been accepted by the Italian authorities.

4.13. EXPERIENCES IN RELATION TO ARTICLE 32

Difficulties caused by the reservations entered by some States fall into two categories:

1. Three Member States (Luxembourg, Slovenia, Czech Republic) entered reservations after the adoption of the Framework Decision; their reservations were thus not published. The result is a legal vacuum regarding requests for surrender issued by those States which are based on acts committed after a certain date. When Belgium is the executing State the situation is uncertain. Some authorities apply the EAW nevertheless, while others apply extradition. There have also been cases of straight refusal.
2. Reciprocity clause: Article 32 of the Framework Decision authorises States who so wish to apply the EAW only for acts committed after a certain date. For some States (e.g. France) the reservation is unilateral, while for others (e.g. Luxembourg, Italy) it is reciprocal. Article 44 of the Belgian Law applies the principle of reciprocity and provides that Belgium will apply extradition arrangements in relations with the States concerned. Difficulties may arise with States which have drafted their reservations as unilateral arrangements.

Case law is being developed on this issue. It is based on the content of the statements made by the issuing States concerned. As a result, Belgian courts tend not to apply reciprocity in relations with France, but they do apply it in relations with Italy.

4.14. TEMPORARY/CONDITIONAL SURRENDER

The Belgian authorities have sometimes made use of the temporary surrender mechanism provided for in Article 24(2) of the Framework Decision. In accordance with that Article, the decision to resort to temporary surrender is a matter for the public prosecutor's office. Surrender takes place under conditions determined by common agreement with the issuing authority.

In practice, temporary surrender is envisaged at the request of the issuing authority, since it takes place in the interests of ongoing proceedings in the issuing State (e.g. to avoid the disappearance of evidence in the issuing State, to enable a person to be tried at the same time as any co-accused, etc.).

The practitioners interviewed highlighted a lacuna in the Belgian legislation and in the Framework Decision as regards the hypothesis of further surrender, i.e. when, following a surrender carried out on the basis of an EAW, a request for an extension to other offences arrives and a second EAW has to be issued. They also noted that there was no provision in the EAW form for this possibility.

4.15. ARRANGEMENTS FOR SURRENDER OF REQUESTED PERSONS (INCLUDING TEMPORARY SURRENDER AND CONDITIONAL SURRENDER)

In all cases, the surrender arrangements are coordinated by the executing and the issuing authorities. The considerations outlined in 3.13 apply *mutatis mutandis*. In Belgium, after notification of the final decision to the person concerned and to the issuing authority, the Public Prosecutor is responsible for the actual surrender procedure, with the police services providing operational support.

Attention was drawn to coordination problems with certain issuing authorities.

4.16. ARRANGEMENTS FOR SURRENDER OF PROPERTY REQUESTED/ DEADLINES/ GUARANTEES

Items which may serve as evidence in securing a conviction or which constitute proceeds of an offence are handed over to the issuing judicial authority, either at its request or on the initiative of the pre-trial chamber.

The Ministerial Circular draws the attention of the Belgian authorities to the possibility available to the issuing judicial authority of requesting the surrender of property, thereby avoiding the need to send letters rogatory in parallel to the European arrest warrant.

By analogy with Article 11 of the Law of 15 March 1874 on extraditions, the pre-trial chamber can order the return of property. It also rules on the claims by third parties in possession of such items or others with rights in respect of them.

Doubts have been expressed as regards the validity of the EAW as a legal basis on which to carry out house searches with a view to seizing the property requested by the issuing authorities.

4.17. CONFLICT BETWEEN EUROPEAN ARREST WARRANTS/EXTRADITION REQUESTS

Multiple European arrest warrants

During the evaluation visit, the team of experts was informed that Belgium had reported two cases of multiple EAWs since the entry into force of the law. In accordance with Belgian law, the pre-trial chamber issued a ruling after receiving the opinion of the public prosecutor and, in one case, Eurojust was also consulted¹. In 2005, the federal prosecution service received a file concerning Italy and Germany. The urgency of the proceedings (needs of the investigation process) was the decisive criterion on which the decision of the pre-trial chamber was based, in accordance with the opinions of the federal prosecution service and Eurojust.

¹ Under Article 29 of the Belgian law on the European arrest warrant, the Federal Prosecutor may request Eurojust's opinion on the choice to be made. It was noted, however, that the College of Principal Public Prosecutors (Circular No COL 15/2004) recommends that the Federal Prosecutor systematically seek Eurojust's opinion.

RESTREINT UE

Conflict between a European arrest warrant and an extradition request

As already mentioned in point 3.15, the possibility of conflict between an EAW and an extradition request is governed by Article 30 of the Belgian law on the European Arrest Warrant.

In practice, a single case arose in 2005 concerning an EAW issued by the Italian authorities and a request for extradition from Germany. After receiving the opinion of the federal prosecution service and Eurojust, the Minister for Justice took the final decision to give priority to the EAW, mainly on account of the seriousness of the acts and other criteria such as the stage the proceedings had reached (proceedings in progress before the Assize Court of Milan) and the urgency of the Italian request.

In cases of conflict, the Belgian law does not provide for consultation with Eurojust. Such consultation may, however, take place if the federal prosecution service or the Federal Department of Justice considers it useful. In the case at hand, Eurojust was consulted and its opinion followed by the Minister for Justice.

4.18. EXPENSES

Belgian legislation does not have any provisions pertaining to who should bear the expenses for the return of sentenced persons. In principle, Belgium bears the expenses relating to the return of Belgian nationals or residents to serve their sentences.

Belgium has not encountered any practical or legal problems regarding the payment of expenses.

In relation to expenses, account also needs to be taken of the wholly or partially free legal aid which may be guaranteed by the State if the person's resources are insufficient or if certain other conditions are met, as well as the interpreting and translation fees, which are borne by the State.

5. TRAINING PROVISION

With the exception of a briefing session devoted entirely to the EAW, organised by the Federal Department of Justice (SPF Justice) shortly before the law entered into force, no special seminar on the European Arrest Warrant has been organised. Magistrates do, however, receive basic training as part of their general training, in particular at sessions on international cooperation organised by the Supreme Council of Justice. Training on the subject is also organised at European level under the AGIS programme.

The experts appreciated the approach adopted by the federal prosecutor's office, which visited all the district court prosecutors' offices, and felt it was necessary to organise one or two meetings a year in order to discuss any problems encountered.

As an example of good practice, the federal prosecutor's office has taken care to collect all the judgments handed down in European Arrest Warrant cases. As there is no computer intranet network (one should come into operation on 23 June 2006) those judgments are not being circulated nationally to all courts.

At police level, the subject of the EAW is dealt with in training organised by individual police schools. Apart from the training given by local police schools, the national research school gives operational training to the staff of district courts (SJA), the central directorates of the DGJ (Direction générale du pilier judiciaire de la police fédérale – Directorate-General of the Judicial Section of the Federal Police) and local research departments (SLR).

6. VIEWS OF THE DEFENCE

The team of experts had the opportunity, during the evaluation visit, to meet two representatives of the Belgian bars.

The two lawyers, who specialised in extradition and EAW cases, described certain individual cases and commented on the EAW procedure.

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In particular, they stressed a number of positive aspects of the EAW compared with the previous extradition system:

- the fact that the procedure for deciding on EAWs had become wholly judicial excluded any intervention on the part of the executive and made it possible for the defence to intervene at any stage of the procedure;
- the appeal system was better organised than in the previous extradition system, since release could be applied for at any stage of the procedure;
- decisions on execution/surrender were much quicker than before, which gave much greater protection to the rights of persons involved in EAWs.

On two points, however, the lawyers stated their disapproval. They deplored the serious democratic deficit that they felt had characterised the procedure by which the EAW had been adopted, at both European and national level, in particular because of the absence of any debate amongst the institutions involved.

They also stressed the summary nature of the EAW form, which was a brief, undetailed dossier that could not be checked by the executing magistrate. For that reason the lawyers considered the EAW effective as regards decisions which were not final but not as regards the execution of final judgments.

The lawyers also pointed out that if a person had not chosen a lawyer or did not choose one by the end of the first hearing the examining magistrate informed the chairman of the bar association or his representative, who appointed a public defence counsel.

Finally, the bar representatives referred to the ruling by the Belgian Constitutional Court on 13 July 2005 on the application for the total or partial annulment of the Belgian EAW Act. Two requests for preliminary rulings concerning the validity of the EAW Framework Decision had been submitted to the Court of Justice of the European Communities and at the time of the assessment decisions were awaited ¹.

¹ See the following EU Council documents: 11518/05 COPEN 116 EUROJUST 42 EJN 38, 11518/05 ADD 1 COPEN 116 EUROJUST 42 EJN 38, 12630/05 JUR 390 COPEN 155.

7. CONCLUSIONS

7.1. General conclusions

The experts greatly appreciated the professionalism, receptiveness and frankness of the persons they met in the course of the evaluation, which enriched the analysis by means of open dialogue on the strong and weak points of the practical application of the EAW in Belgium.

In general it was noted that from the practitioner's point of view the EAW system had significant advantages compared with the previous extradition procedure, especially as regards the simplified procedures and the reasonable times allowed for execution.

On a practical level, Belgium had introduced certain mechanisms intended to facilitate practitioners' application of the EAW. The evaluating experts noted, for example, that there had been a Ministerial circular on the EAW, that a multidisciplinary working group had been set up to examine problems concerning the implementation of the EAW, that in each prosecutor's office a magistrate had been appointed to whom any question concerning the issue or execution of an EAW was to be referred, and also that an expert cell had been set up within the federal prosecutor's office. However, the evaluation team commented that, despite their great potential, those mechanisms were insufficiently used by practitioners.

In the course of the evaluation, the objective difficulty of collecting statistical data and, more generally, ensuring the circulation of information concerning the EAW to courts was noted. The organisation of the courts into 27 districts and the clear distinction between examining magistrates and prosecutors' offices were partly to blame for that communication failure. Similarly, the absence of any intranet system to which all magistrates had access (at least until 23 June 2006) was another important factor in the situation.

As regards the practical implementation of the EAW, it must be pointed out that the reproduction in the EAW system of certain specific mechanisms of national systems (e.g., the conditions governing remand in custody) and the cultural reluctance of certain judicial authorities (not just in Belgium) to accept the principle of mutual recognition had an adverse effect on the efficiency of the EAW system.

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Throughout the evaluation the experts noted the support given by the federal police (the DSO, (Directorate for operational police cooperation), the SIRENE Bureau, the FAST (Fugitive Active Search Team)) and local police to Belgian judicial authorities in the issue and execution phases. In particular, the organisation of the DSO with the SIRENE Bureau and the legal department provided the information collected in national databases and SIS-Interpol as well as expertise in the preparatory phases of dossiers.

As regards the FAST (Fugitive Active Search Team), it must be pointed out that rather than restrict itself to mere passive reporting of persons to be sought with a view to the execution of sentences, Belgium had an effective mechanism and showed that it was willing to proceed with the execution of long custodial sentences and to respect victims' rights.

The experts noted divergences between the Belgian law transposing the EAW and the Framework Decision as regards the list of 32 categories of offences that were not covered by the double-criminality provision. Belgian law, which does not consider abortion or euthanasia to be covered by the concept of murder, has re-introduced verification of double criminality for such cases. The Belgian authorities explained that that decision on the part of the Belgian legislator took account of specific national law on the subject and of the legal framework under which abortion was permitted in certain cases and in others was an offence.

In addition, Belgium has transposed the grounds for the refusal of surrender that criminal prosecution or punishment is statute-barred provided that the acts fall within the jurisdiction of the Belgian courts, in the most restrictive way possible, by making it mandatory. That action is likely to result in a degree of impunity within the European Union.

The experts consider that the Belgian legislator's choice could affect the implementation of the EAW, in the execution phase in particular. At the time of the evaluation no statistics were available concerning the application of those grounds for refusal by Belgian courts.

Without prejudice to the initiatives and actions concerning the circulation of information on the EAW, on-going training should continue at the same time.

7.2. Conclusions in respect of Belgium's activities as an issuing Member State

7.2.1. Questions

7.2.1.1. Information provided by the Federal Department of Justice (SPF Justice)

The experts noted that despite the mandatory order in the Ministerial circular to send the Federal Department of Justice copies of all EAWs issued, the judicial authorities were not complying systematically. Information concerning the total number of EAWs issued by Belgian judicial authorities against the same person may, however, be important for the purpose of managing the priority of pursuits.

Furthermore, the decentralisation of the processing of individual EAW cases also causes an information deficit regarding the data concerning EAWs executed or refused by Belgian authorities. The result is that the Federal Department of Justice has objective difficulties in preparing reliable statistics.

In addition, the Ministerial circular provides that the judicial authorities shall without delay inform the Federal Department of Justice of any difficulty encountered in the application of the law. It would appear that the judicial authorities are not complying systematically with that order either, which undermines the central role that the Federal Department of Justice ought to play in monitoring application of the law.

7.2.1.2. Circulation of information

The experts looked at the importance of two aspects of the shortcomings in communications between judicial authorities at national level. First, information concerning the total number of EAWs issued by the Belgian authorities or the investigations in progress concerning the same person is not directly available to the judicial authorities. In fact they have only the national criminal record, which contains only cases in which there is a final judgment, and to check for the existence of investigations in progress they have to refer to police databases.

Secondly, the circulation of information concerning case law (which is not mandatory) is rare and depends mainly on the good will of individuals, in particular the reference magistrates in prosecutors' offices. However, the experts have been informed by the Belgian authorities of the establishment of a network of expertise in international cooperation which, since it was established less than a year ago, has already circulated no fewer than nine notes on the EAW and developments in the case law relating to it. This network, which is currently limited to the Ghent Court of Appeal, is going to be extended eventually to the whole of Belgium.

7.2.1.3. Sentence threshold for the issue of an EAW

In the context of the advisability of the execution of sentences, Belgium has *de facto* introduced a sentence threshold of two years for the issue of an EAW, since shorter sentences are not necessarily executed. In practice, it was noted that some courts apply a threshold of at least four months (Article 2(1) of the Framework Decision) for the issue of an EAW. In the experts' view there is a danger that that practice could create disparity within the European Union by leaving judgments imposing sentences without effect.

7.2.2. Good practices

7.2.2.1. Ministerial circular

The experts noted the usefulness of the Ministerial circular, which gave a series of directives to facilitate use of the EAW form. They stressed the importance of providing a *Vade mecum* for all magistrates and felt that, even if the circular were not binding (except for the Federal Department of Justice), it ought to be borne in mind as a model of good practice.

7.2.2.2. Contacts and expertise

In the course of the assessment the team of experts welcomed the initiative of appointing a reference magistrate in each prosecutor's office for questions relating to EAWs and also the expertise provided by the federal prosecutor's office, where a magistrate and a lawyer were available at the national courts.

In this context mention must also be made of the initiative on the part of the federal prosecutor's office to collect EAW case law and make it available to all magistrates (an intranet project should come into operation on 23 June 2006). Responsibility for centralising case law peculiar to the EAW lies both with the Ghent Chief Public Prosecutor's Office (responsible for international mutual legal assistance) and with the Federal Department of Justice.

7.2.2.3. Multidisciplinary working group

The experts stressed the importance of setting up a forum bringing together all the authorities competent to discuss the problems involved in implementing the EAW and of circulating widely the results of its discussions. Meetings with all the reference magistrates ought to be organised.

7.3. Conclusions in respect of Belgium's activities as an executing Member State

7.3.1. Questions

7.3.1.1. Legal basis and double criminality

The experts found divergences in the transposition of the Framework Decision as regards the list of offences not covered by double criminality. Belgian law excludes abortion and euthanasia as not covered by the concept of murder, thus reintroducing verification of double criminality.

That transposition could, in the experts' view, lead to a proliferation of requests for additional information from foreign issuing authorities concerning legal classification and the circumstances in which offences were committed, which was contrary to the spirit and the letter of the Framework Decision.

The experts also stress that the Ministerial circular is particularly ambiguous on the subject of double criminality. The fact that the judicial authority must check that generically, the act that is the ground for the arrest warrant is one of those on the list, would also appear to be contrary to the spirit and the letter of the Framework Decision.

In addition, the experts pointed out that to make the circumstance of the criminal prosecution or punishment of the requested person being statute-barred a ground for mandatory refusal, where the acts fall within the jurisdiction of the Belgian authorities was not without consequences for the effectiveness of justice.

7.3.1.2. Consent to surrender and the speciality rule

The legislation transposing the EAW provides that consent to the surrender of the requested person also implies renunciation of the speciality rule. However Article 13 of the Framework Decision is interpreted, it would appear that Belgium's transposition of it restricts its application and does not promote consent to surrender and the rapid execution of an EAW.

In the experts' view, that transposition creates differences of treatment between the Member States. The experts also commented that the possibility of withdrawing consent at any time before the moment of surrender was a true sword of Damocles that made the execution procedure uncertain. Furthermore, in the course of the evaluation the following difficulty, which was not confined to Belgium, was pointed out: the issue of an EAW assumed the existence of an arrest warrant (or of any other enforceable decision having the same effect) or of an enforceable judgment (Article 1 of the Framework Decision).

What is the situation regarding the prosecution of a person who has been surrendered under another procedure and has not renounced the speciality rule? A request for authorisation under Article 27(4) of the Framework Decision, which refers to Article 8 (1) (c), must be sent to the executing authority, which must be able to refer to an arrest warrant or an enforceable judgment. The speciality rule, however, prevents the issuing of such an arrest warrant or judgment.

7.3.1.3. Additional information

The experts noted that certain executing authorities, in Belgium and elsewhere, had a tendency to request excessive or over-detailed additional information from issuing authorities, concerning even the legal classification of the acts, and sometimes went so far as to request that documents (judgments, etc.) be sent. The experts deplored that practice, which they considered contrary to the principle of mutual recognition, and pointed out that it was a practice linked to the previous extradition procedure which had no place in the EAW procedure.

7.3.1.4. Criteria for the release of persons covered by EAWs

The team of experts that carried out the evaluation noted the apparent existence of differences in interpretation regarding the conditions that must oblige an examining magistrate to choose between allowing a requested person to remain at liberty (possibly requiring him to fulfil one or more conditions) and detaining him. Certain magistrates felt that only guarantees of appearance provided by the requested person should be taken into account.

Other magistrates referred to the letter of Article 11 of the Law on the European Arrest Warrant (which reproduces the conditions laid down in the Law on remand in custody) and suggested that an examination should be made of the requirements of that law concerning the committing of further crimes and offences or the risk of the disappearance of evidence or collusion with third parties.

The experts felt that that reference to the Law on remand in custody was awkward and difficult, if not impossible to comply with, given the sometimes very succinct statement of the circumstances given in an EAW, the examining magistrate did not have the full dossier on the case as he would in national proceedings.

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Furthermore, there was certainly a danger that that manner of proceeding would prompt requests for additional information concerning the circumstances to enable the *Chambre du conseil* (the pre-trial chamber) to rule and, if appropriate, to confirm the order of detention.

As regards the effect of the Law on Remand in Custody on the implementation of the EAW, it may be concluded that the conditions laid down for a decision on the release of a person covered by an EAW are difficult to reconcile with the mutual-recognition procedure envisaged in the Framework Decision.

7.3.1.5. Legal basis for re-arrest before surrender

The team of experts noted that difficulties could arise with the surrender of persons left at liberty by examining magistrates after the first hearing or at a later stage in the procedure, whether they were subject to judicial monitoring or not. In those cases, imprisonment following a person's being summoned to appear on the day before the agreed date for surrender would not appear to have any legal basis that would authorise the Belgian authorities to proceed in that way. In practice, if a person who is to be surrendered does not appear as appointed for surrender no penalty (arrest) is available under Belgian law.

The practitioners met during the evaluation and the experts considered possible solutions (for example, considering the EAW as a detention order or making a specific legal provision).

7.3.1.6. Legal arrangements applicable to the return of nationals

Like other European Union Member States, Belgium considers that there is no other appropriate legal basis and applies the Convention on the Transfer of Sentenced Persons of 21 March 1983 to the return of nationals, which requires a request on the part of the person concerned and action by the executive. The evaluating experts stressed that even if a transfer were carried out in accelerated mode, without a social report being required, the procedure was complex and they felt it was out of place in the flexible and wholly judicial procedure of the EAW. In addition, the experts noted that that procedure required the re-introduction of double criminality and invalidated the process of guarantees provided for in Article 5(3) of the Framework Decision. The Belgian authorities had shown good will in overcoming those difficulties, but it would be desirable for the European Union to take some initiative in this area.

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7.3.1.7. Legal basis for the arrest of a person covered by an EAW or for house searches
During the evaluation visit the FAST (Fugitive Active Search Team) raised some practical problems which, in the experts' opinion, required solutions. In particular, it was necessary to decide whether an EAW could be considered an appropriate legal basis for entering the home of the requested person, for arresting him, and/or carrying out searches and seizures. In this connection it was noted that in practice different Belgian judicial authorities interpreted this question in different ways, and when they did not consider the EAW a legal basis, arrests and house searches were carried out on the basis of accessory proceedings decided on a case-by-case basis (with the risk of absconding).

7.3.1.8. Surrender and the arrangements for surrender

Belgium has on occasion encountered difficulties with the surrender phase arising out of a lack of coordination with the issuing authorities, which has affected the costs and even the surrender itself.

In the course of the evaluation the experts noted that surrender that had been postponed because of pending national cases was difficult to manage in practice because there was no intranet network linking the different prosecutors' offices at courts in other districts and no national registry. Thus the Brussels prosecutor's office could search only its own database for other pending cases and would have to contact the prosecutors' offices at other courts by telephone.

7.3.1.9. Further surrender and dangerousness of the requested person

The practitioners met in the course of the assessment visit pointed out a lacuna in Belgian law and in the Framework Decision in the area of further surrender. They also pointed out that even the EAW form did not allow for that possibility.

They also stressed the importance of including in the form an indication of whether or not the requested person was dangerous.

7.3.1.10. Notification in connection with the time limits laid down in Article 17(7) of the Framework Decision. The experts noted a difference between the transposition into Belgian law of Article 17(7) and the actual provisions of the Framework Decision.

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7.3.2. Good practice

7.3.2.1. FAST

Like other European countries Belgium has set up a very efficient centralised structure for the location of fugitives, called FAST. The experts approved of the organisation of the department and also stressed its usefulness as a model of good practice that other States might adopt.

7.3.2.2. Federal prosecutor's office

The experts noted the efficient organisation of the federal prosecutor's office and approved its function as a centre of EAW expertise on which all the national judicial authorities could call.

7.3.2.3. Appeal procedures and compliance with time limits

The experts felt that Belgium had set up a good system for EAW appeal procedures which reconciled the need to protect individuals' rights and the need for the execution procedure to be swift.

7.3.2.4. Consultation of Eurojust

Systematic consultation of Eurojust on the basis of Article 16(2) of the Framework Decision is recommended by the college of Principal Public Prosecutors: *"since Eurojust is responsible, inter alia, for promoting the coordination of investigations among Member States and therefore has an overview of them, so that its opinion may be extremely pertinent"*.

8. RECOMMENDATIONS

8.1. RECOMMENDATIONS FOR BELGIUM

8.1.1. As issuing Member State

Recommendation 1 – Establish a reliable statistical method of storing European Arrest Warrants issued, executed or rejected by the Belgian authorities (see 7.2.1.1.).

Recommendation 2 – In this context, pursue the aim of developing the PHENIX system or establishing a database accessible to all courts concerned by the European Arrest Warrant in order to share the main information items relating to, *inter alia*, current investigations and arrest warrants already issued.

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Ensure that case law on the European Arrest Warrant is circulated by means of a computer system accessible to all judicial authorities. The introduction of the internet system as suggested by the Federal Prosecutor would ensure that all information is disseminated (see 7.2.1.2).

Recommendation 3 - Consider the possibility of pursuing a reasonably flexible policy of executing sentences which would take account of the thresholds referred to by the Framework Decision, to ensure consistent treatment within the European Union (see 7.2.1.3).

Recommendation 4 – Make maximum use of the potential of the instruments available to courts to facilitate application of the European Arrest Warrant, mainly by reference to the ministerial circular containing the directives to be followed in completing the form and by organising regular meetings of reference magistrates and of the multidisciplinary working group (see 7.2.2.1).

8.1.2. As executing Member State

Recommendation 5 – Ensure that Belgian law on the EAW conforms to the Framework Decision in cases where the law re-establishes verification of double criminality for certain offences listed in Article 2 of the Framework Decision (see 7.3.1.1.).

Recommendation 6 – Amend the provisions of Article 13 of the Belgian law transposing the EAW to make consent to surrender and renunciation of the speciality rule the subject of two separate questions requiring two separate replies, so that consent to surrender does not necessarily involve renunciation of entitlement to the speciality rule. Consider the introduction of a fixed period for revocation both of consent to surrender and of renunciation of the speciality rule (see 7.3.1.2).

Recommendation 7 – Be satisfied as far as possible with the information contained in the European Arrest Warrant and avoid a proliferation of requests for additional information concerning description of the acts and legal qualification by different authorities and at various stages of the procedure (see 7.3.1.3).

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Recommendation 8 – Clarify the criteria to be taken into consideration by the court in taking a decision on allowing the wanted person to remain at liberty (possibly by requiring him to comply with one or more conditions) or placing him in custody within the framework of the EAW procedure (see 7.3.1.4).

Recommendation 9 – Clarify or supplement the internal instrument by identifying the legal basis on which the person whose surrender has been granted but who has been left at liberty may be imprisoned the day before surrender (see 7.3.1.5).

Recommendation 10 – Simplify the procedure for return of nationals and ensure that the principles set out in Article 5(3) of the Framework Decision are observed, in particular by eliminating the prior request of the person concerned (see 7.3.1.6).

Recommendation 11 – Clarify the scope of the European Arrest Warrant for the purposes of arrest (see 7.3.1.7).

Recommendation 12 – Encourage and develop communications with the issuing State throughout the execution procedure in order to optimise coordination at all stages (see 7.3.1.8).

Recommendation 13 – Consider the possibility of integrating further surrender into national legislation on the European Arrest Warrant (see 7.3.1.9).

Recommendation 14 – Re-examine transposition into national law with regard to the time-limits referred to in Article 17(7) of the Framework Decision (see 7.3.1.10)

8.2. RECOMMENDATIONS TO OTHER MEMBER STATES

Recommendation 15 – Consider the possibility of pursuing a reasonably flexible policy of executing sentences which would take account of the thresholds referred to by the Framework Decision, to ensure consistent treatment within the European Union (see 7.2.1.3).

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Recommendation 16 – Institute a mechanism which will ensure the application and follow-up of the EAW (Circular, Working Group and reference magistrate) (see 7.2.2.1; 7.2.2.2; 7.2.2.3).

Recommendation 17 – As executing Member State, make every effort to avoid the proliferation of requests for additional information from the issuing States, particularly as regards the description of acts and legal qualification; preferably be satisfied with the information communicated by the issuing State on the EAW form and with the questions specifically provided for in the Framework Decision (see 7.3.1.3).

Recommendation 18 – Maintain communications with the issuing/executing State during the main stages of the European Arrest Warrant execution procedure and ensure coordination during the surrender stage (see 7.3.1.8.).

Recommendation 19 – Simplify the temporary surrender procedure and reduce its cost by encouraging the use of video-conferencing as much as possible (see 7.3.1.8).

Recommendation 20 – Re-examine transposition into national law with regard to the time-limits referred to in Article 17(7) of the Framework Decision (see 7.3.1.10).

Recommendation 21 – Consider the possibility of setting up a centralised search system for wanted persons on the model of the FAST unit (see 7.3.2.1).

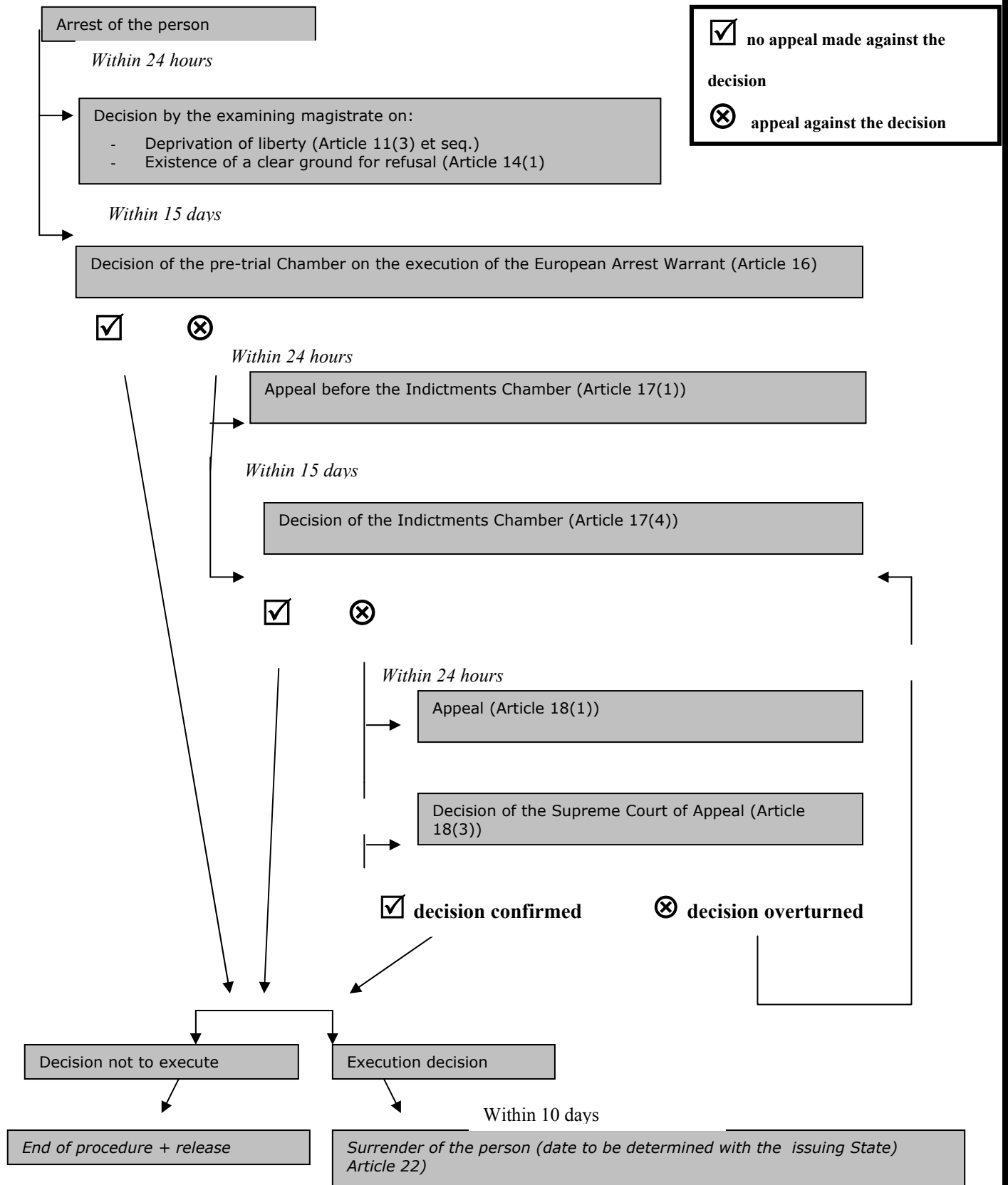
Recommendation 22 – Consider systematic consultation of Eurojust in the case of multiple EAWs (see 7.3.2.4).

8.3. RECOMMENDATIONS TO THE EUROPEAN UNION

Recommendation 23 – Consider the possibility of amending the form for the European Arrest Warrant by including provision for possible further surrender and a heading on the dangerousness of the requested person (see 7.3.1.9).

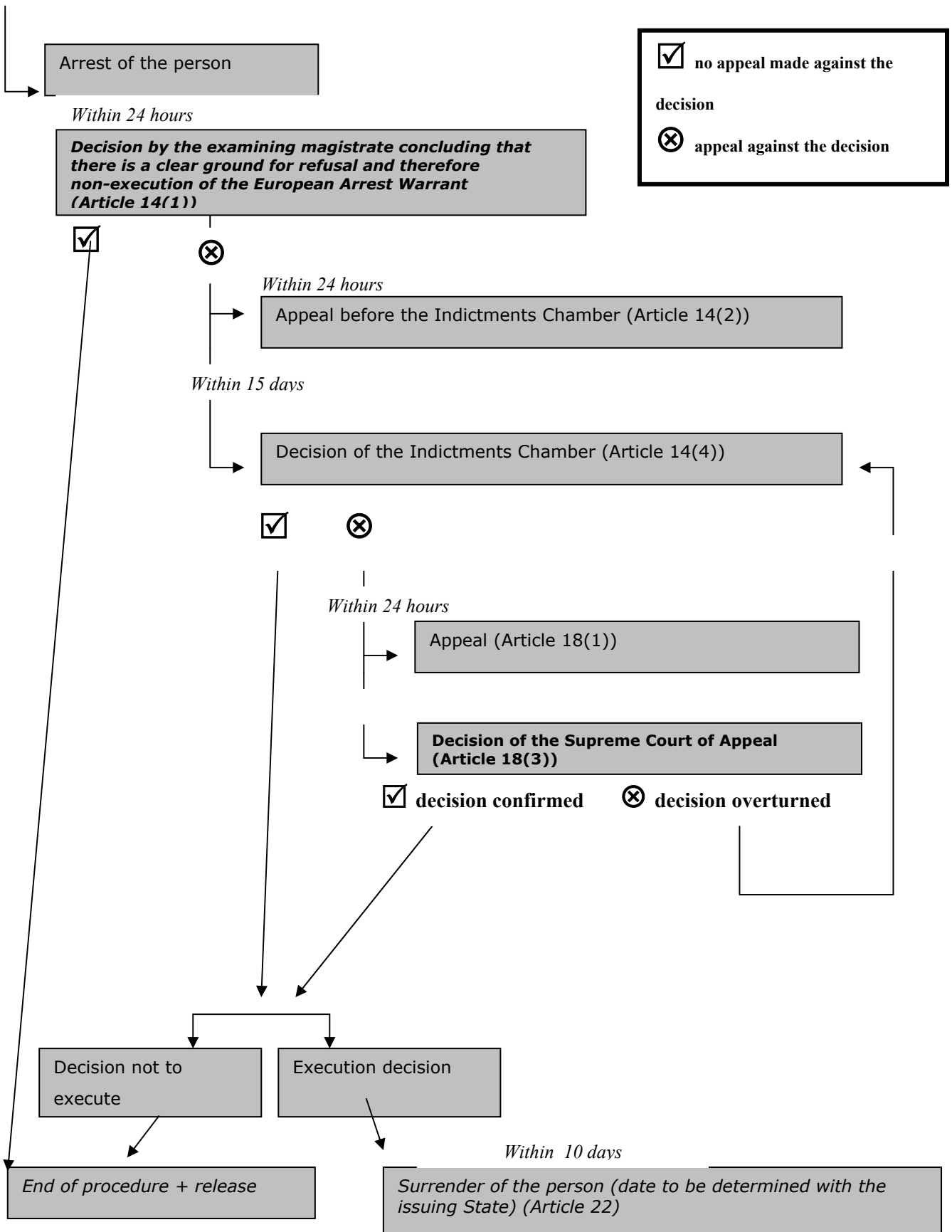
Recommendation 24 – Examine the possibility of introducing a common procedure for return of nationals (see 7.3.1.6).

Procedure for execution of a European Arrest Warrant where the examining magistrate concludes that there is no clear ground for refusing execution



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Procedure where the examining magistrate concludes that there is a clear ground for refusing execution (Article 14(1))



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ANNEX B

FEDERAL DEPARTMENT OF JUSTICE STATISTICS

EAW

01.01.2004-21.06.2006 841

01.01.2005-31.12.2005 397

Active 212

Passive 185

Antilles (Netherlands) 01

Germany 27

Austria 04

Denmark 01

Spain 06

Finland 01

France 64

Greece 01

Hungary 04

Italy 06

Lithuania 01

Luxembourg 03

Netherlands 43

Poland 09

Portugal 01

Sweden 01



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SIRENE/INTERPOL STATISTICS - DSO (Extracts)

Change in the number of Belgian alerts within the SIS + Article 95 files on foreign nationals

	Year/Art.	1998	1999	2000	2001	2002	2003	2004	2005
Alerts by BE	Art. 95	421	330	445	495	548	576	477	497
Alerts by Schengen States others	Art. 95	4369	4533	3947	3985	4533	4722	4646	5420

FEDERAL DEPARTMENT OF JUSTICE STATISTICS

Number of European Arrest Warrants received by the Federal Prosecutor's Office

	2004	2005	2006
Issued by the Belgian judicial authorities:	46	25	9
Issued by other Member States:	26	24	13
Germany	1	6	1
Austria	0	2	0
Spain	7	2	0
France	6	5	8
Hungary	1	0	0
Italy	0	0	1
Lithuania	0	0	1
Luxembourg	0	2	0
Netherlands	6	4	2
Poland	3	1	0
United Kingdom	0	1	0
Sweden	2	1	0

PROGRAMME DES VISITES

Lundi 19 juin 2006

14.00-17.00 : Session d'introduction

Objectif : Accueil des experts + explication du système belge (présentation de la procédure générale et de chacun des acteurs) + premières questions aux interrogations suscitées par le rapport belge + rôle du SPFJ dans la procédure. Lieu : SPF Justice, 115 Boulevard de Waterloo, 1000 Bruxelles

19.00 : Repas – Restaurant Chez Marius en Provence (1, Place du Petit Sablon)

Mardi 20 juin 2006

9.30-12.00 : Visite du Bureau SIRENE / INTERPOL

Objectif : fonctionnement des signalements MAE. Lieu: Bureau SIRENE, rue des Quatre-Bras, 19 à 1000 Bruxelles

14.00-17.00 : Visite du Parquet fédéral

Objectif : mécanismes de coordination pour l'exécution et l'émission de MAE + jurisprudence

Lieu: Parquet fédéral, rue des Quatre-Bras, 19 à 1000 Bruxelles

Mercredi 21 juin 2006

9.30-12.00 : Visite au Parquet/tribunal de Bruxelles

Objectif : fonctionnement de la procédure MAE dans un « grand ressort ». Lieu: Rue des Quatre Bras, n°13

14.00-17.00 : Visite dans un parquet/tribunal « local » à Nivelles

Objectif : fonctionnement de la procédure MAE dans un ressort local

Jeudi 22 juin 2006

9.30-11.00 : Visite du “fugitive active search team” FAST

Objectif : fonctionnement pratique de la recherche des personnes sur base des MAE

Lieu: Luchtmachtlaan 10, 1040 Bruxelles, Bâtiment R – 2ième étage

11.30-13.00 : discussion avec les avocats

Objectif : fonctionnement de la procédure MAE pour ce qui concerne les droits de la défense

Lieu : SPF Justice

15.00-17.00 : session de clôture

Objectif : dernières clarifications

Lieu : SPF Justice

LISTE DES PERSONNES INTERROGÉES

Service public fédéral Justice, DG Législation, libertés et droits fondamentaux

Claude DEBRULLE, Directeur Général
Daniel FLORE, Conseiller Général
Serge DE BIOLLEY, Attaché
Marie-Hélène DESCAMPS, Attaché
Mathieu VAN RAVENSTEIN, Attaché
Erik VERBERT, Attaché
Stéphanie BOSLY, Attaché

Parquet de Nivelles

E. BAYE, Secrétaire adjoint
AF. DESTRÉE, Juge d'instruction
JCI. ELSLANDER, Procureur du Roi
B. GOETHALS, 1er substitut
G. LOBET, Doyen des juges d'instruction

Magistrat Chambre du Conseil de Bruxelles

Béatrice BEHETS-WYDEMANS

Orde van Vlaamse Balies

Paul BEKAERT, Studiedienst

Parquet Fédéral

Daniel BERNARD, Procureur Fédéral
Jean-Marc TRIGAUX
Thomas LAMIROY

Pol. Féd. DSO

Arnaud BRAEM
Sandra CASALE
Sofie DEVRIENDT
Thierry HOVERTIN
Jessica MARTIN

DSO

Sofie MORTIER
Marc SANREY

Parket Hof van Beroep te Gent

Stefaan GUENTER, Advocaat-generaal

Bur. D van het Parket Brussel

Marc HENDRICKX

Eerste Substituut Procureur des Konings te Brussel

Anne LINDEMANS



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Juge d'instruction près le tribunal de première instance de Bruxelles

Frédéric LUGENTZ

O.B.F.G. (Ordre des barreaux francophones et germanophone)

Pierre MONVILLE

André RISOPOULOS

FAST

Martin VAN STEENBRUGGE

Hof van Beroep te Brussel

Alain WINANTS



LISTE DES ABRÉVIATIONS/GLOSSAIRE DES TERMES

ACRONYMES ABBREVIATIONS TERMES	EXPLICATIONS EN FRANCAIS
GMD	Groupe multidisciplinaire "Criminalité organisée"
MAE	Mandat d'arrêt européen
SPF Justice	Service public fédéral justice
DSO	Direction de la collaboration policière opérationnelle
SIG	Section "Signalements internationaux"
Cellule AEL	Cellule "Arrestations, extraditions, localisations"
FAST	Fugitive Active Search Team
BNG	Banque nationale générale de données policières
SIS	Système d'information Schengen

GROUND FOR REFUSAL OF SURRENDER

Legislative references (Law of 19 December 2003)	Grounds	Corresponding articles of the Framework Decision
Article 4, point 1	Amnesty	Article 3, point 1)
Article 4, point 2	Final judgment or sentence already served	Article 3, point 2)
Article 4, point 3	Age of criminal responsibility	Article 3, point 3)
Article 4, point 4 (mandatory grounds for refusal)	Public action statute-barred	Article 4, point 4) (optional grounds for refusal)
Article 4, point 5	Fundamental rights enshrined in Article 6 of the Treaty on European Union	Article 1(3)
Article 5(1)	The act does not constitute an offence under Belgian law	Article 2(4)
Article 5(4)	Exclusion of the offences of abortion and euthanasia from the list of offences not covered by the double criminality regime	Article 2
Article 6, point 1	Judgments pending in the State	Article 4, point 2)
Article 6, point 2	Decision not to prosecute	Article 4, point 3)
Article 6, point 3	Double criminality	Article 4, point 5)
Article 6, point 4, and Article 8	Belgian nationality or residence	Article 4, point 6), and Article 5, point 3)
Article 6, point 5, a) and b)	Offences committed on Belgian territory or outside the territory of the issuing State	Article 4, point 7), a) and b)
Article 7	Decisions rendered in absentia	Article 5, point 1)
