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"THE PRACTICAL APPLICATION OF THE EUROPEAN ARREST  
WARRANT AND CORRESPONDING SURRENDER  
PROCEDURES BETWEEN MEMBER STATES"

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REPORT ON BULGARIA

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The text of this document is identical to the previous version.

# RESTREINT UE



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

**REPORT ON BULGARIA**

# RESTREINT UE

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## 1. INTRODUCTION<sup>1</sup>

- 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 the discussion of a proposal by the Luxembourg Presidency concerning the topic of the fourth round of mutual evaluations<sup>2</sup>, the MDG of 11 July 2005 adopted the topic as proposed, namely "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<sup>3</sup>.
- 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. Also at its meeting on 28 October 2005 the MDG discussed and approved 13824/05, the revised sequence for the mutual evaluation visits. Bulgaria is the twenty-fifth Member State to be evaluated during the fourth round of evaluations.

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<sup>1</sup> This evaluation report does not in any way prejudice the Commission's assessment of Bulgaria's overall progress in the areas of judicial reform, the fight against corruption and organised crime under the Cooperation and Verification Mechanism (established by the Commission Decision of 13 December 2006 (C(2006) 6570 final)).

<sup>2</sup> 9602/05 - Orientation debate on a proposed Mutual Evaluation exercise.

<sup>3</sup> 6206/06/REV1 - Timetable for 2006 and designation of experts.

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- 1.6. The experts charged with undertaking this evaluation were: Mr Florin Răzvan Radu (legal adviser, Ministry of Justice, Romania), Mr Dušan Kerin, (Head of the Section for International Police Cooperation, Ministry of the Interior, Slovenia) and Mr Peter Seda (Prosecutor, Staatsanwaltschaft Wien, Austria). Two observers were also present: Mr José Castillo (Eurojust) and Mr Peter Kortenhorst (European Commission), together with the General Secretariat of the Council.
- 1.7. This report was prepared by the expert team with the assistance of the Council Secretariat, based upon their findings arising from the evaluation visit of 21 to 24 October 2008, and on the detailed and helpful responses of Bulgaria to the evaluation questionnaire.
- 1.8. The report only refers to differing processes in respect of arrest and prosecution cases insofar as practice in the two procedures diverges.
- 1.9. The expert team's overarching purpose was to evaluate the distinct practical processes operated and encountered by Bulgaria in its role both as issuing and as executing Member State and to assess relevant training provisions and provision for defence, before moving on to conclude and to make such recommendations as the team felt appropriate concerning means by which the EAW and its corresponding surrender provisions may be further streamlined and improved.

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## 2. THE AUTHORITIES AND THE LEGAL BASIS

### 2.1 THE AUTHORITIES

The system of courts dealing with criminal matters in Bulgaria comprises:

- The Supreme Court of Cassation,
- 5 Courts of Appeal,
- 28 District Courts,
- 112 Regional Courts,
- 1 Military Court of Appeal and 5 Military Courts.

In Bulgaria EAWs may be issued by courts at the trial stage of the procedure. The procedure and decision on the execution of EAWs fall within the competence of the District Courts; in this matter there is only one level of appeal, to the Court of Appeal.

The Prosecution Service of Bulgaria comprises:

- The Prosecutor General,
- 1 Supreme Cassation Prosecutor's Office,
- 1 Supreme Administrative Prosecutor's Office,
- 5 Appellate Prosecutor's Offices,
- 28 District Prosecutor's Offices,
- 112 Regional Prosecutor's Offices,
- 1 Appellate Military Prosecutor's Office and 5 District Military Prosecutor's Offices.

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The Prosecution Service is an institution of the judiciary. It has a hierarchical structure<sup>1</sup>, so that (written) orders of a higher prosecutor are binding on prosecutors subordinated to him and the latter are subject to supervision by the former<sup>2</sup>. The highest authority in the Prosecution Service is the Prosecutor General, who is appointed by the President of the Republic at the proposal of the Supreme Judicial Council<sup>3</sup>. The Prosecutor General has the power to issue instructions of a general character and guidelines to assist prosecutors in performing their tasks.

As to EAW matters, the prosecutor who is conducting the investigation is the authority competent to issue an EAW in pre-trial proceedings. In conviction cases, EAWs are issued by the prosecutor responsible for the enforcement of the sentence.

Within the Ministry of Justice, the International Legal Cooperation and European Affairs Directorate deals with mutual legal assistance in civil and criminal matters. The unit is staffed by 26 experts and its role and tasks are described in the Regulation on the Structure of the Ministry of Justice.

Also within the Ministry of Justice, the Security Directorate General is charged with the practical arrangements necessary for the actual surrender of a person from and to Bulgaria.

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<sup>1</sup> Article 136(3) of the Law on Judiciary reads: *"The Prosecution Office shall be indivisible and centralised. Each prosecutor shall be subordinated to the respective prosecutor at a higher position and all to the Prosecutor General"*.

<sup>2</sup> Article 46(3) of the Criminal Procedure Code reads: *"A prosecutor at a higher position and a prosecutor with a higher-standing prosecution office may revoke in writing or amend the decrees of prosecutors directly reporting to him. His written instructions shall be binding on them. In such cases he may take the necessary investigative or other procedural action"*. In similar terms: Article 143(2) and (3) of the Law on Judiciary.

<sup>3</sup> The Supreme Judicial Council is the body which administers the judiciary. It is composed of twenty-five members. The President of the Supreme Court of Cassation, the President of the Supreme Administrative Court and the Prosecutor General are *ex officio* members of the Supreme Judicial Council. The other 22 members are designated for a five-year period among high level jurists with at least fifteen years of professional experience; eleven of them are appointed by the Parliament and the rest are elected by the members of the judiciary. The statute and competences of the Supreme Judicial Council are regulated in the Constitution and in the Law on Judiciary.

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The International Operative Police Cooperation Directorate (hereinafter referred to as "the IOPCD"), within the Ministry of Interior, operates international police cooperation. This unit organizes the exchange of information and coordinates police operations at international level; it also ensures coordination with foreign authorities for the actual surrender in extradition and EAW cases. The IOPCD includes the Telecommunication Department, the Europol National Unit, SIRENE Sofia and the NCB Interpol Sofia, the latter dealing with EAW matters.

## 2.2 THE LEGAL BASIS

- Law on Extradition and the European Arrest Warrant, No. 46, of 3 June 2005 (hereinafter referred to as "the implementing law"), as amended by Laws of 28 October 2005 and 6 June 2008<sup>1</sup>. Pursuant to Article 66 thereof, the provisions of the Criminal Procedure Code (hereinafter referred to as "the CPC") apply insofar as the implementing law contains no special rules.

It should be noted that Bulgaria has not made a declaration according to Article 35(1) TEU, recognizing the jurisdiction of the European Court of Justice to give preliminary rulings as regards police and judicial co-operation in criminal matters.

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<sup>1</sup> At the end of 2007, by order of the Minister of Justice, a working group of judges, prosecutors and experts of the Ministry of Justice was set up in order to make concrete proposals for amending and supplementing the implementing law. This was prompted by the problems which had arisen in connection with the 24-hour period for temporary detention originally envisaged in the law (see chapter 4.3 below), as well as some other problems which gave rise to difficulties in the practical application of the implementing law. At the end of February 2008, the proposals were drawn up and submitted, in accordance with the established procedure, to the legislative committee of the National Assembly.



## 3. ORGANISATION AND PRACTICE - AS ISSUING MEMBER STATE

During the evaluation visit the expert team was provided with figures extracted from the records of the International Operative Police Cooperation Directorate (IOPCD). According to this information, 238 EAWs were recorded in the period 1 January 2007 - 30 September 2008. It should be noted, however, that this number corresponds to cases in which the EAW was forwarded to the IOPCD either for transmission or for issue of an Interpol notice, and that there was no information available about the EAWs transmitted directly by the Bulgarian judicial authorities to the executing State. In the same period the IOPCD registered 82 cases in which a person requested by Bulgaria based on an EAW was surrendered, and 3 cases in which an EAW issued by the Bulgarian authorities was refused.

### 3.1. THE DECISION TO ISSUE

The judicial authority competent to issue EAWs in pre-trial proceedings is the prosecutor who is conducting the investigation. At the trial stage, EAWs may be issued only by the court which is trying the case. In conviction cases, EAWs are issued by the prosecutor responsible for the enforcement of the sentence.

There is no special procedure whereby the decision to issue an EAW is taken. In principle, an EAW is to be issued where there is a domestic arrest warrant, an international arrest warrant, a custodial sentence or a detention order and there are indications that the person concerned is located in another Member State<sup>1</sup>, provided that the penalty thresholds as laid down in the Framework Decision on the EAW (hereinafter referred to as “the FD”) are reached.

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<sup>1</sup> It should be noted, however, that, pursuant to a General Prosecutor's instruction on the issuing and execution of EAWs, an EAW may also be issued if there are no precise indications that the person sought is located in another Member State. See chapter 3.5 below.

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It should be noted that, under Bulgarian law, pre-trial proceedings may be carried out without the person concerned being present, and that sentencing in absentia is permitted for offences punishable with less than five years of imprisonment. In that connection, the prosecutors interviewed explained that in practice an EAW is issued in the pre-trial stage only if needed for the investigation to be completed. These results in a relatively low number of prosecution EAWs compared with the total number of EAWs issued by the Bulgarian authorities (for instance, in the district of the Court of Appeal of Plovdiv 71 out of a total of 77 EAWs issued in the period 1 January 2007 - 10 October 2008 were conviction EAWs).

### 3.2. VERIFYING THE POSSIBLE EXISTENCE OF MULTIPLE REQUESTS

At present, no comprehensive information system on pending criminal proceedings is operational in Bulgaria<sup>1</sup>. Should judicial authorities wish to obtain information on outstanding EAWs issued for a given individual, they can request such information from the IOPCD (as stated above, information on previous EAWs sent directly to the executing authorities may be lacking). It should be noted, however, that there is no mandatory requirement for the issuing judicial authorities to do so, nor is the practice of prosecutors and courts to carry out any enquiry in this regard prior to issue of an EAW.

During the visit to the IOPCD, it was explained to the expert team that on receipt of an EAW issued by a Bulgarian judicial authority, it is standard practice to check the Interpol and Ministry of the Interior databases for the existence of earlier EAWs or domestic search requests concerning the same person. Should an outstanding EAW or domestic search request issued for the same person be found, the judicial authorities involved are contacted by the IOPCD for further coordination. In that connection it should be noted that, where criminal proceedings are conducted against the same person by different courts/prosecution offices, there is no means to issue a single unified EAW.

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<sup>1</sup> According to the information provided, a unified case management system for courts would be operational by early 2009. The expert team was not in position to assess the potential impact of this system on the processing of EAWs.

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During the visit to the SCPO the expert team was informed that a so-called Integrated Information System (IIS) is under development, which will enable prosecutors to obtain information on these matters. This is connected with the obligation of the members of the National Prosecution Network (established in 2007) to supervise the publication of the information concerning EAW files in such a system, and of the District Prosecution Offices to set up a separate register for EAW-related matters, imposed by a very recent instruction of the General Prosecutor on the issuing and execution of EAWs (September-October 2008).

## 3.3. THE COMPLETION OF THE FORM

The drafting of the EAW is undertaken by the competent issuing authority. An EAW must be issued using the form provided in annex to the implementing law, which mirrors the one provided for by the FD.

The European Handbook on the EAW has been published in the form of a book and disseminated to all practitioners involved in EAW proceedings by the Ministry of Justice with the financial support of the Supreme Council of the Bar. However, there are no comprehensive guidelines or manuals adapted to the Bulgarian system to facilitate application of the EAW by practitioners. Prosecutors may seek the assistance of the National Prosecution Network and of the International Legal Cooperation Department of the SCPO; in this connection, shortly before the evaluation visit an instruction was issued by the General Prosecutor under which, when drafting an EAW, prosecutors are obliged to coordinate with the local National Prosecution Network contact point.

During the interviews no recurrent issues were reported in relation to the EAW form or any field of it in particular other than difficulties in relation to box "e" in cases in which the EAW refers to several offences.

## 3.4. TRANSLATION OF THE EAW

The translation of the EAW is a matter for the issuing authority. Translations may be obtained via the SCPO within a very short period; this service, provided by a private company on the basis of a framework contract, is available to prosecution offices, not to courts<sup>1</sup>.

EAWs are issued by the Bulgarian authorities in Bulgarian. As a rule EAWs are translated following notification that the requested person has been arrested in another Member State. A translation is only produced in anticipation if the location of the requested person is known.

No particular problems were reported in this connection.

## 3.5. TRANSMISSION OF THE EAW

The transmission of the EAW to the competent authority in the executing Member State is the responsibility of the issuing prosecutor or court.

The issuing authority has a high degree of discretion in determining the means of transmission. The use of fax, e-mail or any other secure system that enables the receiving authority to authenticate the EAW, as well as of Interpol, the SIS and the EJM telecommunications system are expressly envisaged in the implementing law<sup>2</sup>. EAWs may also be channelled through the Ministry of Justice<sup>3</sup>. It seems that, in practice, Interpol channels are used in most cases. According to the information provided, the good offices of the Eurojust National Member were requested for these purposes in a number of cases.

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<sup>1</sup> According to the information received, each court avails itself for the translation of EAWs and related documents of a translation agency of its choice; also assistance is lent by the MoJ when necessary.

<sup>2</sup> Article 57(5) in relation to Article 38a.

<sup>3</sup> 17078/06 - Statements by Bulgaria in the context of the implementation of the European arrest warrant with reference to the Framework Decision 584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States of the European Union reads: *"Statement under Article 7. The central authority designated by Bulgaria to assist the judicial authorities is the Minister of Justice...The central authority is competent to forward a European arrest warrant issued by a Bulgarian judicial authority, if the latter is unable to transmit it directly to the foreign executing judicial authority or when the executing Member State has designated as receiving authority the Ministry of Justice"*.

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Difficulties in identifying the competent authority in the executing State are solved by using the EJM Atlas, or with the assistance of the EJM contact points, the Ministry of Justice or Interpol. In that connection, during the interviews it appeared that the Bulgarian judicial authorities are aware of the e-tools available on the EJM website.

If the whereabouts of the requested person within the EU are unknown, a copy of the EAW is sent to the IOPCD-Interpol NCB, which, after a customary check, proceeds to prepare a formal request for international search and circulate it through Interpol channels. In these cases the EAW together with a translation will be transmitted to the competent executing authority as described above following notification that the requested person has been arrested. In that connection, it should be noted that the instruction issued by the General Prosecutor on the issuing and execution of EAWs distinguishes between two situations: i) where there are no indications that the person sought is in the European Union, the prosecutor must forward to the SCPO a draft request for international search and a draft request for provisional arrest (Article 16 of the European Convention on Extradition), accompanied by an EAW, in view of the possibility that the person concerned might be detained on the territory of another MS; ii) where such indications exist, a copy of the EAW must be sent to the IOPCD for the purposes of issuing an Interpol notice.

## 3.6. ISSUES RAISED BY EXECUTING MEMBER STATES AND COMMUNICATION CHANNELS RELIED UPON

No particular issues were reported. According to the information provided, any difficulties that had arisen with other Member States in relation to the appropriateness of an EAW or the manner in which the form was completed could be solved by direct contacts between the judicial authorities involved.

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## 3.7. REQUESTS FOR FURTHER INFORMATION MADE BY EXECUTING MEMBER STATES

In cases where additional information has been requested by the executing State, no particular difficulties, of translation or otherwise, have been noted by the Bulgarian authorities. The implementing law<sup>1</sup> expressly provides that the Bulgarian issuing authority must provide the necessary data and information at the request of the executing authority. According to the replies to the EAW questionnaire, whenever a specific need arises to discuss the nature of these requests with the executing authorities, the assistance of Eurojust is requested through the Bulgarian National Member.

## 3.8. LEGAL REGIME GOVERNING THE RETURN OF OWN NATIONALS FOR THE ENFORCEMENT OF A SENTENCE

No specific regime exists on the return of nationals of executing Member States when Bulgaria acts as issuing Member State. While noting that there had been no experience of cases of this kind, the officials interviewed were of the opinion that the legal arrangements governing this matter are to be found in the 1983 Council of Europe Convention on the Transfer of Sentenced Persons, and that it is for the issuing authority to provide any undertakings necessary in this connection<sup>2</sup>.

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<sup>1</sup> Article 58.

<sup>2</sup> The expert team notes that, according to Article 25 of the Council Framework Decision 2008/909/JHA of 27 November 2008, on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (published during the preparation of this report), "*without prejudice to Framework Decision 2002/584/JHA, provisions of this Framework Decision shall apply, mutatis mutandis, to the extent that they are compatible with provisions under that Framework Decision, to enforcement of sentences in cases where ..., acting under Article 5(3) of that Framework Decision, it (a Member State) has imposed the condition that the person has to be returned to serve the sentence in the Member State concerned, so as to avoid impunity of the person concerned*".

Article 26 – Relationship with other agreements and arrangements, of the same Framework Decision, reads: "*1. Without prejudice to their application between Member States and third States and their transitional application according to Article 28, this Framework Decision shall, from 5 December 2011, replace the corresponding provisions of the following conventions applicable in relations between the Member States: - The European Convention on the transfer of sentenced persons of 21 March 1983 and the Additional Protocol thereto of 18 December 1997...*".

## 3.9. YOUTH SURRENDERS AND CORRESPONDING GUARANTEES

No case involving minors was recorded at the time of the evaluation visit.

## 3.10. GENERAL COMMUNICATIONS WITH THE EXECUTING MEMBER STATE

The expert team was advised that as a general practice the Bulgarian issuing authorities take care of establishing direct channels of communication with the executing authorities, by telephone or e-mail. In cases where some difficulty or special issue arises and bilateral communication is unsuccessful, contacts are made through Interpol, the National Member to Eurojust, the EJN or the Ministry of Justice,

The authorities met during the evaluation visit noted that the level of communication regarding the progress of EAW proceedings is in general unsatisfactory, and that information from the executing authorities concerning hold-ups in the execution process is rarely provided spontaneously.

## 3.11. THE MECHANICS OF THE SURRENDER (INCLUDING TEMPORARY SURRENDER) OF REQUESTED PERSONS

Once the decision to execute the EAW has been notified by the executing authority, a copy of the notification must be sent to the SCPO, which approaches the IOPCD with a view to arranging with the competent authorities in the executing Member State a date and place for the handover of the requested person. The IOPCD together with the Security Directorate General (MoJ), based on a decree of the SCPO, deal with the reception of the person concerned. The IOPCD ensures coordination with foreign officials, while the Security Directorate General (MoJ) is charged with the practical arrangements necessary for the handover. Officials from both bodies take part in the escort<sup>1</sup>.

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<sup>1</sup> According to the information gathered, the functions of the IOPCD - Interpol related to the surrender of persons pursuant a EAW are the following:

- arrangement of dates for surrender or reception and request of necessary documents according to the LEEAW;
- establishment of direct contact with the Ministry of Foreign affairs in case diplomatic assistance abroad is required;
- reception and transfer of the documentation necessary for the actual surrender of the person;
- taking part, together with the Security Chief Directorate of the MoJ, in the escorting of the person being surrendered or received pursuant to a EAW.

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According to the information provided, the requested person must be provided with valid travel documents to enter the territory of Bulgaria. Where necessary, (temporary) travel documents are produced by the Bulgarian authorities or foreign consular offices are contacted for that purpose.

No issues were reported in connection with this matter.

## 3.12. CONFLICT OF EAWs/EXTRADITION REQUESTS. ONWARD SURRENDER

At the time of the evaluation visit no practical experience of cases of conflicting EAWs/extradition was recorded. No issues concerning subsequent surrender/extradition were reported.

## 3.13. EXPENSES

No difficulties were reported in this regard.

## 3.14. MISCELLANEOUS COMMENTS

### Accessory offences

There is no provision in the implementing law explicitly allowing the addition of accessory offences when issuing an EAW. Based on this, the authorities interviewed were of the opinion that offences that do not meet the penalty thresholds may not be included in an EAW.

## 4. ORGANISATION AND PRACTICE - AS EXECUTING MEMBER STATE

According to the information provided during the visit, in 2007 Bulgaria received 166 EAWs, of which 112 resulted in the effective surrender of the requested person and 11 were refused. In 2008 (to 17 October) Bulgaria received 129 EAWs, surrendered 61 persons and refused to execute an EAW in 10 cases<sup>1</sup>.

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<sup>1</sup> Detailed information on the grounds for refusal is provided in chapter 4.7 below.



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## 4.1. RECEIPT PROCEDURES

Pursuant to the implementing law, an EAW may be transmitted to Bulgaria through Interpol, the SIS or the telecommunications system of the EJN<sup>1</sup>. If the requested person is known to be in a particular location in Bulgaria, the EAW may be transmitted directly to the court competent to decide on the surrender of the requested person<sup>2</sup>.

In cases of direct transmission, the EAW together with a translation into Bulgarian may be forwarded to the competent court in writing, by fax, e-mail or any other secure system that enables the receiving authority to authenticate the EAW<sup>3</sup>. The EAW may also be forwarded to the court through the Ministry of Justice in cases where some difficulty arises<sup>4</sup>. According to the information provided, it is standard practice in cases in which the EAW is received by fax or e-mail for the judge immediately to contact the issuing authority by telephone, fax or e-mail (where necessary with the help of an interpreter), to verify whether the EAW originates from the authority indicated in it.

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<sup>1</sup> Article 38a(1). At the time of the evaluation visit Bulgaria did not participate in the SIS and the telecommunications system of the EJN was not operational.

<sup>2</sup> Article 38a(2) of the implementing law.

<sup>3</sup> Article 38a(1) of the implementing law.

<sup>4</sup> 17078/06 - Statements by Bulgaria in the context of the implementation of the European arrest warrant with reference to the Framework Decision 584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States of the European Union reads: *"Statement under Article 7. The central authority designated by Bulgaria to assist the judicial authorities is the Minister of Justice... The central authority is competent to receive a European arrest warrant issued by a judicial authority in another Member State of the European Union and to forward it to the Bulgarian executing judicial authority, in the case in which the issuing judicial authority does not succeed in transmitting the European arrest warrant directly to the Bulgarian executing authority..."*

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In practice Interpol is the standard channel for the receipt of EAW surrender requests. In such instances the police, following the arrest of the requested person, must immediately inform the locally competent district prosecutor and forward to him the supporting documents (normally, the Interpol notice and the faxed EAW, usually in the language of the issuing Member State). If the EAW and/or a translation of it into Bulgarian are/is not available, the prosecutor must in turn notify the issuing State in order for the latter to send them/it at the latest before expiry of the time limit for detention set by the prosecutor (72 hours: see chapter 4.3 below)<sup>1</sup>. On receipt, the EAW together with the translation are taken to the court by the prosecutor.

During the interviews with judicial authorities in Sofia and Plovdiv it appeared that, although not expressly laid down in the implementing law, it is standard practice to require the original EAW or a certified copy thereof to rule on the execution of the EAW, at least in those cases where the EAW has been transmitted via Interpol.

## 4.2. INVESTIGATIONS CONCERNING THE LOCATION OF THE REQUESTED PERSON

On receipt of an EAW/EAW-based notice, the IOPCD-Interpol NCB officers check the Ministry of Interior's database and other available databases administered by different national agencies to attempt to verify the presence of the requested person and whether criminal proceedings have been brought against him in Bulgaria. Some of these databases are directly accessible to the IOPCD-Interpol NCB whereas others are not (e.g. the register on convictions). In the case of a hit, the file is referred to the local police authorities for them to carry out further checks and undertake the arrest of the requested person; otherwise, after the IOPCD-Interpol NCB has verified that the EAW surrender request contains all the necessary data, a notice is displayed in the national database of wanted persons.

If the EAW is forwarded directly to the District Court (hereinafter referred to as “the DC”), the latter sends a request to the police to verify the presence and undertake the arrest of the requested person.

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<sup>1</sup> Article 42(4) of the implementing law.

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## 4.3. ARREST PROCEDURES/FIRST HEARING

Two situations can be differentiated here:

i) In those cases in which the EAW is forwarded directly to the competent DC, the latter, after verifying that the requirements of Article 36 and Article 37 of the implementing law are met (these provisions mirror those set out in Article 2 and Article 8 of the FD), orders the police to proceed with the detention of the requested person for a maximum of 72 hours<sup>1</sup>. Once the requested person is brought before the court, the latter must *ex officio* immediately take a decision on remand custody in a public hearing with the participation of the prosecutor, the requested person and his defence counsel<sup>2</sup>.

ii) In cases other than those referred to in the preceding paragraph, police may directly proceed to arrest the requested person based on the EAW/search notice. Information on the arrest and supporting documents must immediately be transmitted to the competent prosecutor, who within 24 hours of the arrest must decree the detention of the requested person for a maximum of additional 72 hours. Where necessary, the prosecutor contacts the issuing authority in order for the latter to send the EAW and/or a translation of it into Bulgarian, as well as the IOPCD-Interpol NCB in order to be provided with fingerprints or any other type of information necessary to establish the identity of the requested person. Within the abovementioned period of 72 hours the prosecutor must submit an application to the DC for the person to be placed in custody, together with the EAW and a translation of it into Bulgarian. The court must rule on the prosecutor's application immediately in a public hearing as described above<sup>3</sup>. Should the EAW or the translation not be available within the prescribed 72-hour time limit, the requested person must be released, although there is nothing to prevent him from being arrested again on receipt of the documents.

The requested person may appeal to the Court of Appeal against a DC decision imposing custody . He may also, during the course of the proceedings, apply to the DC for custody to be replaced by another more lenient measure. However, according to the information provided during the interviews, in practice the bail system is not often used in EAW proceedings.

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<sup>1</sup> Article 42(1) of the implementing law.

<sup>2</sup> Article 43(1) and (3) of the implementing law.

<sup>3</sup> Article 43(3) of the implementing law.

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## 4.4. THE FORM OF THE WARRANT AND REVIEW PROCEDURES. REQUESTS, AND RESPONSES TO REQUESTS, FOR FURTHER INFORMATION/CLARIFICATION

Assessment of the form and its content is done solely by the DC. Even in those cases in which the EAW is taken to the court by the prosecutor, the latter does not undertake any preliminary assessment, nor is he entitled to request the issuing authority to provide any additional information.

Pursuant to the implementing law, the DC is empowered, at any time during the proceedings, to request additional information, to determine the time limit for receiving it (the proceeding is not suspended), and to accept information spontaneously submitted by the issuing State<sup>1</sup>. The Court of Appeal has the same powers.

Requests for additional information should be in the language of the issuing State, but the additional information itself must be provided in Bulgarian. Requests are sent by any means considered appropriate; direct contacts are prioritised, although, where appropriate, the information may also be requested through the MoJ or Interpol. In cases where the reply is delayed, a letter of reminder is always sent, according to the Bulgarian authorities.

As to the most common grounds for these requests, the Bulgarian authorities reported instances in connection with the provision of the guarantee referred to in Article 5(1) of the FD, as well as of inaccurate description of the criminal offence and poor quality of translations.

In the replies to the EAW questionnaire information was given about two cases in particular in which the EAW had not been executed on the basis that the issuing authorities had not provided the required information on the right of the requested person to apply for a retrial of the case (Romania), and on the decision on which the EAW was based (Hungary).

## 4.5. THE SURRENDER DECISION

The decision on surrender rests with the District Court in the territory where the requested person resides or is located.

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<sup>1</sup> Article 44(4).

# RESTREINT UE

The case must be tried by the DC within 7 days of the arrest in a public hearing with the participation of the prosecutor, the defence counsel and the requested person<sup>1</sup>. Pursuant to the law, the court must immediately render its decision. If a decision is issued that the requested person must be surrendered, the court is under a statutory obligation to order that the requested person be remanded in custody. The ruling of the DC may be appealed within 5 days before the Court of Appeal, by the requested person, his lawyer or the prosecutor<sup>2</sup>. The Court of Appeal's decision is final.

In those cases in which the requested person consents to surrender, the procedure varies slightly<sup>3</sup>. During the proceedings on the imposition of remand custody, the court must inform the requested person of his right to consent to surrender and the consequences thereof. Subsequently, during the judicial proceedings on the execution of the EAW, the court must explain again to the requested person that he has the right to consent to surrender and to waive the application of the speciality rule, as well as the consequences thereof. Consent can only be given at the hearing on surrender, and may be revoked within three days of giving it. If the requested person withdraws his consent, the proceedings continue according to the procedure described in the preceding paragraph, otherwise the court must pass a judgment within 7 days of the expiry of the time limit for withdrawing consent. It has to be noted that consent to surrender does not obviate compliance with the provisions envisaged in Article 36 (which mirrors Article 2 of the FD, on the scope of the EAW), Article 41 (corresponding to Article 5 of the FD, on the guarantees to be given by the issuing State in particular cases) and Article 39 (corresponding to Article 3 of the FD, on grounds for mandatory non-execution of the EAW) of the implementing law, so that, in trying the case, the court must check whether any of them applies. In these cases the DC's decision may not be appealed.

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<sup>1</sup> Article 44(1) and (5) of the implementing law.

<sup>2</sup> Article 44(6) and Article 48.

<sup>3</sup> Article 45 of the implementing law.

## RESTREINT UE

Under Bulgarian law, the DC must immediately notify the issuing authority (usually by means of a letter translated into the official language of the issuing State transmitted by fax), the SCPO and the MoJ (by means of an authenticated duplicate copy of the decision) of the enforceable decision on the execution of the EAW, irrespective of the result (execution/refusal)<sup>1</sup>.

During the interviews criticisms were voiced concerning the 7-day deadline following arrest for scheduling the hearing on surrender. Judicial authorities interviewed noted that this period is sometimes too short for contacting the issuing authority when additional information is needed, especially in those cases where the EAW is not forwarded directly to the court (normally in this situation judicial proceedings are not instituted until 4 days after the arrest: see chapter 4.3 above).

It also appeared that there is no uniform interpretation as to whether consent to surrender implies automatic renunciation of entitlement to the speciality rule or, contrarily, these issues are to be dealt with separately. In the view of the expert team this issue should be clarified, in particular in the interest of the requested person.

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<sup>1</sup> Article 53(1) and (2) of the implementing law.

# RESTREINT UE

## 4.6. REFUSAL TO SURRENDER

As already mentioned, Bulgaria refused execution of an EAW in 11 and 10 cases in 2007 and 2008 (to 17 October) respectively. The following table details the ground for non-execution applied according to the information provided:

| GROUNDS FOR REFUSAL   | No. OF CASES |                 |
|---|--------------|-----------------|
|   | 2007         | 2008 (to 17.10) |
| Acts not punishable under Bulgarian law (Article 36(2))   | 1            | -               |
| Incompleteness of the EAW (Article 37(1)) - No data on the decision on which the EAW is based                             | 1            | -               |
| Requested person already finally judged by Bulgaria (Article 39(2))   | -            | 1               |
| Existence of domestic proceedings for the same act (Article 40(1)) <sup>1</sup>   | 4            | 4               |
| Bulgarian national - execution cases (Article 40(4))  | 3            | -               |
| Territoriality (Article 40(5))  | -            | 1               |
| Judgment in absentia, where the issuing authority did not provide a retrial guarantee (Article 41(1))                     | 1            | -               |
| Custodial life sentence (Article 41(2))   | -            | 2               |
| Bulgarian nationals - prosecution cases, where the issuing authority did not provide a transfer guarantee (Article 41(3)) | 1            | 2               |
| TOTAL   | 11           | 10              |

The grounds for refusal listed in the implementing law are in accordance with the FD. No issues were identified in connection with these provisions or their application in practice.

<sup>1</sup> At present, Article 40(1) of the implementing law, as amended by Law No. 52/2008 of 6 June 2008, reads: *"The District Court may refuse to execute a European arrest warrant where: (1) before reception of the warrant, the person has been arraigned as an accused party or is a defendant in the Republic of Bulgaria in respect of the offence on the basis of which the said warrant is issued"*. Previously, this provision read: *"The District Court may refuse to execute a European arrest warrant where: (1) the offence which the warrant has been issued for is judicable by Bulgarian courts"*.

## 4.7. APPEAL PROCEDURES AND THEIR IMPACT ON TIME LIMITS

As already mentioned, the DC's decision on the execution of an EAW may be appealed against in the Court of Appeal, except in cases where the requested person has consented to surrender.

The appeal may be lodged by the person concerned or his defence lawyer within five days of the publication of the DC's decision. This decision is also subject to review by the Court of Appeal following an objection by the prosecutor within the same time limit. Pursuant to the implementing law the appeal must be adjudicated within five days of the receipt. The Court of Appeal's decision is final.

Time limits set in the implementing law are in line with the FD; they expressly include the time necessary for the final decision in the event of appeal<sup>1</sup>. If those time limits are not observed, the corresponding DC is under a statutory obligation to notify Eurojust<sup>2</sup>.

According to the information provided, in most cases the Bulgarian courts have managed to comply with the prescribed time limits. In the district of Plovdiv, 3 cases were recorded in which the breach of those time limits was not reported to Eurojust.

## 4.8. OWN NATIONALS AND YOUTH ARREST AND SURRENDER ISSUES

### Own nationals

Bulgaria has opted for regulations applying both Article 4(6) and Article 5(3) of the FD. The former has been transposed as a ground for optional non-execution, whereas, according to the wording of the implementing law, the provision of a return guarantee in prosecution cases is mandatory. Those provisions apply to own nationals and permanent residents.

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<sup>1</sup> Article 48 and Article 49 of the implementing law.

<sup>2</sup> Article 49(2) of the implementing law.



## RESTREINT UE

As to conviction cases, Article 40(4) of the implementing law mirrors the provisions set out in Article 4(6) of the FD. The procedure for the enforcement of the sentence imposed in the issuing Member State is regulated in Article 44, paragraphs (8) to (11). Pursuant to these provisions, when refusing to execute an EAW on this ground, the DC must undertake the execution of the foreign custodial sentence or detention order. After the court's decision becomes final, a duplicate copy is forwarded to the competent DPO, which in turn must contact the issuing authority for the latter to send a certified copy of the judgment underlying the EAW. On receipt of such a copy, the prosecutor must submit an application to the respective DC for the enforcement of the foreign sentence pursuant to the procedure laid down in Article 457(2) to (5) of the CPC. According to these arrangements, the foreign sentence is binding as to the extent of the penalty to be imposed, although it may not exceed the maximum penalty which could be imposed for the offence under Bulgarian law<sup>1</sup>.

During the interviews it was noted that there are no indicators or best practice to guide courts in applying Article 40(4) of the implementing law; therefore the appropriateness of refusing to execute an EAW on this ground is assessed in light of the circumstances of each case in particular.

As to prosecution cases, the implementing law contains no specific provisions on the procedure to be followed for the enforcement of the sentence imposed in the issuing Member State. In the view of the officials interviewed this matter is governed by the provisions of the CPC on the transfer of sentenced persons, according to which the sentence must be converted in line with the procedure laid down in the 1983 Council of Europe Convention<sup>2</sup>.

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<sup>1</sup> The expert team notes that Article 25 of the Council Framework Decision 2008/909/JHA, on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union, reads: “*Without prejudice to Framework Decision 2002/584/JHA, provisions of this Framework Decision shall apply, mutatis mutandis, to the extent they are compatible with provisions under that Framework Decision, to enforcement of sentences in cases where a Member State undertakes to enforce the sentence in cases pursuant to Article 4(6) of that Framework Decision, ..., so as to avoid impunity of the person concerned*”.

<sup>2</sup> See footnote in chapter 3.8 above.

## Youth surrenders

According to the information provided, no difficulties in this connection had been encountered so far. However, the need for a specific regulation at European Union level on juvenile-related matters in connection with the EAW was voiced by some of the officials interviewed.

### 4.9. SPECIALITY

No difficulties arising from this issue were reported

### 4.10. ONWARD SURRENDER/EXTRADITION

No cases of subsequent surrender/extradition subsequent to a surrender on the basis of an EAW were recorded at the time of the evaluation visit.

### 4.11. TEMPORARY/CONDITIONAL SURRENDER

The provisions of the implementing law on this matter<sup>1</sup> mirror those laid down in Article 24 of the FD. Pursuant to Bulgarian law, during the judicial proceedings on the execution of the EAW, the court must examine *ex officio* whether grounds for postponed or conditional surrender exist<sup>2</sup>.

As to practical experience in this matter, the Bulgarian authorities reported one case with the Netherlands in which difficulties arose in defining the mechanism for the proceedings. According to the information provided, thanks to the early involvement of Eurojust a written agreement on the conditions for the temporary surrender could be reached.

### 4.12. THE MECHANICS OF SURRENDER OF REQUESTED PERSONS

As stated above, the DC must immediately notify the SCPO of the enforceable decision on the execution of the EAW with a view to carrying out the surrender of the requested person. The arrangements for the actual surrender of the requested person when Bulgaria acts as executing State are similar to those described above in relation to cases in which Bulgaria acts as issuing State (see chapter 3.11).

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<sup>1</sup> Article 52.

<sup>2</sup> Article 44(6) of the implementing law.

# RESTREINT UE

No cases in which the mandatory time limits for surrender had not been observed were recorded.

No recurrent problems concerning logistical issues were reported.

## 4.13. THE MECHANICS OF THE SURRENDER OF REQUESTED PROPERTY

The relevant provisions in the implementing law are in line with the FD. No issues were reported in this regard.

## 4.14. CONFLICT OF EAWS/EXTRADITION REQUESTS

The expert team noted a discrepancy between the implementing law and the FD in that, when describing the circumstances to be assessed when deciding on this issue, the former refers to "*the dates on which the EAWs were received*", whereas the latter refers to "*the respective dates of the EAWs*".

One case of conflicting EAWs was recorded in which no difficulties arose.

## 4.15. EXPENSES

No practical or legal issues surrounding the payment of expenses were recorded at the time of the evaluation visit.

## 4.16. MISCELLANEOUS COMMENTS

### Accessory surrender

There is no provision in the implementing law concerning this matter. In the view of the officials interviewed at the MoJ, this leads to judicial discretion. It should be noted, however, that no experience of cases of this kind was reported.

## 5. TRAINING PROVISIONS

*The National Institute of Justice (NIJ) provides training for judges, prosecutors, investigators and other judicial staff. The NIJ is an independent legal entity but has a functional relationship with the Supreme Judicial Council and the MoJ, both of which are represented in the NIJ Managing Board.*

## RESTREINT UE

*Training of magistrates is organised in initial and continuing training courses; whereas the former are mandatory, the latter are not.*

*As regards training on the EAW, there is a component on EU law within the initial training programme that includes a 3-hour module on this matter. In 2004-2005, within a project for technical cooperation with the European Institute for Public Administration - Luxembourg, the Ministry of Foreign Affairs of Luxembourg and MATRA, a series of training courses for trainers on judicial cooperation in criminal matters was organized; as a result, a group of trainers was set up and a training module on these matters (including the EAW) was elaborated, which was taken as a specialized EU law course in the NIJ continuing training curriculum. In the period 2006-2008 the NIJ organised a number of seminars relating to the EAW (5 in 2006, 3 in 2007 and 3 in 2008), as well as, in cooperation with external partners, diverse activities on the same issue (most of them within the framework of Phare Twinning projects, although some were organised within the framework of a joint NIJ- U.S. Department of Justice programme for the training of prosecutors); as a result, 315 judges, 158 prosecutors and 47 investigators received training on these matters throughout this period.*

*According to the information provided, the EAW was one of the priority topics within the Local Training Programme for Courts and Prosecution Offices in Bulgaria, which was launched by the NIJ in the beginning of 2008. The preparation of on-line training on extradition and the EAW is envisaged for 2009.*

*The NIJ has also developed a website with a specific section on the EAW, which provides structured information on the EU instruments and Bulgarian legislation, as well as the Court of Justice case-law and selected judgments of Bulgarian courts on this matter.*

*As for language training, the expert team was informed that training in English legal terminology was organised in 2006 -2008 with the assistance of the British Council.*

# RESTREINT UE

## Training of lawyers

*During the interviews the issue of the shortage of training for lawyers arose. According to the information provided, only two training courses on EAW matters had been organised by the Supreme Council of the Bar shortly before the evaluation visit. It should be noted, however, that, as already stated, the European Handbook on the EAW has been published in Bulgarian in the form of a book and distributed among the members of the Bar.*

## **6. DEFENCE PERSPECTIVES**

The requested person is entitled to receive legal assistance from the moment he is apprehended. The participation of a defence lawyer in EAW procedures is mandatory. Therefore, if the requested person does not choose a defence counsel of his own, the court will *ex officio* appoint one paid by the State from a list of lawyers within its jurisdiction specialised in criminal matters, at the latest upon the initiation of the hearing on custody<sup>1</sup>. Where the requested person has no command of Bulgarian, the assistance of a State-paid interpreter throughout all stages of EAW proceedings is guaranteed<sup>2</sup>.

The expert team had the opportunity to meet representatives of the Supreme Council of the Bar and a lawyer who had appeared as defence counsel in EAW proceedings. While noting that the experience accumulated was rather limited, they stated that no major problems had arisen in relation to the implementation of the EAW in Bulgaria so far.

The lawyers interviewed explained that the rights of the individual in EAW proceedings were aligned on the safeguards inherent in the Bulgarian criminal system. In this connection it was noted that the impossibility of contesting the 72-hour detention prior to the person being taken to the court for a decision on custody also constitutes an issue in domestic proceedings.

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<sup>1</sup> Article 43(4) of the implementing law.

<sup>2</sup> Ibid.

# RESTREINT UE

As to the performance of the authorities dealing with EAW cases, the lawyers interviewed stated that most of the difficulties encountered originate from the fact that the habits developed under the European Convention on Extradition have not been completely removed. In their view the functioning of the system could be further improved by means of appropriate training of all practitioners (including lawyers) involved in this kind of proceedings.

## 7. CONCLUSIONS

The expert team acknowledges the professional manner in which the Bulgarian authorities organised and conducted the visit. A comprehensive agenda was prepared, which allowed the team to meet all the relevant actors. The experts appreciated the quality of the practitioners they had the opportunity to interview, as well as their openness and willingness to answer any question raised during the discussions. The information provided enabled the team to get an overview of the Bulgarian system. Last but not least, the members of the team would also like to thank the Bulgarian authorities for their hospitality.

### 7.1. GENERAL CONCLUSIONS

7.1.1. The Bulgarian transposing legislation is in line with the FD.

7.1.2. In general, the procedures under Bulgarian law are adequate for the purposes of the FD.

7.1.3. The practical implementation of the EAW has not raised major problems so far and, in general, the EAW appears to work effectively in Bulgaria. It should be noted, however, that experience with the EAW is relatively limited. This, combined with the decentralized system adopted in Bulgaria and the lack of monitoring systems (such as comprehensive statistics, unified registers, etc.: see 7.1.5 below), lead us to be cautious in this regard. Moreover, there are a number of issues of which Bulgaria has no experience yet, and therefore the question of how the transposing legislation would be implemented in such cases remains open.

## RESTREINT UE

7.1.4. The implementing law defines clearly the roles of the different authorities involved in the operation of the EAW. The expert team was left with the impression, however, that such allocation of tasks results in an excessively compartmented system, in which each and every actor keeps strictly to the tasks assigned to him and any move towards practicality is dismissed when not expressly provided for in the law. This results in a situation in which the relationship between the authorities involved in the operation of the EAW is based on a request-response scheme more than on a spontaneous and regular coordination and flow of information, thus creating a risk of shortcomings in communications and of lacunae, missing links or, simply, failures that may appear in the functioning of the system not being remedied. For instance, in the cases envisaged in Article 42(2) of the implementing law, transmission of the available information to the court (and/or further coordination between the prosecutor and the court involved) before the file is formally taken to the latter could help to alleviate the difficulties sometimes encountered in connection with the time limit for scheduling the hearing on surrender when additional information is needed to try the case. Furthermore, in respect of the criticisms voiced during the visit to IOPCD-Interpol NCB concerning the lack of information on the EAWs sent directly to the executing authorities, entering an alert in the Interpol System could be a “backup” solution in case the wanted person moves to another Member State, or where the information concerning his whereabouts is incorrect.

7.1.5. Appropriate mechanisms for gathering, processing and circulating information on the operation of the EAW are lacking. At present, no centralised, comprehensive statistics may be provided, nor is there a unified register on EAW proceedings. This flaw extends to other kinds of information relevant to EAW procedures (e.g. there is no comprehensive database on pending criminal proceedings operational in Bulgaria).

The expert team was advised of a number of initiatives already adopted in that direction. However, the mechanisms resulting from such initiatives either have a limited scope (the IT system used by the prosecution service in the district of Plovdiv), or are still under development (the so-called Integrated Information System for the prosecution service). It was also explained that a unified case management system for courts is expected to be operational in 2009; however the expert team could not assess the potential impact of such a system on these matters.

## RESTREINT UE

7.1.6. Specific instruments have been set up to assist prosecutors in dealing with EAWs and to seek to unify the action of the different prosecution offices in this area. Namely, an experts' network has been established (the so-called National Prosecution Network), to provide expertise and supervise the activity of prosecutors in the field of international judicial cooperation, in particular in respect of EAWs. A binding instruction for prosecutors has also been issued by the General Prosecutor concerning (certain aspects of) the processing of EAWs.

As regards courts, an experts' network has been established only for civil and commercial matters. Courts have no specialized panels for MLA or EAW cases. In order to ensure harmonized court practice there exists in the Bulgarian system a mechanism of consultation between the presidents of the Courts of Appeal, in which the Supreme Court of Cassation participates. However, it seems that the outcome of those meetings is not communicated to courts; moreover, according to the information provided, no such consultations have taken place yet as regards EAW-related matters.

In this connection it should be noted that, as to the execution of EAWs, Bulgaria has introduced a two-tier system, the District Courts (27) acting as first instance courts and the Courts of Appeal (6) acting as final instance. In the view of the expert team this situation may lead to a scenario in which the practice and interpretation of the law differ from one jurisdiction to another. According to Article 125 of the Law on Judiciary, the Minister of Justice and the Prosecutor General may lodge a request with the Supreme Court of Cassation to issue an interpretative decision in case of contradictory or incorrect case-law by lower courts. Such possibility, however, does not exist for the person concerned or his lawyer. The expert team also notes that this extraordinary procedure is not a legal remedy in a specific case, since the decision of the Supreme Court of Cassation is mandatory only for the future in order to uniform the case law, and does not affect the decisions already pronounced by the courts.



## RESTREINT UE

7.1.7. Extensive and regular training on EAW matters for judges, prosecutors and investigators is provided by the National Institute of Justice. The activity displayed by the latter in this field is remarkable<sup>1</sup>. The setting up of a comprehensive website with a specific section on the EAW (which includes the Court of Justice case-law, as well as relevant decisions of Bulgarian courts on these matters) is also to the credit of that institute.

7.1.8. During the interviews it appeared that language skills are not wide-spread among judicial authorities. However, at present no language training is organised specifically for judges and prosecutors, nor are they entitled to participate in the general programme of language training for civil servants. In the view of the expert team steps should be taken in this direction with a view to enhancing direct contacts with foreign authorities.

### 7.2. *CONCLUSIONS IN RESPECT OF BULGARIA'S ACTIVITIES AS AN ISSUING MEMBER STATE*

#### Issues

##### 7.2.1. Proportionality

During the interviews the expert team was informed that in conviction cases an EAW must be issued whenever the statutory penalty threshold is met. As to prosecution cases, although the law does not mention it expressly, the possibility of applying a proportionality test appears to be limited, as described below.

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<sup>1</sup> See chapter 5 above.

## RESTREINT UE

Under Bulgarian law, pre-trial proceedings may be carried out without the accused being present, irrespective of the seriousness of the crime. Pursuant to Article 269 of the CPC, sentencing in absentia is permitted for offences which carry less than five years' imprisonment, although even in these cases the presence of the accused is mandatory whenever the sentencing court considers it "*necessary for the discovery of the objective truth*". Therefore, according to the authorities interviewed, the leading criterion for deciding on the issue of a prosecution EAW is whether the court hearing may be held *in absentia*, in which case no EAW will be issued, or, on the contrary, the presence of the defendant is necessary, in which case an EAW will be issued. It should be noted, however, that there seems to be no uniform interpretation of Article 269 of the CPC in relation to the EAW, nor any nation-wide policy on this issue.

In the view of the expert team consideration should in any event be given to the possibility of using less restrictive MLA measures before taking a decision to issue an EAW.

# RESTREINT UE

## 7.3. CONCLUSIONS IN RESPECT OF BULGARIA'S ACTIVITIES AS AN EXECUTING MEMBER STATE

### Issues

#### 7.3.1. Initiation of proceedings

As stated above, in general terms the procedures put in place in Bulgaria are considered to be appropriate for the purposes of the FD. However, the expert team questions the dual system envisaged for the initiation of the proceedings depending on the way in which the EAW was received<sup>1</sup>.

Pursuant to the implementing law, all that the prosecutor may do during the 72-hour term subsequent to the 24-hour police detention period following arrest, and prior to referring the file to the court, is to prolong the detention during the abovementioned 72-hour period and, where necessary, to ask the issuing authority for the EAW and a translation of it into Bulgarian and to verify the identity of the person. The court must arrange a hearing to try the case within 7 days of the arrest, but it only can start studying the case and, where necessary, ask for additional information (the prosecutor is not permitted to do this) after the 24-hour + 72-hour period. In that connection, authorities interviewed were critical about the shortage of time to prepare the hearing pursuant to this system, mainly in cases in which additional information is required; criticism was also made of the marginal role assigned to the prosecutor. The expert team shares those views.

#### 7.3.2. Detention

Following arrest in those cases where the EAW has not been transmitted directly to the court, there is no possibility for the requested person to be released before being taken to the court, even in cases where the EAW would obviously not be executed (minors, wrong identity).

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<sup>1</sup> See chapters 4.2 and 4.3 above.

## 7.3.3. Remand custody

During the interviews it appeared that it is standard practice to place the requested person in custody during the EAW proceedings without considering other measures, although the law envisages such a possibility. In the view of the expert team this practice is questionable, and consideration should be given to the application of other less constraining measures in suitable cases, where they suffice to prevent the requested person absconding or whenever the risk of absconding need not be feared.

## 7.3.4. Fiche Française

The expert team noted that at the time of the evaluation visit the "Fiche Française" on Bulgaria was not available on the Council's website.

## 8. *RECOMMENDATIONS*

### 8.1. RECOMMENDATIONS TO BULGARIA

#### GENERAL

Recommendation 1.- Take measures to ensure systematic coordination and flow of information among all the authorities involved in the processing of EAWs (see 7.1.4).

Recommendation 2.- Set up appropriate mechanisms for monitoring EAW proceedings (see 7.1.5).

Recommendation 3.- Ensure the availability of comprehensive statistics (see 7.1.5).

Recommendation 4.- Consider making a declaration according to Article 35(1) TEU, recognising the jurisdiction of the European Court of Justice to give preliminary rulings as regards police and judicial co-operation in criminal matters (see 2).

Recommendation 5.- Introduce the possibility for accessory surrender in national practice/legislation (see 3.14 and 4.16).

Recommendation 6.- Ensure that the Fiche Française is available on the Council's website (see 7.3.4).

## **RESTREINT UE**

Recommendation 7.- Consider providing judges, prosecutors and judicial staff with language training free of charge (see 7.1.8).

### **RECOMMENDATIONS TO BULGARIA AS AN ISSUING MEMBER STATE**

Recommendation 8.- Consider developing common criteria regarding proportionality to guide judicial authorities when issuing an EAW (see 7.2.1).

Recommendation 9.- Ensure that the Interpol NCB is informed of all EAWs issued by the Bulgarian authorities (see 7.1.4).

### **RECOMMENDATIONS TO BULGARIA AS AN EXECUTING MEMBER STATE**

Recommendation 10.- Ensure the effective application of Article 49(2) of the implementing law, regarding the obligation to report delays to Eurojust (see 4.7).

Recommendation 11.- Consider amending the implementing law in order to ensure that the court is informed and provided with the relevant documents as soon as possible after the arrest of the person concerned (see 7.1.4 and 7.3.1).

Recommendation 12.- Reconsider the role of the prosecutor prior to the initiation of proceedings by the court, in particular as regards the possibility of requesting additional information and the advisability of detention (see 7.1.4 and 7.3.1).

Recommendation 13.- Set up appropriate mechanisms for the harmonization of court practice (see 7.1.6).

Recommendation 14.- Consider developing a practise of including one or more specialised judges in panels dealing with EAW cases (see 7.1.6).

Recommendation 15.- Consider introducing the possibility of lodging a complaint against 24+72-hour detention orders and a procedure for handling such complaints within a very short period (see 7.3.2).

# RESTREINT UE

## 8.2. RECOMMENDATIONS TO CERTAIN OTHER MEMBER STATES

Recommendation 16.- Consider making a declaration according to Article 35(1) TEU, recognising the jurisdiction of the European Court of Justice to give preliminary rulings as regards police and judicial co-operation in criminal matters (see 2).

Recommendation 17.- Consider providing judges, prosecutors and judicial staff with language training free of charge (see 7.1.8).

## 8.3. RECOMMENDATIONS TO THE EUROPEAN UNION

Recommendation 18.- Make further efforts to provide the judicial authorities of Member States with appropriate language training, with a view to promoting direct contacts between them (see 7.1.8)

Recommendation 19.- Continue the ongoing discussions on the benefits of instituting a proportionality test for the issuing of EAWs, including the identification of common criteria (see 7.2.1).

Recommendation 20.- Discuss at the appropriate level the benefits of supplementing the Framework Decision with a provision allowing surrender for accessory offences.

# RESTREINT UE

ANNEX A

## PROGRAMME FOR VISIT

### Tuesday, 21 October

- 9.30-10.00 Ministry of Justice  
Welcome meeting with the Minister of Justice, a Deputy Minister of Justice, the Head of Cabinet to the Minister of Justice and the Director of the International Legal Cooperation and European Affairs Directorate
- 10.00-12.00 Ministry of Justice  
Meeting with experts from the International Legal Cooperation and European Affairs Directorate, Legislative Council Directorate and Security Directorate General – common comments on the Extradition and European Arrest Warrant Act and the application of the Framework Decision on the European Arrest Warrant, summarized statistics and presentation of the Law on Amendment of the Extradition and European Arrest Warrant Act
- 12.15-13.30 Lunch
- 13.45-16.00 Palace of Justice - Sofia  
Meeting with prosecutors from the Supreme Cassation Prosecutors' Office
- 16.00- 18.00 Palace of Justice - Sofia  
Meeting with prosecutors from district, city, regional and appellate prosecution offices –activity of the prosecution offices concerning EAW issuance and enforcement - achievements and problems
- 19.30 Dinner hosted by the Minister of Justice

### Wednesday, 22 October

- 9.00– 12.30 Palace of Justice - Sofia  
Meeting with representatives and judges from Sofia City Court, Sofia regional Court and Sofia Appellate Court dealing with proceedings concerning the EAW
- 12.45-13.45 Lunch
- 14.00 – 14.45 Supreme Judicial Council  
Meeting with members and representatives of the SJC's administration on the role of the Supreme Judicial Council as a supreme administrative authority of the judiciary in the implementation of international legal cooperation with the EU Member States
- 15.00 – 17.30 Ministry of Interior  
Meeting with representatives of the International Operative Police Cooperation Directorate of the National Police Service on the role of Interpol and Europol in forwarding and enforcement of the EAW
- 17.30-18.30 Travel to Plovdiv
- 20.00 Dinner hosted by the Supreme Prosecutors' Office

# RESTREINT UE

## **Thursday, 23 October**

- 9.30 -12.30 Palace of Justice– Plovdiv  
Meeting with heads of and judges from the Regional Court -Plovdiv and the Appellate Court – Plovdiv. Familiarization with the activity of the court related to EAW applications – good practice and difficulties encountered by the judges at local level
- 12.45 – 14.00 Lunch hosted by the Appellate Court-Plovdiv
- 14.15 – 16.15 Prosecution Office - Plovdiv  
Meeting with the appellate and the regional prosecutor of Plovdiv from the Regional Court – Plovdiv and the Appellate Court – Plovdiv dealing with proceedings related to the EAW
- 16.30 - 17.30 Return to Sofia

## **Friday, 24 October**

- 9.30 – 10.30 The building of the Supreme Council of the Bar  
Meeting with members of the Supreme Council of the Bar – lawyers’ activity related to EAW proceedings
- 10.40– 11.40 National Institute of Justice  
Meeting with representatives of the National Institute of Justice regarding magistrates' training on implementation of the EAW and presentation of the website dedicated to the EAW
- 12.00-13.00 Ministry of Justice  
Debriefing – initial outcomes, views and recommendations from the evaluation.
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## LIST OF PERSONS MET

### **Ministry of Justice**

Miglena Tacheva, Minister of Justice  
Boiko Rashkov, deputy Minister of Justice  
Mitka Zaharlieva, Head of Cabinet

Lubomira Dimitrova, Director of the International Legal Cooperation and European Affairs Directorate  
Borislav Petkov, Head of International Cooperation and Legal Assistance in Criminal Matters Department  
Borislav Notev, expert, International Cooperation and Legal Assistance in Criminal Matters Department  
Milena Stoeva, expert, International Cooperation and Legal Assistance in Criminal Matters Department  
Vera Nikolova, expert, International Cooperation and Legal Assistance in Criminal Matters Department

Stanislav Stefanov, Director of Security Directorate General  
Ilia Gashtarov, expert, Security Directorate General

### **Supreme Cassation Prosecutor's Office**

Kamen Mihov, Head of International Legal Assistance Department  
Velichka Smilianova, Head of the Sector "EAW"  
Ivanka Kotorova, Head of the Sector "International Legal of the Assistance - European Union Member States"  
Daniela Masheva, Head of the Sector "International Legal Assistance - Non European Union Member States"  
Cvetomir Iosifov, Prosecutor, Sector "International Legal Assistance – European Union Member States"  
Pavlina Panova, Judge, Supreme Cassation Court

### **Palace of Justice, Sofia**

Ianka Gocheva, Prosecutor, Sofia Appeal Prosecutor's Office  
Elka Vaklinova, Prosecutor, Sofia City Prosecutors' Office  
Ana Malignova, Prosecutor, Sofia City Prosecutors' Office  
  
Nina Pancheva, Prosecutor, Sofia District Prosecutors' Office  
Daniela Vracheva, Prosecutor, Sofia Appeal Prosecutors' Office  
Evgeni Staikov, Chairman of the Sofia Regional Court

Svetlin Mihailov, Chairman of the Sofia City Court  
Pavlina Panova, Judge, Supreme Cassation Court

# RESTREINT UE

## **Palace of Justice, Plovdiv**

Rosen Dimov, Appeal Prosecutor of Plovdiv

Radka Petrova, Chairman of the Plovdiv Appeal Court

## **Supreme Council of the Bar**

Daniela Dokovska, Chairman of the Supreme Council of the Bar

## **National Institute of Justice**

Pencho Penev, Director



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**LIST OF ABBREVIATIONS/GLOSSARY OF TERMS**

| <b>ACRONYM<br/>ABBREVIATION<br/>TERM</b> | <b>ENGLISH EXPLANATION</b>                              |
|--|---|
| CPC                                      | Criminal Procedure Code                                 |
| DC                                       | District Court  |
| DPO                                      | District Prosecutor's Office                            |
| EAW                                      | European Arrest Warrant                                 |
| EJN                                      | European Judicial Network                               |
| FD                                       | Framework Decision on the European Arrest Warrant       |
| IOPCD                                    | International Operative Police Co-operation Directorate |
| MoJ                                      | Ministry of Justice                                     |
| NIJ                                      | National Institute of Justice                           |
| SCPO                                     | Supreme Cassation Prosecutor's Office                   |
| SIS                                      | Schengen Information System                             |

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