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REV 1

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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 CYPRUS

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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 the discussion of a proposal introduced by the Luxembourg Presidency concerning the topic of the fourth round of mutual evaluations¹, 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 2005².
- 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 ST 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. Cyprus is the tenth Member State to be evaluated during the fourth round of evaluation.
- 1.6. The experts charged with undertaking this evaluation were: Ms Ana BUCAR BRGLEZ (Ministry of Justice, Slovenia), Mr Georgios PAPAGEORGIOU (Judge, Greece)and Dr. Peter SEDA (Prosecutor, Austria). Two observers were also present: Mr Lampros PATSAVELLAS (Eurojust) and Ms Claudia GUALTIERI (Commission), together with the General Secretariat of the Council.

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

² 6206/1/06 REV1 - Timetable for 2006 and designation of experts.

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- 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 2-4 May 2007, and upon Cyprus' detailed and helpful responses to the evaluation questionnaire and a written request for further information.
- 1.8. The expert team's overarching purpose was to evaluate the distinct practical processes operated and encountered by Cyprus both in its role as issuing and executing Member State, to assess relevant training provisions 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

2.1 THE AUTHORITIES

- District Judge

There are four District Courts in the Republic of Cyprus (Nicosia, Limassol, Larnaca and Paphos) ¹.

According to Sections 6 and 11 of Law No 133(I) of 2004 on the European Arrest Warrant (hereinafter referred to as the EAW Law), the District Judge or the District Court is the judicial authority responsible for issuing and executing an EAW.

When Cyprus is the issuing State, the issuing authority will be the District Judge except in cases where the objective of the EAW is to execute a sentence and where this sentence was decided by a Court, in which case it is that Court which is the competent authority to issue the EAW.

¹ There are officially two other District Courts, one in Kyrenia and one in Famagusta, but they are in the territories on which the Republic of Cyprus does not exercise effective jurisdiction.

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When Cyprus is the executing State, the District Judge will decide on the first stages of the procedure (issuing of a domestic arrest warrant and first hearing within 24 hours after the arrest). If the person consents to the surrender, the District Judge will also be competent to decide on execution of the EAW. If the person does not consent to the surrender, the next hearings and the decision on execution of the EAW will be dealt with by the District Court (Section 11 of the EAW Law).

However, the role of the District Judge/Court is in practice more limited than the legislation seems to provide because important aspects of the issuing and execution of EAWs are actually transferred to the Central Authority, the Office of the Attorney General and the Police. That will be discussed further below.

- Supreme Court

The Supreme Court has several roles, including those of an appeal court, a constitutional court and an administrative court, as well as the supreme council of judicature.

As far as EAW procedures are concerned, the Supreme Court acts as an appeal court with regard to decisions of the District Judge/Court.

The Supreme Court, as supreme council of the judicature, is also responsible for training judges.

- Ministry of Justice and Public Order (Central Authority)

The Ministry of Justice and Public Order includes a section dealing with individual cases of judicial cooperation, both in civil and criminal matters. This section is composed of one head of unit and two lawyers. It deals with all forms of judicial cooperation in criminal matters, including mutual legal assistance, extradition and EAW.

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In EAW procedures, the Ministry of Justice acts as Central Authority (CA). In procedures intended to execute an EAW, that role includes a check on the EAW in the early stages of the procedure and the issuing of a certificate to enable the procedure to go further (Section 16 of the EAW Law). In all EAW procedures, it is the CA which deals with requests for additional information, often with the help of Interpol Nicosia for the transmission of this information and in cooperation with the Office of the Attorney General.

Because of this key role played by the CA in the EAW procedure and the time limits involved, the CA must be on call on a more or less permanent basis.

- Attorney General

The Attorney General is appointed by the President of the Republic and has various tasks determined by the Constitution or by specific national legislation. These include acting as legal adviser to the Republic as well as having extensive prosecution powers. The Attorney General and its representatives are not part of the judiciary. However, they share a number of features with the judiciary and are completely independent from the executive power.

There are approximately 80 lawyers in the Office of the Attorney General. Most of them are located in Nicosia, but there are also local offices: one in Limassol (four lawyers) and one in Paphos (two lawyers). That number does not include the 24 prosecutors who have been appointed to deal with criminal cases in the District Courts as opposed to the Assize Courts. These prosecutors do not act in EAW procedures.

EAW procedures (as well as extradition procedures) are dealt with by 12 lawyers, together forming the Extradition and EAW Section of the Attorney General's Office. These lawyers act as Legal Counsels of the Republic. Nine are located in Nicosia, one is in Paphos and two are in Limassol.

Furthermore, the Office of the Attorney General hosts the Unit for Combating Money Laundering (MOKAS) which has law-enforcement powers with regard to money-laundering offences.

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- Police

The Cyprus Police is under the responsibility of the Ministry of Justice and Public Order. As far as EAW procedures are concerned, the main players in the Police are:

- The Criminal Investigation Department (CID): the department is responsible for the investigation of offences. The CID is involved in EAW procedures both at local and central level:
 - at local level: there are investigators in all Police Districts. In procedures for the issuing of an EAW, it is usually up to the police investigator to initiate proceedings and obtain the domestic warrant and EAW from the District Judge. In procedures aiming at the execution of an EAW, it is up to the police investigator to obtain from the District Judge the issuance of a domestic arrest warrant and the arrest of the person.
 - the CID in the Police Headquarters is also involved in the procedure for issuing an EAW, where it provides an opinion, submitted to the Attorney General by the police investigator, on every request for an EAW submitted by the police investigator.
- Interpol Nicosia: Interpol Nicosia is the National Central Bureau for Interpol (BCN), is part of the Directorate for European Union and International Police Cooperation and is located in the area near the Police Headquarters (Nicosia). In Cyprus, Interpol is the main channel for the transmission of EAWs as well as for requests for additional information (although the CA may also send them directly).

The Police manages the STOP-LIST, which is a database of all wanted persons in Cyprus.

It should be noted that the Schengen Information System will not be operational in Cyprus before 2009, as Cyprus will not be part of the SISone4all solution which serves as a provisional solution for the extension of SIS before SIS II becomes operational. A Sirene bureau is, however, already in place at the Directorate for European Union and International Police Cooperation. Cyprus expects to have everything put in place for SIS II in July 2008.

Although the Police is the main law enforcement agency, two other bodies also have law enforcement powers: the Customs and Excise and the MOKAS.

2.2 THE LEGAL BASIS

- The EAW Law

The main legislative source for EAW procedures in Cyprus is *Law No 133(I) of 2004 to provide for the European Arrest Warrant and the surrender procedures of requested persons between Members States of the European Union* (hereinafter referred to as the EAW Law).

The Law details the procedures regarding both the issuing and the execution of EAWs. It has already been amended once in 2006. This amendment made it mandatory for every procedure for the issuing an EAW in a prosecution case to obtain the agreement of the Attorney General before submitting the request to the District Judge. It was explained to the experts that this was needed because EAWs could be obtained in cases of so-called private prosecutions.

A more extensive review of the Law is currently being discussed in Parliament. The changes proposed in the draft submitted by the government will be mentioned later.

- The Constitution

Article 11 of the Constitution was amended following the Supreme Court decision of 7 November 2005. The Supreme Court had to decide on an appeal brought by the Attorney General against the decision of a District Judge in Limassol. The District Judge had declared the EAW Law unconstitutional with regard to the surrender of Cypriot nationals because Article 11 at that time prohibited the extradition of nationals. In that case, the defendant, found in Cyprus and whose arrest and surrender was requested by the UK, was a national of both Cyprus and the UK. The Supreme Court upheld the District Judge's decision. A summary of the decision may be found in 14281/05 COPEN 176 EJM 58 EUROJUST 78.

The new version of Article 11. of the Constitution provides that the procedure for the execution of EAWs regarding Cypriot nationals can only be used in cases where the offence has been committed after Cyprus became a member of the EU (1 May 2004). In addition, a new Article 1A was inserted in the Constitution providing that :

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"No provision of the Constitution shall be deemed to invalidate laws enacted, acts effected or measures taken by the Republic which are necessary as a result of its obligations as a Member State of the European Union, or to prevent Regulations, Directives or other acts or binding measures of a legislative nature enacted by the European Union or by the European Communities or by their institutions or by their competent bodies on the basis of the Treaties establishing the European Communities or the European Union, from having legal validity in the Republic".

- The Code of Criminal Procedures

In the Cypriot system, as will be described below, a domestic arrest warrant is necessary both for the issuing and the execution of an EAW. Normal rules on domestic arrest warrants are therefore applicable. It is particularly important to note Articles 18 and 19 of the Code of Criminal Procedures related to the issuing of a domestic arrest warrant.

- Non-legislative document: the Police Manual

The only written guidelines existing in Cyprus regarding EAW procedures are those for the police and are contained in the Police Manual. The Police Manual is a ten pages document describing, for police officers, the EAW procedures, both in the case of the issuance of an EAW and in the case of the execution of an EAW.

3. ORGANISATION AND PRACTICES - ROLE OF ISSUING MEMBER STATE

3.1. THE DECISION TO ISSUE

Article 6 of the EAW Law provides that *"the competent authority for the issuance of the European arrest warrant shall be the District Judge to the district of whom is subject the territorial jurisdiction of trial of the offence for which are required the arrest and surrender of the requested person, or the Court which has issued the decision with regard to the sentence or the detention order"*.

However, the District Judge/Court will not act on its own initiative. It is up to the police investigator to initiate the procedure, both in pre-trial and post-trial cases.

3.2. VERIFYING THE POSSIBLE EXISTENCE OF MULTIPLE REQUESTS

Prior to the request for the issue of an EAW, the police investigator checks the STOP-LIST to see if the person concerned is already wanted in Cyprus for other offences. If that is the case, the practice among the police is to include all committed offences in a single EAW.

Furthermore, once the EAW is issued, it is transmitted to Interpol Nicosia which enters the data in its internal registry.

3.3. COMPLETION OF THE FORMS/COURT PAPERS

If the person cannot be found and information exists as to the possible presence of the person abroad, the police investigator will submit the case to the CID (Police Headquarters), which will give its opinion on the case, including on the issue of proportionality. The police investigator will then present its case, together with the opinion of the central office of the CID, to the Attorney General where it will be dealt with by one of the counsels dealing with extradition and EAWs. The Attorney General has discretionary powers to accept or refuse the request. The decision of the Attorney General is based on issues of opportunity, such as in particular the seriousness of the offence, the situation of the victims, the time of the offence, etc.

If the Attorney General agrees on the need for an EAW, the police investigator will draft an EAW and will submit it again to the Attorney General.

The main part of the drafting therefore takes place at the level of the police and of the Attorney General. Regarding the police, the officer in charge can rely on the Police Manual on the EAW but the Attorney General will have a decisive influence on the actual content of every EAW.

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The check conducted by the representatives of the Attorney General helps to ensure standardisation in the completion of the forms, but there are no written guidelines for that purpose.

Section 4.4. of the EAW Law provides that the "*the issuing authority may, if possible, fill in*" the form annexed to the Framework Decision on the EAW. The experts were told that this wording, which does not create any obligation, was chosen in order to avoid a situation where the defence, once the person is sent back to Cyprus, contests the legality of the surrender on the ground that the form was not properly filled in. Cypriot officials expressed concern about the wording of Article 8 of the Framework Decision which seems to imply that accessory information such as the electronic address of the issuing authority is mandatory.

3.4. THE APPLICATION, PARTIES AND PROCESS

In the framework of a criminal investigation, a police investigator may apply for the issuance of a domestic warrant of arrest. If the person cannot be found and information exists as to the possible presence of this person abroad, the investigator, taking into consideration the circumstances and the severity of the case, presents the case to the Attorney General's Office, for the acquisition of a written consent regarding the issuing of an EAW and/or an approval for an international alert for the person, either through an application to Interpol for the issuing of a red notice or through the transmission of an "Arrest and Extradition" message. If the written consent is given, the investigator prepares the draft EAW and presents it to the Attorney General's Office, which will verify whether the EAW is correctly and fully completed. The draft EAW, the domestic warrant of arrest, as well as any evidence of the possible presence of the wanted person abroad are presented before the competent District Judge. In each District, there is one District Judge permanently on call. The local police officer can submit his case to the competent District Judge in any place; the EAW does not have to be issued in the premises of the Court.

The EAW and domestic warrant are signed by the District Judge if he is satisfied that they comply with the legislation. The EAW is then officially issued.

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3.5. TRANSLATION OF THE EAW

The translation of the EAW is ensured by the CA. A copy of the EAW is sent by the CA to the Press and Information Office in the Ministry of Interior which assigns the translation to an external translator. Translation costs are covered by the CA. If the location of the person is not known, the EAW will be translated into English in order to ensure a wide transmission via Interpol. If the location of the person is known, the EAW will be translated into one of the languages accepted by the Member State concerned.

3.6. TRANSMISSION OF THE EAW

Section 8 of the EAW Law provides that the District Judge may transmit the EAW directly to the executing judicial authority. However, the experts found that this provision, which seems to promote direct contacts between the District Judge and the executing authority, does not at all reflect reality. Indeed, once he has issued the EAW, the District Judge does not deal with the transmission.

Once the EAW is issued, the police investigator transmits the EAW to Interpol Nicosia and to the CA simultaneously.

The CA carries out an administrative verification of the EAW and decides on the transmission.

If the location of the person is not known Interpol Nicosia will send an "arrest and extradition message" to all EU Member States indicating that the person is wanted in Cyprus and that an EAW has been issued.

If the location of the person is known, the CA will either transmit the EAW to the receiving authority by fax or via Interpol Nicosia, together with a certified translation.

3.7. ISSUES RAISED BY OR REQUESTS FOR INFORMATION FROM THE EXECUTING MEMBER STATES AND THE COMMUNICATION CHANNELS USED

The channel through which requests for additional information are received is usually Interpol. Requests for additional information are not dealt with directly by the issuing authority (District Judge/Court). It is the CA which drafts the replies to requests for additional information, which are forwarded through Interpol. If the request for additional information entails a modification of the EAW, the competent police officer will have to go back to the District Judge who issued the EAW. But the District Judge will not contact the executing authority himself. This contact will be dealt with by the CA.

3.8. THE RETURN OF OWN NATIONALS FOR THE ENFORCEMENT OF A SENTENCE

The situation whereby the person concerned is a national of the executing State and where that State requires that the person, if he is convicted, is sent back to that State for the execution of the sentence, has only occurred once in Cyprus. The guarantee was provided to the executing State in the form of a written statement made by the Attorney General.

The person has not yet had to be sent back to the executing State, but the legal basis for the transfer would be the Council of Europe Convention on the transfer of convicted persons. The experts were told, however, that the use of that Convention could raise difficulties if the person concerned does not consent to the transfer.

3.9. YOUTH SURRENDERS AND CORRESPONDING GUARANTEES

The age of criminal majority in Cyprus has recently been raised to 14 years (Criminal Code Amendment Law 18(I)/2006), but no EAW has so far been issued for a young person.

3.10. EVOLVING BEST PRACTICES

The Police has taken concrete measures in relation to the EAW.

That includes the dissemination of the Police Manual, mentioned here above, which provides in a practical way a description of EAW procedures to be followed by the Police. There is for example a clear recommendation to the police investigator to include all offences committed in the EAW and an explanation on the reasons for such recommendation. The manual also contains in annex various forms to be used by the Police.

The use of the STOP-LIST should also be mentioned. The systematic insertion of the details of the persons wanted on the basis of an EAW is a decisive tool to find these persons when they are on Cypriot territory.

3.11. GENERAL COMMUNICATION WITH THE EXECUTING MEMBER STATE

As mentioned above, and despite the apparent encouragement of direct contact between the issuing and local judicial authorities in the EAW Law, the District Judge will only rarely be involved in communication with the executing State.

This communication will be dealt with by the CA, the details of which are mentioned in every EAW, with the support of Interpol Nicosia.

3.12. THE MECHANICS OF THE SURRENDER (INCLUDING TEMPORARY SURRENDER) OF REQUESTED PERSONS/PROPERTY

Once the CA or Interpol Nicosia is informed of the executing judicial authority's decision to execute the EAW, the arrangements for the surrender are made by the police investigator. The officer informs the person concerned about the domestic arrest warrant once the person is on Cypriot territory (either in the aircraft if it is registered in the Republic of Cyprus or upon landing of the aircraft ¹). The person must then be brought before the District Judge within 24 hours.

In one case presented to the experts, involving a person arrested in Germany, the surrender procedure took 12 days, thereby exceeding the 10-day period defined in the Framework Decision, due to an oversight by the Cypriot authorities. The German authorities showed flexibility and agreed to surrender the person nevertheless. Upon arrival in Cyprus, the defendant challenged the detention on the basis of non-compliance with the 10-day time limit. The defendant was released because the police could not prove that there had been minimum contact with the executing State in order to meet the deadline.

3.13. CONFLICT BETWEEN EAWS/EXTRADITION REQUESTS/ONWARD SURRENDER

The Cypriot authorities have not so far experienced any case of conflict between an EAW issued in Cyprus and an EAW or extradition request from another State.

3.14. EXPENSES

There has been no mention of any problem regarding expenses.

¹ Cyprus being an island, the surrender will in all cases be by plane, although the maritime route may also theoretically be used.

4. ORGANISATION AND PRACTICES - ROLE OF EXECUTING MEMBER STATE

4.1. RECEIPT PROCEDURES

Cyprus has availed of the possibility offered by Article 7.2. of the Framework Decision on the EAW which allows a central authority to be designated for the administrative receipt of an EAW. All EAWs are transmitted to Cyprus via central channels, either Interpol or the CA, with the latter mentioned in the EJM Atlas as the normal channel for receiving EAWs sent to Cyprus specifically. EAWs received via Interpol Nicosia are directly forwarded to the CA.

EAWs are therefore not sent directly to the competent District Judge. Even if an EAW is sent directly to the District Judge, he would have to send it to the CA which has to issue a certificate (see below).

4.2. FORM OF THE WARRANT, REVIEW PROCEDURES

EAWs are received by fax or by post. The electronic format has not been used so far; the experts were told that there would be no objection to that form but that it may raise difficulties for affirming the authenticity of the EAW.

If the version of the EAW is not the original version, the CA will start the procedure to execute it but will immediately contact the issuing authority and request the original EAW, which will have to be transmitted within three days. The same time limit applies for the Greek, Turkish or English version of the EAW.

A copy of every EAW received by the CA is immediately sent by fax to the Attorney General.

The EAW is checked by the CA; this requirement is further strengthened by the fact that the procedure will not go any further without a certificate issued by the CA (Section 16.1. of the EAW Law).

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For this first check on the EAW, the CA will in most cases be in touch, usually by phone, with the representatives of the Attorney General on the basis of the copy of the EAW sent previously by fax. Although this cooperation is not legally required, it enables these authorities to discuss for example the need for additional information.

To issue the certificate, the CA must be satisfied that the EAW was issued in due form (Section 16.1. of the EAW Law). This review of the EAW focuses mainly on the formal requirements. The CA will for example check, on the basis of the information transmitted by the Member States on the implementation of the Framework Decision, if the EAW has been issued by the proper judicial authority. However, other more substantial issues, such as the description of the circumstances of the case, or the time and place of the offence will also be addressed. If the CA is not satisfied with the EAW, it will request additional information (often after having conferred with the AG) or, in rare cases ask for the re-issuing of the EAW. The CA is not a judicial authority under Cypriot law.

This check by the CA and leading to the issue of a certificate is no guarantee that the EAW will not be challenged by or before the executing District Judge on grounds which have been checked by the CA.

The certificate is signed on behalf of the Permanent Secretary, the highest civil servant in the structure of the Ministry of Justice.

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

The need for clarification or further information may appear either during the preliminary phase of the certificate before the CA or during the phase of the EAW's execution before the District Judge. In the first case, the request will be dealt with solely by the CA (after conferred with the AG).

If the need for further information or clarification arises before the District Judge, he will not deal with the request for additional information itself even though Section 21.2. of the EAW Law explicitly provides that it is the District Judge who "requests" the additional information, "through the CA". The District Judge will only point out the lack of information to the police investigator, who will contact the CA to issue a request or, apparently, ask for the information directly through the Interpol channel.

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Although they had not considered the possibility before, the Judges the expert team met during the visit did not rule out direct contact with the issuing authority but were uncomfortable with such an active role in the procedure. If a simple conversation between the two judicial authorities is enough to clarify the issue, such direct contact could be used. However, if there is a need for real additional information, this new information would be treated as evidence and should be introduced by one of the parties and supported by oath, as the Court has to be "moved" by the parties.

In both cases (either at the stage prior to the issuance of the certificate provided for in Section 16(1) of the EAW Law or requested by the police investigator), the CA will either directly contact the issuing authority or send its request via Interpol Nicosia. Most of this contact takes place by fax and e-mail.

4.4. ARREST PROCEDURES/FIRST HEARING

1. Procedure before the arrest

(a) The EAW specifically affirms the possible presence of the person in Cyprus.

If the EAW is received by the CA, it will be forwarded, after the verification, to Interpol Nicosia together with the certificate mentioned above. When Interpol Nicosia receives the EAW, the details of the person are entered into the STOP-LIST.

If the EAW is received by Interpol Nicosia, the details of the person are immediately entered into the STOP-LIST and the EAW is transmitted to the CA which will carry out the administrative verification with the AG.

The EAW, accompanied by the certificate issued by the CA, is forwarded:

(a) to the local Police District (officer in charge of the local CID) if the EAW specifically affirms the possible presence of the requested person at a certain address in Cyprus

(b) to the Director of the CID at the Police Headquarters (where it is forwarded to the officer in charge of the Operations Branch) in cases where the EAW does not specifically affirm the possible presence of the requested person at a certain address in the territory of the Republic.

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The officer in charge of the District CID or the officer in charge of the Operations Branch appoints a police investigator; his details are notified to Interpol Nicosia.

The appointed police investigator will draft a domestic arrest warrant in cooperation with the Attorney General. He will then, in cooperation with the Office of the Attorney General, appear before the competent District Judge who will issue the domestic arrest warrant if he considers that such a warrant is in accordance with the law and provided that the grounds on which it is sought are supported by oath.

An operation is mounted to arrest the person. Once the person is arrested, Nicosia Interpol is immediately informed and notifies the issuing Member State.

(b) There is no specific indication that the person may be located in Cyprus.

In other cases, Interpol Nicosia, like other EU Member States, receives a message for "Arrest & Extradition" of a requested person, which entails a statement that there is an EAW for this person, or a red notice in which the existence of an EAW is specifically pointed out. In that case, the details of the requested person are processed immediately in the STOP-LIST with instructions that if this person is located, Interpol Nicosia, as well as the competent District CID, should, in cooperation with the Office of the Attorney General, take the necessary measures to acquire a temporary domestic arrest warrant (Section 16.4.(a) of the EAW Law).

Therefore, if the person is found during a control on the territory of Cyprus (because of the reference in the STOP-LIST), the police will seek to obtain a domestic arrest warrant from the competent District Judge.

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The situation between the control of the person and the signification of the domestic arrest warrant is not entirely obvious because there is no legal basis to detain the person during that period. The experts were told that in most cases the detention is not necessary; usually, the person will either be detained for offences being committed at that time (for example illegally carrying a weapon) or will have to stay close to the police for other reasons. For example, if the person is a non-Cypriot citizen and is controlled in Larnaca Airport (one of the two national airports), immigration procedures will have to be followed and will prevent the person from leaving the airport rapidly. In the meantime, it will have been possible to obtain the domestic arrest warrant.

The police officer does not need to produce the EAW before the District Judge to obtain the domestic arrest warrant (Section 16.4. of the EAW Law). Information about the existence of the EAW, contained for example in an Interpol Arrest and Extradition message, is enough to launch the procedure. In that case, the domestic arrest warrant is based on the oath taken by the police officer certifying that there is sufficient information that the EAW has been issued. However, if the District Judge issues the domestic arrest warrant, the EAW will have to be produced within three days. The draft legislation currently being discussed in Parliament contains a proposal to extend this time limit to 8 days. Furthermore, and bearing in mind the use of the SIS in the future, Section 17.3. of the EAW Law already provides for a time limit of 20 days for the detention of the person before receiving the EAW if the person is arrested on the basis of an SIS alert.

2. Issuing of the domestic arrest warrant

The issuing of a domestic arrest warrant by the District Judge is required by Section 16.2. of the EAW Law which provides that the judge shall issue the domestic arrest warrant if "*he satisfies himself that the conditions of issuance of the arrest warrant of the requested person, are met*".¹

¹ It is to be mentioned that the unofficial English translation of the EAW Law transmitted to the experts wrongfully mentions an European arrest warrant.

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The conditions for issuing a domestic arrest warrant are defined in Article 18 and 19 of the Code of Criminal Procedure. According to these provisions, a judge may issue a domestic warrant when he is satisfied by means of a written, sworn statement that there is a reasonable suspicion that a person has committed an offence or when arrest or detention is reasonably deemed necessary in order to prevent the commission of an offence or an escape following commission of such offence. Every arrest warrant shall bear the signature of the judge who issued it, the date and time of issue and confirmation by the judge that he is reasonably satisfied that there is a need to issue the warrant.

To decide on the issuing of the domestic arrest warrant, the District Judge will have a first examination of the EAW or, if the EAW is not available, at the existing information received through Interpol. If the EAW is available, a certificate of the CA will have been issued prior to submission of the case to the District Judge. According to the judges the experts met during the visit, and partly because of the existence of the certificate, the analysis is relatively superficial at that stage and has not so far led to non-execution or postponement of the execution of the EAW.

3. First hearing

Once the person is arrested on the basis of the domestic arrest warrant (and, presumably, the EAW), he must be brought before the Judge within at most 24 hours (Section 17 of the EAW Law and according to the Constitution).

If the person challenges his identity, the Judge must take a decision within five days.

If the person does not challenge his identity or once the identity is confirmed, the Judge decides whether it is advisable to keep the person in detention. Section 18.1. of the EAW Law explicitly provides for the possibility of releasing the person at that stage with or without restrictive measures. According to the officials met during the visit, in all cases dealt with so far in Cyprus the person has been kept in detention in order to prevent them from absconding.

If the domestic arrest warrant was issued although the EAW was not yet available, the representative of the Attorney General, during the first hearing taking place within 24 hours after the arrest of the person, will ask that the person be remanded in custody for three days (time limit to produce the EAW, see above).

4.5. THE SURRENDER DECISION

The person may consent to surrender during his first appearance before the Judge or later on.

Consent is irrevocable. If the person consents to surrender, Section 23.1. of the EAW Law provides that the final decision on execution of the EAW must be taken within 10 days.

If the person does not consent to surrender, the Judge will set a date for the next hearing. The EAW Law only establishes the time limit for the whole procedure leading to the final decision on the execution of the EAW. In accordance with the Framework Decision, this time limit is 60 days with a possible extension of 30 days.

There is no explicit time limit for the decision during the first instance procedure.

4.6. REFUSALS TO SURRENDER

Sections 13 and 14 of the EAW Law provide the mandatory and non-mandatory grounds for refusing execution of the EAW. Most of these grounds are copied from the Framework Decision.

Section 13 (d) provides that the execution shall be refused "*where the European arrest warrant has been issued in view of the prosecution or punishment of a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political beliefs, sexual orientation or action in favour of freedom*". This should be read together with Section 2.2. of the same Law, which provides that "*the implementation of the provisions of this Law shall not have the effect of violating the obligation to respect fundamental rights and fundamental legal principles, according to section 6 of the Treaty on European Union. In any case, the requested person shall not be extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.*" The Commission pointed out in its report on the implementation of the EAW that the Cypriot legislation "refers to an activity in the cause of freedom which is wider than the possibilities covered in the recital and which therefore creates the risk that a refusal will go beyond the Framework Decision" (6815/05 ADD 1 COPEN 42). As a result, it is proposed in the draft legislation currently discussed in Parliament to amend part (d) of Section 13 by deleting the reference to "action in favour of freedom".

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See above for the grounds for refusal linked to the surrender of Cypriot nationals.

In practice, there have only been two refusals to execute an EAW. In one case, the refusal was based on Article 4.3 of the Framework Decision on the EAW (ne bis in idem). In the other case, execution was refused for institutional reasons, namely that the person concerned was a Cypriot national (see below).

Regarding the partial abolition of the double criminality check, the EAW Law does not exactly copy the content of the list of offences of Article 2.2. of the Framework Decision on the EAW. For some of the 32 offences, the wording found in the Law on the EAW is slightly different. For example:

- "trafficking in human beings" is referred to in the EAW Law as "trafficking in human beings and procurement to prostitution"
- "sexual exploitation of children and child pornography" is referred to as "violation of sexual liberty, sexual exploitation of children and child pornography".

It seems however that these limited changes have mostly the effect of potentially extending the scope of the offences referred to in Article 2.2. of the Framework Decision. As these changes apply to Cyprus as an executing State and as the form used by the issuing authority will contain the wording found in the Framework Decision, these modifications should not affect the execution of the EAW.

4.7. APPEALS PROCEDURES AND THEIR IMPACT ON TIME LIMITS

The person concerned and the Attorney General may appeal within three days before the Supreme Court against the decision on execution of the EAW taken at district level. Section 24.2. of the EAW Law provides that the Supreme Court must decide within eight days; however, it is considered by the Supreme Court that this time limit is not constitutional as the Supreme Court alone is able to set its own time limits. In the draft legislation currently under discussion in Parliament, it is therefore proposed to delete the reference to these eight days; the Supreme Court will, however, have to comply with the general time limit of 60 days.

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The Supreme Court will take its decision based on the record of the case. In principle, to raise an issue before the Supreme Court, that issue must already have been raised during the procedure in first instance. The Supreme Court's decision is the final decision.

4.8. OWN NATIONAL, YOUTH ARREST AND SURRENDER ISSUES

Section 13 (e) and (f) provides for the mandatory refusal to execute an EAW when the person concerned is staying in, or is a national or resident of the Republic of Cyprus. When the surrender is requested for the execution of a sentence and when the person is a Cypriot national, execution of the EAW must be refused if Cyprus undertakes to execute the sentence. In the same case, but where the person is staying in or is resident in Cyprus, refusal is optional (Section 14(g) of the EAW Law). Finally, when the surrender is requested for the purposes of prosecution of a Cypriot national, execution of the EAW must be refused unless it is ensured that the person will be transferred to Cyprus to serve the sentence.

However, these provisions must be read in conjunction with Article 11 of the Constitution, which provides that a Cypriot national shall not be surrendered on the basis of an EAW for acts which were committed before 1 May 2004.

4.9. ACCESSORY OFFENCES

There are no provisions in the legislation regarding offences which do not meet the threshold required for an EAW but which are linked to a main offence covered by the EAW. The experts were told during the visit that, should such a case arise, the EAW would not be executed nor issued with regard to these offences.

4.10. ONWARD SURRENDER/EXTRADITION

Section 27 of the EAW Law deals with the issue of execution of an EAW concerning a person who is on the territory of Cyprus because he had been extradited by a third State. The provision is in line with Article 21 of the Framework Decision.

There has been no experience of such a case so far.

4.11. AD HOC ISSUES SURROUNDING UNDERTAKINGS

There has been no experience so far for Cyprus acting as the executing State. Regarding the surrender of Cypriot nationals for the purpose of prosecution, it should be noted that, before the amendment of the Constitution, execution of the EAW was simply not possible.

4.12. EXPERIENCE OF ARTICLE 32

Cooperation with Member States which have limited use of the EAW regime to acts committed after a certain date, in accordance with or beyond what is accepted by Article 32 of the Framework Decision on the EAW, may be problematic when Cyprus is the issuing State as there is currently a gap in the legislation (see below).

When Cyprus is the executing State, there should not be any difficulty with Member States which have legally used Article 32 of the Framework Decision as that limitation is related only to the cases where these Member States are executing States.

4.13. TEMPORARY/CONDITIONAL SURRENDER

Section 25 of the EAW Law provides for a legal basis for a provisional transfer. There has been no experience of this so far.

4.14. THE MECHANICS OF SURRENDER (INCLUDING CONDITIONAL SURRENDER) OF REQUESTED PERSONS AND PROPERTY

Surrender procedures are dealt with by the police. The Director of the prison (only one prison in Cyprus) will deliver a letter describing the time already spent in detention by the person. The letter is given to the police of the issuing State in connection with the transfer.

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In one case, the surrender could not take place within the 10-day time limit, due to serious difficulties experienced by the issuing State. The competent District Judge was immediately notified by the Office of the Attorney General and had granted a two-day extension to facilitate completion of the surrender procedure.

4.15. CONFLICT BETWEEN EAWs/EXTRADITION REQUESTS

Section 22 of the EAW Law deals with potential conflicts between several EAWs or extradition requests received by Cyprus regarding the same person and is in line with Article 16 of the Framework Decision.

In the case of competing EAWs, the judicial authorities interviewed during the visit said that they could in principle ask for Eurojust's advice but also that this would not be common practice as, in a common law system, judges are reluctant to seek advice from outside.

4.16. EXPENSES

There have so far been no difficulties regarding expenses.

5. TRAINING PROVISION

The situation regarding the training of players involved in EAW procedures must be analysed separately depending on the type of authority concerned.

- Police: specific courses of about 45 min. are dedicated to EAW procedures. Their content varies according to the level of the target group. The courses are mandatory for new recruits (three lectures). In addition, 239 officers have received a special training course of 3-4 lectures in 2006 and 2007.
- Judicial authorities: the training of judicial authorities is the responsibility of the Supreme Court. The experts were told that there is no specific training on EAWs procedures.

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- Office of the Attorney General: there does not seem to be any specific training for representatives of the Office of the Attorney General specialising in EAW procedures, although there is in house training provided by an experienced lawyer in the Office.
- Furthermore, on 18 March 2006 a one-day seminar was organised internally for police officers, civil servants from the Ministry of Justice and representatives of the Office of the Attorney General. Another seminar, organised with the support of TAIEX (European Commission, Technical Assistance Information Exchange Unit) on 16 June 2006, was attended by police officers only. A TAIEX Seminar was also organised at the end of May 2007 where the EAW was dealt with extensively.

6. DEFENCE PERSPECTIVES

The right to be assisted by a legal counsel is formally required after the first hearing which must take place within 24 hours after the person's arrest (Section 17.1. of the EAW Law).

The experts were told, however, including by representatives of the Bar, that in practice the police will usually inform the person before this first hearing and will enable him to contact the counsel of his choice. The counsel will usually meet his client at least once during this period of 24 hours. The police does not interrogate the person during this period. Furthermore, the person will from the outset be entitled to the assistance of an interpreter (formally required at the first hearing, Section 17.1. of the EAW Law). That does not, however, include the right to have the relevant documents translated into a language understood by the person concerned.

Article 17.1. provides that the Judge will first examine the issue of the person's identity before calling for a translator and informing the person about his right to be assisted by a counsel. However, the experts were told that, due to constitutional requirements on interpretation and translation during criminal proceedings, Judges do it the other way around and check the identity afterwards in order to ensure proper examination of the identity issue.

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If the person does not already have a counsel, he is presented with a list of counsels registered in the District concerned. The list must be approved by the Court and it is up to each counsel to decide whether or not he should be mentioned on that list. Because of the obligations attached to being on the list, not all lawyers ask to be mentioned. Once a counsel is contacted on the basis of his presence on the list, he cannot, in principle, refuse the case.

There are around 1700 counsels in the Republic of Cyprus. The experts were told that, due to the small population of the Republic of Cyprus, most of these counsels do not specialise in specific matters. There is, therefore, no reference to specialisation in the list mentioned above.

The person arrested benefits from legal aid under the same conditions as for other judicial proceedings. Any person (national and non-national) who cannot bear the costs of the proceedings without affecting the basic needs and obligations of himself and his family is entitled to legal aid. The District Judge dealing with the case will decide whether the person fits into that category.

7. CONCLUSIONS

7.1. GENERAL CONCLUSIONS

7.1.1. The expert team wishes to thank the Cypriot authorities for the open and willing manner in which the evaluation visit was planned and conducted. The experts were able to meet a wide range of high-level authorities representing the legislative, administrative and judicial powers. They were particularly impressed by the openness showed by the President of the Parliamentary Law Committee as regards the changes in the Constitution of the Republic of Cyprus.

This programme was very helpful in order for the experts to understand the system in place in Cyprus. The authorities showed that they were open to suggestions and criticisms expressed by the evaluation team.

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7.1.2. Two features must be kept in mind when analysing EAWs procedures in Cyprus:

- The population of Cyprus: with 837 000 residents, the population is relatively small. This must be balanced with the 2 to 3 millions tourists per year visiting the island and who inevitably bring a potentially high number of trans-national cases as well as reports on some serious forms of organised crime operating in the island (to be checked on the basis of the OCTA). It is a fact, however, that the number of EAWs dealt with in Cyprus is very limited. This must be kept in mind when analysing any structural solution implemented in this island with regard to EAW procedures.
- The common law system: the Cypriot system is very much influenced by the system of the UK, previously the colonial power in the island. It is a common law system and Cypriot officials have on several occasions stressed that, in the current system, the Court does not "move" by itself but has to be "moved" by the parties.

The experts are well aware of these two features. They may justify specific solutions but only in so far as compliance with the Framework Decision is ensured. Furthermore, the Cypriot Constitution now explicitly provides that EU Law takes precedence over Cypriot law. This obligation, which already follows from the case law of the Court of Justice, has to be given a real meaning.

7.1.3. The expert team wishes to stress that, as far as concrete results are concerned (especially in terms of time limits and effective surrender of the person), the Cypriot system appears to be efficient. This is partly the result of excellent cooperation between the authorities concerned, facilitated by the small size and population of the country but also by the professionalism of the officials involved.

7.2. CONSTITUTIONAL ISSUES: LIMITATION ON THE SURRENDER OF NATIONALS

According to the Constitution, as amended following the decision of the Supreme Court of 7 November 2005, the surrender of Cypriot nationals is possible for acts which were committed after the accession of Cyprus to the EU (1 May 2004).

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This limitation is a clear violation of the Framework Decision on the EAW, which in addition (and even under the Constitution itself) has primacy over the Cypriot Constitution.

Article 32 of the Framework Decision provides that *"any Member State may, at the time of the adoption of this Framework Decision by the Council, make a statement indicating that as executing Member State it will continue to deal with requests relating to acts committed before a date which it specifies in accordance with the extradition system applicable before 1 January 2004. The date in question may not be later than 7 August 2002."*

It is clear that this provision does not allow Member States which acceded to the EU in 2004 or after to benefit from this derogation. It was actually drafted specifically with that purpose. However, if Cyprus needed that derogation, it should have been raised during the accession negotiations. Furthermore, the limitation currently in place in Cypriot law goes even beyond the derogation provided for in Article 32 of the Framework Decision which does not allow the exclusion of acts committed after 7 August 2002.

Two reasons justifying this limitation were mentioned to the experts during the visit. In the opinion of the experts, both reasons are equally wrong.

The first reason is that the implementation of the surrender of nationals for facts committed before 1 May 2004 would violate the principle of non-retroactivity of criminal law. However, while this principle is certainly valid and of utmost importance as regards substantive criminal law, it does not apply to procedural law. This interpretation was shared by many lawyers met during the visit.

The second reason mentioned during the visit is that, in practice, the new EAW system will in any case only be used exceptionally for acts committed before 1 May 2004 because, in almost all cases giving rise to an EAW to be executed in Cyprus, the acts will have been committed after that date. This evaluation of practice is not shared by the experts. It does not take into account the fact that many EAWs have been issued in cases where the person has been wanted for a long time but has not yet been found (= several thousands of cases in the SIS). Furthermore, it is not at all unusual that the existence of an offence appears only a few years after it has occurred nor is it rare that an investigation gives rise to an arrest warrant years after the investigation started.

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In any case, it is very clear that the Council decided that the EAW is applicable to acts committed before 1 May 2004, irrespective of the nationality of the person concerned.

The situation is all the more regrettable since the Parliament, when amending the Constitution, decided to indicate clearly that EU Law prevails over Cypriot national law, including the Constitution. There is therefore a contradiction in the Constitution itself: on the one hand, the primacy of EU law is clearly mentioned in the Constitution but, on the other hand, another Article of the Constitution creates a clear and indisputable incompatibility with a piece of EU legislation (=the Framework Decision on the EAW). Cypriot judges themselves are therefore confronted with contradictory constitutional obligations and that contradiction may have to be resolved by them.

7.3. CONCLUSIONS IN RESPECT OF CYPRUS' ACTIVITIES AS AN ISSUING MEMBER STATE

7.3.1. Issues

7.3.1.1. The Attorney General as a filter

The Attorney General acts as a filter for requests submitted by the Police in order to obtain an EAW from the District Judge. The Attorney General has discretionary powers to accept or refuse the request. The decision of the Attorney General is based not only on the requirements of the EAW Law but also on issues of proportionality and issues such as the seriousness of the offence, the situation of the victims, the time of the offence, etc.

The experts consider that, in the interest of efficiency, the police investigator should be in a position to know exactly on which grounds its request could be rejected by the Attorney General. Written guidelines of the Attorney General, addressing both formal requirements and criteria of opportunity, would be useful in that context. The Police Manual on the EAW may not be enough as it has not been drafted in cooperation with the Attorney General.

Furthermore, it must be pointed out that the competent police officer has to appear before the Attorney General twice: the first time to submit the general case to the Office of the Attorney General in Nicosia and the second time to present the draft EAW to a local representative of the Attorney General. One might wonder whether this double check is really necessary.

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It should be noted that these are suggestions to improve the action of the Attorney General but that this action is not, in itself, problematic. On the contrary, it is an interesting solution to ensure a control of issues such as proportionality (see below).

One might wonder whether this power of the Attorney General, which may result in ending the procedure, is in line with the Framework Decision which provides that the decision on the issuing of an EAW is taken by a judicial authority. This objection, however, does not seem overly serious for two reasons. Firstly, although the Attorney General is not formally a judicial authority under the Cypriot system, it shares a number of features with what is normally understood as a "judicial authority" such as independence from the executive power and guarantees from being replaced. Secondly, this intervention takes place before the decision of the judicial authority.

It is true that the District Judge will not be able to issue an EAW if it has been refused initially by the Attorney General. However, the experts were of the opinion that the requirement set up by the Framework Decision aims at ensuring that an EAW cannot be issued by a non-judicial authority and that once a judicial authority has decided to issue an EAW, it cannot be rejected because of the intervention of a non-judicial authority. In that context, the Attorney General's intervention seems not to be problematic.

7.3.1.2. Role of the JA after the EAW is issued

Once the District Judge has issued the EAW, his role in the rest of the procedure leading to the execution and the transfer is very limited.

Firstly, the District Judge will not transmit the EAW himself and will not even send it to the CA. It is the police investigator who obtained the EAW who will transmit it to the CA (unless it is transmitted directly via Interpol), which in turn will ensure transmission to the executing authority or will ask for transmission via Interpol (see above, 3.7.). This limitation of the role of the District Judge is surprising since the EAW Law is very clear that "*the District Judge may transmit the EAW directly to the executing judicial authority*" (Section 8.1.). Anticipating the use of the SIS, the Law also provides that "*the District Judge may decide to proceed to an entry in the SIS*" (Section 8.2.).

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Secondly, the District Judge will not in principle deal with requests for additional information sent by the executing authority, unless his intervention is requested by the police or the CA, for example because the additional information amounts to a substantial addition or modification to the EAW or because the executing authority requires the signature of the issuing authority. Here again, the EAW Law seems to provide for a much more active role when it says that "*all difficulties concerning the transmission or the authenticity of any document needed for the execution of the European arrest warrant shall be dealt with by direct contact between the judicial authorities involved, or, where appropriate, with the involvement of the central authorities of the Member States*" (Section 8.5.).

It is as if the relevant authorities did not really consider the possibility of a more direct application of the letter of the EAW Law and of the Framework Decision which would have resulted in a more active role conferred to the issuing authority in the procedure. The current practice in Cyprus seems to prevent direct contact between judicial authorities, although it is clearly promoted in the national legislation itself. It is understood that this situation is the result of the general view of the Judge's role in national criminal proceedings. But, in the opinion of the experts, it could be argued that giving a more active role to the Cypriot Judges in EAW procedures would not be a derogation from the current vision of the role of the judiciary, because this more active role would only concern contact with the executing judicial authority which is, in a way, the Cypriot Judge's "mirror image" in the other Member State. Because mutual recognition is about a judicial authority executing the decision of another judicial authority, it seems important to the experts that these authorities may, whenever possible, contact each other (possibly through a CA). In other words, because the executing authority acts as a kind of extension of the issuing authority in a single European judicial area, it is important to maintain, if possible, a direct connection between the two authorities.

Besides the issue of the role of the Judge in a common law system, it was also mentioned during the visit that giving more responsibilities to the judicial authorities would raise difficulties in terms of resources. However, some officials met during the visit agreed that court registrars could be involved and assist the Judges in these tasks. Furthermore, it must be recalled that most of the work is currently done by the CA which is composed of only three lawyers and for which the EAW is only one of several tasks.

7.3.1.3. Dealing with requests for additional information

The Cypriot authorities mentioned that requests for additional information have on several occasions raised major difficulties, particularly when the request is sent in the national language of the executing State which is not commonly understood in Cyprus. Translation of the request is time consuming and has on some occasions led to the release of the person in the executing State. That happened for example in two cases, one involving Italy and the other France as executing States.

Repeated difficulties were experienced by the Cypriot authorities in the case of a person found in the UK. In several cases, the Cypriot authorities were requested to send additional information within 24 hours and, in other cases, within three days. In one case presented to the experts, the UK had sent Cyprus four requests for additional information one after the other. From that brief presentation of the case, the experts had the impression that requests sent by the UK amounted to requiring actual evidence of the offence. In another case, the UK request for the transmission within 24 hours of additional information certifying that the person was accused of the offences mentioned in the EAW and detailing why Cyprus had jurisdiction on the case led to the release of the person because of the failure to comply with that time limit.

Furthermore, the Cypriot authorities insisted on the difficulties raised by the UK requirement where the location of the person is not known and where, consequently, the EAW is sent via Interpol to all Member States. In such a case, the UK requires the original EAW before its authorities will seek to establish whether the person is in UK territory. The Cypriot authorities were of the opinion that such a requirement runs counter to the Framework Decision. Complying with that requirement, and therefore issuing an EAW specifically directed to the UK, makes it necessary to issue a new EAW if the person is found on the territory of another EU Member State.

7.3.1.4. National coordination measures

As mentioned before, the experts found that there is, generally speaking, excellent cooperation between the police, the office of the Attorney General and the CA in specific cases. However, there is no platform ensuring that these authorities meet regularly in order to discuss general issues. A working group, also involving the District Judges, was set up to draft the EAW Law and constituted, in the opinion of some officials, an adequate *forum* but it has not met since the legislation was implemented. The experts feel that such a working group is important for discussing good practices and overcoming difficulties. It should involve all authorities, including judges.

One of the tools this working group could usefully produce is a common manual for the police, the Attorney General and the CA. It could be based on the existing Police Manual or it could supplement it. It should for example enable the police investigator to clearly identify the criteria that will be taken into account by the Attorney General when examining the request for an EAW to be issued (see above).

7.3.1.5. Internal coordination within the Office of the Attorney General

Discussions with the representatives of the Attorney General have demonstrated a high level of expertise and commitment. However, it also seemed clear that not all staff in the section dealing with EAWs had received adequate training.

All staff in the section dealing with EAWs are provided with a file of documents containing national legislation, the "Fiches françaises" drafted by the other Member States, etc. However, there are no written guidelines on EAW procedures specifically dedicated to the role of the Attorney General. These guidelines, which could be for staff in the section only or incorporated into the common manual recommended above, would for example identify common practices regarding what kind of information is required in the relevant field of the form of the EAW, ... It would also detail the criteria which must be taken into account by the representative of the Attorney General when examining the need for the EAW.

7.3.1.6. Training

The experts found that the level of training is at best very limited in relation to the complexity and importance of the procedure. There may be relatively few EAWs procedures in Cyprus, but it is all the more important that all officials who may be involved in such procedures are adequately trained because they will not easily gain experience through repeated cases.

While there have been seminars, one cannot rely wholly on such events to ensure proper training, especially since the seminars mentioned to the experts were all seminars made possible by the Commission Taixex programme which will no longer be available for Cyprus after 2008.

Measures have been taken within the police to ensure specific EAW training but the experts found that it is still limited considering the important role of the police in EAW procedures. While expertise clearly seems to be present in the CID department at Police Headquarters, the experts have some doubts about the adequacy of training for CID officers at district level. If that is not yet the case, part of the solution could be to have at district level at least one specialist on the EAW and extradition procedures, with adequate permanent training.

As for the judiciary, the experts were told that there is no specific course on the EAW. Such courses should be included in the normal permanent training programme. These courses should also present the EAW as part of implementation of the mutual recognition principle and of the creation of a European judicial area with the impact it may have on the role of the Cypriot judges in such trans-national cases (see above). Furthermore, measures should be taken to enable District Judges to take part in seminars organised in other EU Member States.

7.3.1.7. Use of Eurojust

The experts noticed that Cypriot authorities do not involve Eurojust in EAW procedures, apparently because no real consideration is given to the added value Eurojust could bring.

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The use of Eurojust should be particularly recommended when there are recurring difficulties with a specific Member State and when there is insufficient contact between the national authorities to overcome these difficulties. Firstly, involving the two national members of Eurojust concerned may already help as they have developed a specific relationship of trust and mutual understanding in Eurojust and may find solutions which were not envisaged by the national authorities. Secondly, when the difficulties are such that they raise questions about compliance of the system of one the Member States concerned with the Framework Decision on the EAW, the use of Eurojust may result in a discussion in the College. The result of such a discussion may include a formal request being sent to one of the Member States, under Article 7 of the Decision of 28 February 2002 setting up Eurojust, which would considerably increase the profile of the case.

Therefore, and given that the Cypriot authorities have experienced repeated difficulties with at least one specific Member State when issuing EAWs, consideration should in the future be given to the involvement of Eurojust.

Furthermore, due to the limited number of EAWs issued by Cyprus, it is not difficult to have an overall view and it may therefore be useful if a copy of all EAWs issued were transmitted to the national member of Eurojust.

7.3.2. Good practices

7.3.2.1. Proportionality check

As mentioned above (See 7.2.1.1), some measures could improve the filter of the Attorney General (between the request of the police investigator and the actual submission of a draft EAW before the District Judge). However, this filter is in itself an interesting solution. It allows a proportionality check by an authority which is independent (and comparable to a judicial authority) but also has an overall view of criminal proceedings. This proportionality check is crucial to prevent EAWs being issued for offences which, although they legally speaking fall within the scope of Article 2 of the Framework Decision on the EAW, are not serious enough to justify the measures and cooperation which execution of an EAW requires.

7.4. CONCLUSIONS IN RESPECT OF CYPRUS' ACTIVITIES AS AN EXECUTING MEMBER STATE

7.4.1. Issues

7.4.1.1. Checking by the CA and certificate

The CA is the central channel for the receipt of EAWs in Cyprus. Even if the EAW is received by Interpol Nicosia, it must be transmitted to the CA. Section 16.1. of the EAW Law provides that *"Where the central authority receives the European arrest warrant and satisfies itself that the warrant has been issued in due form, it shall issue a certificate and shall see to the arrest of the requested person."*

For the experts, the task given to the CA and the requirement for a certificate raise serious concerns with regard to compliance with the Framework Decision on the EAW.

Regarding the task of the CA, Article 7.2. of the Framework Decision provides that, when Member States have opted for the use of a CA, the role of the CA is limited to *"the administration, transmission and reception of EAWs as well as for all other official correspondence relating thereto"*. It is obvious that in Cyprus the CA ensures a check on the EAW which goes far beyond the administrative receipt of the warrant. As mentioned above, the check conducted by the CA is not even limited to formal requirements but will also result in asking the executing judicial authority for more information about the description of the circumstances of the case.

The experts have no reason to believe that, under current practice, the check conducted by the CA has resulted in an EAW not being transmitted to a District Judge or that an excessive number of requests for additional information have been forwarded to the issuing authority by the Cypriot CA. On the contrary, the experts noticed that the CA acts in a very positive spirit of good cooperation.

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Nevertheless, the objective of Article 7.2. of the Framework Decision is to ensure, even though the receipt and transmission of the EAWs is done via a central channel, that all decisions relating to execution of the EAW are taken by a judicial authority. Furthermore, the check conducted by the CA cannot replace the check which the District Judge will in any case have to perform on the EAW (and in fact is undertaken in Cyprus). There is therefore a danger, even though it has not yet materialised, that the CA check will result in excessive requirements being sent by the CA to the issuing authority in order to ensure that the EAW will not be challenged before the District Court. But, if the CA sets some limitations on its action, it is possible that a first round of requests for additional information dealt with by the CA will be followed by another round resulting from the examination of the EAW before the District Judge. Moreover, from the point of view of principle, the practice seems difficult to reconcile with the letter and the spirit of the Framework Decision.

The check required from the CA is strengthened by the fact that the CA must issue a specific certificate when transmitting the EAW. This certificate is not part of the procedure provided for in the Framework Decision. Certainly, the Framework Decision does not create a full and unique procedure, and Member States are free to organise it at domestic level. However, the domestic measures must be in line with the objective of the Framework Decision which is to facilitate judicial cooperation in that sector.

These objections must be nuanced by the fact that the check made by the CA and the issuing of the certificate are done after consultation of the AG, which, although it is not acting in that case, under Cypriot Law, as judicial authority, shared a number of features with the judiciary.

It is worth mentioning the opinion of the House of Lords (UK) given on 28 February 2007 in the "Dabas v. High Court of Madrid" case¹. The opinion of the Lords in that case is of high interest for this part of the analysis of the procedure in Cyprus because the British and Cypriot systems seem to some extent to be very similar. In that case, the Lords had to decide whether or not the certificate required by domestic legislation on the EAW could be the EAW itself or should be a separate certificate filled in by the British central authority. The following quotation from the opinion is especially relevant:

¹ <http://www.publications.parliament.uk/pa/ld200607/ldjudgmt/jd070228/dabas.pdf>.

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"The short question is whether this arrest warrant, complying with the formal requirements of the Framework Decision, is invalid under the 2003 Act [the domestic legislation on the EAW] because there is no separate certificate, and no express certification, to the effect specified in section 64(2)(b) and (c). If it is, the effect of the Act would be to introduce a requirement not found in the Framework Decision and thereby to impede, to some extent, achievement of the purpose of the Framework Decision, by reintroducing an element of technicality which the Framework Decision is intended to banish and by frustrating the intention that a warrant in common form should be uniformly acceptable in all member states. Happily, as I think, the House is not driven to that conclusion, since I consider that the Spanish judge, by signing the warrant, has given his authority to and thereby vouched the accuracy of its contents. Thus the warrant is in substance if not in form a certification by the judge. It would be inconsistent with the trust and respect assumed to exist between judicial authorities to insist on any additional verification, which would impede the process of surrender but do nothing to protect the rights of the appellant." (emphasis added)

7.4.1.2. The STOP-LIST database

The STOP-LIST database is a key element in ensuring the arrest of persons wanted by other EU Member States and located in Cyprus.

The STOP-LIST is a police database. Unfortunately, it is not available to other law enforcement authorities such as the Customs or the MOKAS which, if faced with the person concerned, will not therefore be in a position to identify him as a wanted person.

Making the STOP-LIST available to the Customs and MOKAS is part of the more general recommendation to ensure better information sharing between law enforcement authorities, which is one of the key conclusions with regards to the evaluation of Cyprus in the third round of mutual evaluation.

7.4.1.3. Requirement of a domestic warrant

The EAW received by the CA in Cyprus is not considered to be a sufficient basis for arresting the person. It must be supplemented with a domestic arrest warrant issued by the competent District Judge. This domestic arrest warrant, although based on the EAW, will be the only legal basis for the arrest of the person.

The problem here is not that an intervention of the District Judge is necessary. The experts do not contest the fact that a decision of the Judge may be required in the early stages of the procedure to allow the detention of the person (subject to the remarks made below on the immediate arrest of the person). But what is problematic is that this decision of the Judge must take the form of a domestic arrest warrant (Section 16.2. of the EAW Law). With such a requirement, it seems that the EAW must in some way be translated into the national order. Here again, the experts consider that there are unnecessary barriers which at best are not in tune with the establishment of a single European judicial area and the objectives of the Framework Decision.

It was mentioned during the visit that a domestic arrest warrant is an absolute requirement, provided for in the Constitution, in order to arrest a person. After further explanation, it appears that the Constitution actually requires a "judicial warrant". Furthermore, Article 14.1.7 of the Code of Criminal Procedure provides that a policeman may arrest a person if he is reasonably convinced of the fact that there is an arrest warrant from a court against this person. This wording (both in the Constitution and in Article 14.1.7 of the Code of criminal Procedures) is commonly interpreted in Cyprus as a Cypriot judicial warrant. However, this limitation is not required by the Constitution itself. Following the obligation to interpret national law in compliance with EU law (see ECJ, Pupino case) and since the Constitution does not explicitly require a domestic arrest warrant, it seems that the Constitution is not an obstacle to changing the legislation and the practice. On the contrary, it would make perfect sense, in the context of implementation of the principle of mutual recognition, to interpret the words "judicial warrant" as a warrant issued by a judicial authority of one of the EU Member States.

7.4.1.4. The Sirene Bureau

As mentioned above, the Sirene Bureau is already in place even though Cyprus is not yet connected to the SIS. It is important that preparation for use of the SIS also takes into account the specific requirements linked to the EAW.

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It should be recalled that, in the third round of mutual evaluation, it was recommended that the Sirene Bureau be merged with the Europol National Unit and the Interpol Bureau (Interpol Nicosia). This recommendation is also very important in EAW procedures as it is clear that both Interpol Nicosia and the Sirene Bureau have a very important role to play in these procedures.

In addition to the issue of immediate arrest of the person in the case of a hit in the SIS based on an EAW (see above), the issuing of flagging deserves special attention. In the SIS, a flag may be added at the request of a Sirene Bureau to the effect that the action to be taken on the basis of the alert will not be taken in its territory. This may be done when execution of the alert would violate the international obligations or essential national interests of that Member State.

With regard to the EAW, Article 25 of the Decision on the SIS II (*finalised but not yet adopted, see 14914/06*) provides that :

1. *Where Framework Decision 2002/584/JHA applies, a flag preventing arrest shall only be added to an alert for arrest for surrender purposes where the competent judicial authority under national law for the execution of a European Arrest Warrant has refused its execution on the basis of a ground for non-execution and where the addition of the flag has been required.*
2. *However, at the behest of a competent judicial authority under national law, either on the basis of a general instruction or in a specific case, a flag may also be required to be added to an alert for arrest for surrender purposes if it is obvious that the execution of the European Arrest Warrant will have to be refused.*

The first paragraph refers to flagging after the decision not to execute the EAW has been taken by the competent judicial authority. Only this competent judicial authority has the ability to decide that a flag is necessary. Since the EAW Law already takes account of the SIS, it would be better to add a provision on that issue as well.

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The second paragraph of Article 25 of the Decision on the SIS refers to a flag "a priori", i.e. at the time when the alert is inserted in the SIS. Because such a flag may *de facto* result in non-execution of the EAW (because the person is not arrested), the intervention of a judicial authority is necessary and explicitly required by Article 25. The question which arises for Cyprus is therefore which judicial authority should be given that task and what coordination should there be with the Sirene Bureau. During the visit, the Police mentioned that one of the solutions (not only for EAW issues but more generally for all alerts relating to criminal matters) currently under consideration would be to involve the Office of the Attorney General, either by having one of the representatives of the Attorney General seconded in the Sirene Bureau or by having a contact point in that Office on a permanent basis. That idea had, however, not yet been discussed with the Attorney General.

One could argue that the Attorney General is not formally a judicial authority and that this solution would not, therefore, fully comply with Article 25 of the Decision on SIS II. As mentioned above, one should take into account the fact that the Attorney General shares many features with the judiciary, including independence from the executive power. Given the current system in Cyprus and the overall objective of Article 25 of the Decision on SIS II, the possibility of giving such a task to the Attorney General deserves to be explored further.

7.4.1.5. Provisional arrest

When an EAW is received in Cyprus but is not specifically directed to that Member State because the whereabouts of the person are not known, the identity of the person is inserted into the STOP-LIST database. This enables the police to identify the person, for example, if he shows up at a border control or a traffic checkpoint. In that case, a police officer, after having consulted the Attorney General, will request a domestic warrant from a competent judge.

As mentioned before, there is no legal basis for the police to detain the person before the domestic warrant has been obtained, which may take several hours.

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The experts are not fully convinced that in practice it creates only few difficulties because the person will either be detained for offences being committed at that time (for example illegally carrying a weapon) or will have to stay close to the police for other reasons. For example, if the person is a non-Cypriot citizen and is controlled in Larnaca Airport (one of the two national airports), immigration procedures will have to be followed and will prevent the person from leaving the airport rapidly (see above).

Even if solutions are usually found on a case-by-case basis, the experts were also told that it occasionally raises serious problems. Furthermore, it should be pointed out that, due to the specific situation in Cyprus, a person who knows that he- has been located can relatively easily reach the part of the Republic of Cyprus over which the Republic does not have effective control.

Furthermore, although the Framework Decision on the EAW does not itself formally require the immediate arrest of a person against whom it is known that an EAW has been issued (but that is an interpretation that follows from practice in several other Member States and could be argued on the basis of Article 1 of the Framework Decision), one should not forget that such an immediate arrest is a requirement under the SIS framework.

7.4.1.6. Use of Eurojust

In the case of competing EAWs to be executed in Cyprus, the judicial authorities interviewed during the visit said that they could in principle ask for Eurojust's advice. This possibility for the competent Judge to contact Eurojust is explicitly provided in the EAW Law (Article 22.2). However, these judicial authorities also mentioned that this would not be common practice as, under a common law system, judges are reluctant to seek advice from outside. The issue is theoretical since no cases of competing EAWs to be executed in Cyprus have yet arisen. However, it must be recalled that the aim of Eurojust is to facilitate judicial cooperation, also by overcoming the differences between the legal cultures. One of the advantages of Eurojust is that it brings together magistrates from common law and civil law countries on a permanent basis. This advantage is partly lost if the common law feature simply prevents the submission of requests to Eurojust. Here again, the use of Eurojust should not be seen as a derogation from what is expected from judges in Cyprus.

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In a single European judicial area, Eurojust acts as an interface between the issuing and the executing authority. It is all the more important when more than two Member States are involved, such as in cases of competing EAWs. Since, in mutual recognition cases, the Cypriot Judge acts "on behalf" of the issuing judicial authority, it is important that contact between them is as close as possible, which may be facilitated by Eurojust.

7.4.1.7. Finalisation of the legislative procedure

Several amendments to the EAW Law are included in draft legislation submitted to the Parliament. At the time of the visit, the competent Committee in Parliament had discussed the draft legislation on two occasions.

The main elements in this draft are (see above for further explanations):

- extension from three to eight days of the period during which the person may be kept in detention when the EAW has not yet been received
- deletion of the specific time limit of eight days for the decision of the Supreme Court in appeal procedures
- in the ground for refusal based on the fact that the EAW *"has been issued in view of the prosecution or punishment of a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political beliefs, sexual orientation or action in favour of freedom"*, deletion of the words *"or action in favour of freedom"*
- possibility to use the extradition regime with Member States which are not in a position to apply the EAW: with regard to that amendment, the experts strongly advise a flexible wording. The use of the extradition regime may be required because the Member States have used the derogation provided for in Article 32 of the Framework Decision but other cases, such as constitutional challenges to national legislation, should also be envisaged.

It may be worth taking the opportunity offered by the current discussion in Parliament to already implement some of the changes to the EAW Law suggested in this report.

7.4.1.8. Presentation of the arrested person before a Judge within 24 hours

Section 17.1. of the EAW Law provides that "*where the requested person is arrested on the basis of the European arrest warrant, he or she shall be conducted within twenty-four (24) hours to the District Judge.*" It was unanimously acknowledged during the visit that this wording is not adequate. According to the general principles of Cypriot law, there is instead an obligation to bring the person before the Judge as soon as possible and in any case within 24 hours. If a person is brought before the Judge within the time limit of 24 hours but in a case where it was possible for the police to have done so earlier, this person would have to be released by the competent District Judge. It therefore seems better to clarify the EAW Law and align it on the wording chosen for domestic procedures.

7.4.1.9. Competence of the ECJ

Cyprus has not (yet) made the declaration mentioned in Article 36 of the EU Treaty and does not therefore allow its courts the possibility of submitting preliminary rulings to the Court of Justice regarding the interpretation and validity of third pillar instruments, including Framework Decisions.

There is no obligation to make such a declaration. However, it is not clear whether the absence of the declaration for Cyprus is the result of a decision to refuse such a competence of the ECJ or whether the issue is still under consideration.

It seems to the experts that recognising the competence of the ECJ would be particularly useful in the case of Cyprus because of some substantial questions arising regarding the compatibility of the legislation and the practice with the Framework Decision. For several issues mentioned above, such as the limitation on the surrender of nationals, the requirement for a CA certificate and the requirement for a domestic arrest warrant, the involvement of the ECJ would be of great value.

7.4.1.10. "Fiches françaises" on the EAW in Cyprus

The Council's Working Party on Cooperation in Criminal Matters agreed on the proposal made by the French delegation to have a standard "fiche" (the so-called "fiches françaises", see 14506/03 COPEN 109 SIRIS 99) for each Member State detailing the main aspects of implementation of the Framework Decision on the EAW in that Member State.

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This information, available on the Council website, is very useful and both the representatives of the Attorney General and the CA have mentioned that these "fiches françaises" are part of the information which is commonly used in the practice of EAW procedures.

Unfortunately, Cyprus itself did not submit that practical information.

7.4.2. Good practices

7.4.2.1. High standards for the defence

There seems to be a high standard of protection of the rights of the person concerned during the procedure. The practice to allow access to a counsel and to an interpreter even before the person is presented before the judge (within 24 hours) is an important part of these good practices. It also creates the necessary safeguards making it possible for the person to consent to his surrender at this first hearing, which ensures a quick procedure in that case and therefore helps to reduce the detention period.

7.4.2.2. Spirit of good cooperation

Although, as mentioned earlier, the procedures should be improved to be more in line with the Framework Decision and the principle of mutual recognition, it is clear that authorities involved in these procedures are trying to make them as fast and efficient as possible in the practice.

Although significant effort must be made regarding training in general, the experts also felt that the key persons in the relevant bodies dealing with EAW procedures were real experts in international cooperation. These key persons seem to be in close contact with each other.

7.4.2.3. Readiness to change the law

The Cypriot authorities have demonstrated a readiness to amend, when necessary, the legislation and the constitution. The EAW Law has already been amended once and draft legislation is currently being discussed in Parliament to add new amendments. The Constitution was also changed following the decision of the Supreme Court of 7 November 2005. This flexibility helps to clarify and correct the legislation, and can only facilitate the work of the authorities involved.

8. RECOMMENDATIONS

8.1. RECOMMENDATIONS TO CYPRUS

8.1.1. Constitutional issue

Recommendation 1 - To amend the Constitution in order to abolish the limitation to the surrender of nationals (See 7.2.).

8.1.2. As issuing Member State

Recommendation 2 - To ensure that the police investigator is fully informed of the criteria applied by the Attorney General to authorise the issuing of an EAW, possibly through written guidelines of the Attorney General. (See 7.3.1.1.).

Recommendation 3 - To ensure simplification of the procedures, for example by reconsidering the need for the police investigator to go repeatedly before the Attorney General before presenting a draft EAW to the District Judge (See 7.3.1.1.).

Recommendation 4 - To initiate discussions at national level, especially among the judiciary, on the best way to allow a more active role in practice for the District Judge for example with regards to additional requests for information sent by the executing authority (See 7.3.1.2.).

Recommendation 5 - To consider setting up a working group at national level, composed of representatives of all authorities involved (including the Attorney General, the CA, the Police and the Judges), which would meet regularly in order to discuss general EAW issues and which could draft general guidelines on EAW procedures (See 7.3.1.4.).

Recommendation 6 - To increase standardisation of procedures, through appropriate training as well as specific guidelines, among the lawyers in the section dealing with the EAW and extradition at the Office of the Attorney General (See 7.3.1.5.).

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Recommendation 7 - To increase training measures focusing on EAW procedures, especially among the judiciary (See 7.3.1.6.)

Recommendation 8 - To enhance the coordination offered by Eurojust especially where the cooperation with a specific Member State proves to be difficult, and to consider the opportunity of sending to the national member of Eurojust a copy of all EAWs issued by Cyprus (See 7.3.1.7.).

8.1.3. As executing Member State

Recommendation 9 - To consider limiting the role of the CA to the administrative receipt of EAWs and leave the checking of EAWs to the executing judicial authority (See 7.4.1.1.).

Recommendation 10 - To amend the legislation in so far as it requires a certificate issued by the CA and, in the meantime, to consider whether such a requirement may be abolished in practice based on the fact that it does not comply with EU legislation (See 7.4.1.1.).

Recommendation 11 - To enable all law enforcement authorities to access the STOP-LIST database directly (See 7.4.1.2.).

Recommendation 12 - To merge the Sirene Bureau with the Europol National Unit and Interpol Nicosia (See 7.4.1.4.).

Recommendation 13 - In the context of the future connection of Cyprus to the SIS, to amend the EAW Law to insert a provision indicating that the judicial authority which has refused the execution of an EAW may require that a flag be added regarding the relevant SIS alert in order to prevent the arrest of the person for the same acts (See 7.4.1.4.).

Recommendation 14 - To ensure that the Sirene Bureau, for tasks related to the EAW, especially regarding the issue of flagging, is given the support of legal advice by an independent authority, either a judicial authority or the Attorney General (See 7.4.1.4.).

Recommendation 15 - To create a clear legal basis allowing for the immediate detention of a person mentioned in the STOP-LIST on the basis of an EAW (See 7.4.1.5.).

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Recommendation 16 - To amend the EAW Law in so far as it requires a domestic arrest warrant (See 7.3.1.3.).

Recommendation 17 - To enhance the coordination offered by Eurojust especially in cases of competing EAWs and to raise awareness among the judiciary regarding the role and nature of Eurojust (See 7.4.1.6.).

Recommendation 18 - To finalise the discussion, currently taking place in Parliament, of the legislation amending the EAW Law and to consider adding new amendments suggested in this report (See 7.4.1.7.).

Recommendation 19 - To amend the EAW Law to make it clear that the Police must bring the arrested person before the District Judge as soon as possible and in any case within 24 hours (See 7.4.1.8.).

Recommendation 20 - To consider making the declaration mentioned in Article 35(2) of the EU Treaty enabling Cypriot courts to submit a request for preliminary ruling to the ECJ regarding the interpretation of instruments adopted in the framework of Title VI of the EU Treaty, including Framework Decisions (See 7.4.1.9.).

Recommendation 21 - To submit to the General Secretariat of the Council the "fiches françaises" relating to the practical implementation of the EAW in Cyprus (See 7.4.1.10.).

8.2. RECOMMENDATIONS TO CERTAIN OTHER MEMBER STATES

Recommendation 22 - To endeavour to issue requests for additional information in a language which the issuing authority is likely to understand, especially in cases where short time limits are provided for the reply (See 7.3.1.3.).

Recommendation 23 - To refrain as much as possible from setting very short time limits for the reply to requests for additional information (See 7.3.1.3.).

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Recommendation 24 - To consider the benefits of creating an EU practitioner guide to assist with best practice indicators for the proportionate and consistent application of this instrument, the proper completion of the EAW form, and to provide indicative examples of FD-compliant requests for further information (See 7.3.1.4. and recommendation 6).

Recommendation 25 - To set up mechanisms and rules at national level enabling a proportionality check in order to avoid the issuing of EAWs for offences which, although legally speaking fall within the scope of Article 2 of the Framework Decision on the EAW, are not serious enough to justify the measures and the cooperation which the execution of an EAW requires (See 7.3.2.1.).

Recommendation 26 - That those MSs which require receipt of original EAWs prior to commencing substantive tracing work in respect of requested persons reconsider those demands in the light of the difficulties caused to issuing MSs which rely upon standard SIS and Interpol procedures as their primary transmission options (See 7.3.1.3).

Recommendation 27 - With regard to EAW alerts in the SIS, to wait no longer to adapt, if necessary, the practice of flagging in accordance with the rules provided in the Decision on the SIS II, taking into account the fact that these rules, by ensuring judicial control on the flagging, even though they are legally applicable to the SIS II only, are the best solution for ensuring full compliance with the Framework Decision on the EAW (See 7.4.1.4.).

Recommendation 28 - To consider making the declaration mentioned in Article 35(2) of the EU Treaty enabling national courts to submit a request for preliminary ruling to the ECJ regarding the interpretation of instruments adopted in the framework of Title VI of the EU Treaty, including Framework Decisions (See 7.4.1.9.).

8.3. RECOMMENDATIONS TO THE EUROPEAN UNION

Recommendation 29 - To consider the benefits of creating an EU practitioner guide to assist with best practice indicators for the proportionate and consistent application of this instrument, the proper completion of the EAW form, and to provide indicative examples of FD-compliant requests for further information (See 7.3.1.4. and recommendation 6).

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Recommendation 30 - To consider the benefit of inserting into the legal framework a proportionality requirement for the issuing of any EAW, while at the same time making it clear that this proportionality check should be conducted in the issuing State only (See 7.3.2.1.).



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ANNEX A

STATISTICS PROVIDED PURSUANT TO THE EVALUATION EXERCISE

I CYPRUS AS AN ISSUING STATE - 2005-2006

No. of EAW issued	60
No. of completed cases in which the person was extradited to Cyprus	8 (Germany, Spain, France, Hungary, Greece)
Number of issued EAWs which have been cancelled	4 (the wanted persons were arrested in Cy)

II CYPRUS AS AN EXECUTING STATE- 2005-2006

No. of acceptances of EAWs	34
No. of arrest warrants cancelled	3 (traced in the Requesting State)
No. of cases in which the person wanted was not traced	14
No. of EAWs that resulted in the effective surrender of the person sought	10
No. of cases in which the judicial authorities of Cyprus refused the execution of a EAW	1 (article 3(b) F.D. was applied by the Court)
No. of persons of those surrendered, who consented to such surrender	6
No. of persons of those surrendered, who did not consent to surrender	4

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ANNEX B

PROGRAMME OF VISITS

Wednesday 2 May 2007

09:15 Departure from Hilton Hotel
09:30 – 11:30 Ministry of Justice and Public Order
Welcome
General Presentation and Statistics
11:45 – 13:15 Visit to the Supreme Court in Nicosia
13:30 – 15:30 Lunch in the old Town
16:00 – 17:30 Meeting with members of the Parliamentary Law Committee and the Committee of European Affairs
17:30 – 19:00 Sightseeing walk in the old town
20:15 Departure from Hilton Hotel - Dinner

Thursday 3 May 2007

09:00 Departure from Hilton Hotel
09:15 – 11:45 Meeting with the representatives of the
Prosecution Office/Department C and the Office of Legal Cooperation E.U. and
International Police Cooperation Directorate of the Police Headquarters
12:00 – 13:00 Visit to the Cyprus Museum
13:30 – 15:00 Lunch
15:30 – 17:30 Meeting with the Attorney General of the Republic, Mr Petros Clerides
20:00 Departure from Hilton Hotel - Dinner

Friday 4 May 2007

08:30 Departure from Hilton Hotel
08:45 – 10:00 Meeting with the representative of the Cyprus Bar Association, Mr. Alexandros
Markides, former Attorney General of the Republic
10:15 – 12:30 Final meeting with representatives of the Ministry of Justice and Public Order and
the Office of the Attorney General and the Police
13:00 – 15:00 Lunch
15:30 – 17:00 Meeting with the District Judge of Limassol, Mrs Lia Marcou and the President of
the District Court of Nicosia and the Cyprus Association of Judges, Mr A.
Paschalides
Departures

LIST OF PERSONS INTERVIEWED

MINISTRY OF JUSTICE AND PUBLIC ORDER

Ms Elli Kanari-Morphaki, Senior Administration Officer
Ms Ioanna Anastasiades, International Legal Administrative Officer Cooperation Unit
Ms Maria Mounti, Administrative Officer

CYPRUS BAR ASSOCIATION

Mr Alexandros Markides, Former Attorney General of the Republic

LAW OFFICE OF THE REPUBLIC

Mr Petros Clerides, Attorney General of the Republic
Ms Eleni Loizides, Senior Counsel of the republic

POLICE HEADQUARTERS

Ms Elena Panayiotou, Criminal Investigation Department C'
Ms Photoula Mosphili, Central Bureau, Interpol of E.U. & International Police Cooperation Directorate

SUPREME COURT

Mr Artemidi, President of the Supreme Court

DISTRICT COURTS

Mr Andreas Paschalides, President of the District Court of Nicosia and the Cyprus Association of Judges
Ms Lia Markou, Dristric Judge of Limassol

HOUSE OF REPRESENTATIVES

Mr Jonas Nicolaou, President of the Parliamentary Law Committee

LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

ACRONYM ABBREVIATION TERM	EXPLANATION IN ENGLISH
CA	Central Authority
CID	Crime Investigation Department
EAW	European Arrest Warrant
EJN	European Judicial Network
FD	Framework Decision
JA	Judicial Authorities
MOKAS	Unit for Combating Money Laundering
MS	Member State
NCB	National Central Bureau of Interpol
SIS	Schengen Information System
