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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 THE CZECH REPUBLIC

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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 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. The Czech Republic is the twenty-second Member State to be evaluated during the fourth round of evaluations.
- 1.6. The experts charged with undertaking this evaluation were: Mr Stanislav Jakubčík (Prosecutor, Regional Prosecutor's Office in Zilina, Slovak Republic), Mr George Cremona (Police Inspector, International Relations Unit, Police General Headquarters, Malta) and Ms Tatiana Juverdeanu (Judge, Court of Appeal of Iasi, Romania). Two observers were also present: Ms Elena Dinu (Eurojust) and Mr Peter Korthenhorst (European Commission), together with the General Secretariat of the Council.

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

² 6206/06/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 16 to 20 June 2008, and upon the detailed and helpful responses of the Czech Republic to the evaluation questionnaire.
- 1.8. The report makes reference to differing processes in respect of arrest and prosecution cases only insofar as there is a divergence of practice between the two procedures.
- 1.9. The expert team's overarching purpose was to evaluate the distinct practical processes operated and encountered by the Czech Republic in its role both as issuing and as executing Member State and to assess relevant training provisions and the views of the defence, before moving on to conclude and to make such recommendations as the team 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

The Czech Republic judicial system comprises four layers of courts:

- 1 Supreme Court;
- 2 High Courts (in Prague and Olomouc);
- 8 Regional Court (including the Municipal Court in Prague);
- 89 District Courts.

All these courts may issue an EAW, whereas the decision on the execution of incoming EAWs falls within the competence of the regional courts. There is only one level of appeal against the regional courts' decisions, to the High Court. However, a complaint may be filed with the Constitutional Court at any stage of the EAW procedure against any act of any authority participating in it. The Supreme Court is competent to authorise the transit of persons surrendered on the basis of an EAW through the territory of the Czech Republic.

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The structure of the Public Prosecution Service follows that of the courts, i.e., there are 89 District Public Prosecutor's Offices, 8 Regional Public Prosecutor's Offices (including the Municipal Prosecutor's Office in Prague), 2 High Public Prosecutor's Offices and 1 Supreme Public Prosecutor's Office (hereinafter referred to as "the SPPO"). Specialised departments have been established within the High Public Prosecutor's Offices to deal with serious economic crime cases.

The Supreme Public Prosecutor is appointed (and may be removed) by the Government on the proposal of the Minister of Justice. He is the head of the Public Prosecution Service and, as such, may issue binding instructions of a general character to unify and streamline the work of all public prosecutors and public prosecutor's offices.

Public prosecutors have a monopoly on prosecution. In this regard, the public prosecutor supervises the pre-trial proceedings, submits the indictment and represents the public action before the court. In the Czech Republic criminal proceedings are governed by the principle of legality, which means that the public prosecutor is obliged to prosecute all offences reported to him, except in those cases expressly prescribed by the Code of Criminal Procedure. Prosecution may be discontinued or conditionally discontinued on certain grounds specified by the CCP. The SPPO is entitled to review all those cases where the prosecution is closed by decision of a public prosecutor.

The immediately superior public prosecutor's office supervises the work of the immediately subordinate public prosecutor's offices within its jurisdiction, and, within each public prosecutor's office, the chief public prosecutor supervises the work of the public prosecutors working for that office. This means that every public prosecutor is obliged to follow the written instructions of his immediate superior; should the former refuse to follow such instructions, he must justify it. If the immediate superior nevertheless insists on respecting the instruction, he may take the case and deal with it himself. In addition, the immediately superior public prosecutor may take over a case from a subordinate if the latter fails to act or causes unreasonably delays in the proceedings.

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The SPPO acts as a central judicial authority in international judicial cooperation in criminal matters. In this regard the public prosecutors of the SPPO's International Affairs Department are empowered, for instance, to send and receive MLA requests, coordinate execution of MLA requests in the whole territory of the Czech Republic, ask a public prosecutor to remove obstacles for the execution of an MLA request, conclude agreements concerning the setting up of a joint investigation team, and decide on the taking over of criminal proceedings upon the request of another State. The National Member to Eurojust is assigned to the SPPO. For EAW-related matters, the SPPO was designated as one of the central authorities to assist the judicial authorities.

Pursuant to Article 7(1) of the Framework Decision on the EAW, the Ministry of Justice was designated as one of the central authorities to assist the judicial authorities. The Ministry of Justice is also responsible for statistics on the EAW. Within the Ministry these tasks are performed by the International Department for Criminal Matters, which deals with judicial cooperation-related matters. The Minister of Justice is competent to decide on cases of conflict between an EAW and an extradition request.

The International Police Cooperation Division (IPCD), within the Police Presidium of the Czech Republic, is responsible for the international relations of the Czech Police. It acts as a central point for international police communication and coordinates the international activities of the Czech Police. The IPCD has nation-wide jurisdiction and directive powers over local police units (e.g. for the purpose of arresting a person). The IPCD includes the following units: the SIRENE Office, Interpol NCB, Europol, International Relations and IT and administrative support.

The Police Presidium of the Czech Republic was designated as central authority in application of Article 7(1) of the Framework Decision on the EAW. In practice this function is performed by the SIRENE Office.

2.2 THE LEGAL BASIS

Specific provisions on EAW procedures are to be found in Title Three - "Special provisions for the surrender of persons between the Member States of the European Union on the basis of a European Arrest Warrant", within Chapter Twenty-five - "Legal relations with foreign countries", of the Code of Criminal Procedure¹ (hereinafter referred to as "the CCP"), namely Sections 403-422. It has to be noted, however, that, pursuant to Section 403(3) of the CCP, the provisions of Title Two - "Extradition" (Sections 383-402) apply to EAW procedures where the provisions of Title Three do not stipulate otherwise, and that Title One includes a number of general rules (Sections 375-382), which in principle apply to Chapter Twenty-five as a whole unless provided otherwise in the relevant provisions².

The following are also of relevance:

- Act No. 537/2004 Coll. of 22 November 2004, amending Act No. 140/1961 Coll., the Criminal Code, as subsequently amended, and certain other acts, namely Chapter One - Amendment to the Criminal Code, Section 1(4), as to the removal of the statutory ban on surrender of Czech nationals³.
- Act No. 253/2006 Coll. of 19 April 2006, amending Act No. 141/1961 Coll. on criminal proceedings in court (the Code of Criminal Procedure), as subsequently amended, and certain other acts, namely Chapter Seven - Amendment to the Act No. 539/2004 Coll., Section VIII, as to the non-applicability of Chapter Twenty-five of the CCP for the surrender of Czech nationals for offences committed before 1 November 2004⁴.

¹ The Framework Decision on the EAW was transposed into Czech law by Act No. 539/2004 Coll. amending Act No. 141/1961 Coll. Code of Criminal Procedure, which came into force on 1 November 2004.

² This has an impact on EAW procedures. See chapter 4.6 below as regards "Violation of the Constitution and protection of State interests".

³ It reads: *"In Article 21 (of the Criminal Code), the following paragraph (2) is inserted after paragraph (1): "(2) A national of the Czech Republic may be surrendered to another Member State of the European Union only on the basis of a European Arrest Warrant."*

⁴ It reads: *"The Act No. 539/2004 Coll. amending Act No. 141/1961 Coll. Code of Criminal Procedure is amended as follows: Article II point 2 shall read: "The provisions of the Title III, Chapter Twenty Five shall not apply for the surrender from the Czech Republic to another Member State of the European Union relating to acts committed by Czech nationals before entry into force of this Act. The provisions of the Section 391 to Section 402, as amended by this Act, shall apply in this case""*.

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- Declaration by the Czech Republic to the Council of Europe 1957 European Convention on Extradition, in accordance with Article 28(3) thereof, of 14 January 2005¹.
- Regulation of the Ministry of Justice No. 258/2006 Coll., providing the form to be used by the Czech judicial authorities when issuing an EAW.
- Instruction of the Ministry of Justice No. 66/2004, on procedures applied by courts in mutual relations with European Union Member States concerning criminal matters.
- Instruction of General Nature of the Supreme Public Prosecutor (hereinafter referred to as "IGN") 1/2005, to govern procedures applied by public prosecutors performing the competencies of the Public Prosecutor's Offices in judicial assistance in criminal matters, as amended by IGN No. 3/2005 and the IGN No. 9/2006.

¹ It reads: *"In accordance with Article 28, paragraph 3, of the Convention, the Czech Republic notifies that, as from 1 November 2004, it enacted legislation implementing the Framework Decision of the Council of the European Union of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA; hereinafter "framework decision on the European arrest warrant"), which the Czech Republic considers a uniform law as provided for by Article 28, paragraph 3, of the Convention, and which the Czech Republic will apply in relation to Member States of the European Union, which also apply legislation implementing the Framework Decision on the European arrest warrant. The European Convention on Extradition and its two Protocols of 15 October 1975 and 17 March 1978 will continue to apply in relation to Member States of the European Union on extradition of persons sought for offences committed before 1 November 2004. The Czech Republic shall continue to apply Article 3 of the Treaty between the Czech Republic and the Slovak Republic on Mutual Assistance Rendered by Judicial Authorities and Regulation of Some Legal Relations in Civil and Criminal Matters, done in Prague on 29 October 1992, and Article XV of the Treaty between the Czech Republic and Austria on Supplementation to the European Convention on Extradition of 13 December 1957 and on Facilitation of its Application, done in Vienna on 27 June 1994, on whose basis the European arrest warrants and other documents are transmitted without translation into the official language of the requested State."*

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3. ORGANISATION AND PRACTICES - AS ISSUING MEMBER STATE

The Czech Republic issued 168 EAWs in 2006 and 435 in 2007¹, of these 125 and 66 respectively resulted in the effective surrender of the requested person².

3.1. THE DECISION TO ISSUE

The judicial authority competent to issue an EAW, in both prosecution and conviction cases, is the court competent for the underlying criminal proceedings³.

In pre-trial proceedings, EAWs may be issued only upon a proposal from the public prosecutor, whereas in court proceedings such a proposal is not necessary.

In practice EAWs are issued only if, on the basis of the existing investigations, there are firm grounds to believe that the person concerned is not in the territory of the Czech Republic and is located in another Member State, provided that penalty thresholds as laid down in the Framework Decision are reached and that a domestic arrest warrant, an international arrest warrant or an enforceable convicting judgment has been issued⁴. A domestic arrest warrant or an international arrest warrant and an EAW on that basis may be issued at the same time⁵.

¹ 11371/07 and 10330/08 - Replies to the questionnaire on quantitative information on the practical application of the European arrest warrant - Years 2006 and 2007.

² As to the significant increase of EAWs in 2007 compared with the previous calendar year, it has to be noted that prior to 1 July 2006 EAWs could not be issued for offences committed before 1 November 2004. As from that date, following an amendment to the implementing provisions, Czech courts are empowered to issue EAWs irrespective of the date of commission of the underlying offence.

³ 5403/05 - Council Framework Decision on the European arrest warrant and the surrender procedures between Member States - Notifications and declarations by the Czech Republic. Declaration to Article 6(3) reads: *"Authorities competent to issue a European arrest warrant in the Czech Republic are District, Regional and High courts, Municipal Court in Prague, Municipal Court in Brno and Supreme Court of the Czech Republic"*.

⁴ Section 405(2) of the CCP.

⁵ In that connection, Article 43(1) of IGN No. 1/2005 provides: *"If the accused is staying in a Member State and if it is necessary to request the person for the purpose of criminal prosecution against such person in the Czech Republic, the public prosecutor will file a motion to the court competent to hear the case to issue an arrest order according to Sec. 69 of the CCP or an arrest warrant according to Sec. 384 clause 1 of the CCP and the European arrest warrant on the basis thereof"*.

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It has to be noted that under Czech law a domestic arrest warrant or an international arrest warrant (and, subsequently, an EAW) may be issued only against a person who has the legal status of "accused", meaning that the decision on the initiation of criminal prosecution has been personally served to the person concerned¹. Only those cases in which a "procedure against a fugitive" has been instituted are excepted². This is an exceptional procedure³ that may be conducted against a person who evades criminal procedure after all legal means to summon him have been exhausted. In that connection, the judges interviewed stressed that finding that the person is staying abroad does not in itself constitute a basis for instituting this kind of proceedings, if his domicile is known: in that case serving the notification in the identified domicile, e.g. by means of an MLA request, should be tried first.

Pursuant to the CCP⁴, even if the abovementioned conditions are met, an EAW shall not be issued if the surrender "would entail costs or consequences for the Czech Republic that are manifestly disproportionate to the public interest in the person in question being criminally prosecuted or serving a custodial sentence", or "would be disproportionately detrimental to the person concerned compared with the advantage to be gained by criminal proceedings or the repercussions of the criminal offence, particularly in view of the person's age or social or family circumstances". There are no written guidelines or indicators to assist the judicial authorities in assessing such circumstances. In that connection, during the visit to the SIRENE office, information was given on EAWs issued by Czech authorities that do not match these criteria (e.g. EAWs issued for the service of documents). The comment was made that practitioners are in real need of simplified procedures for other forms of mutual legal assistance within the EU, for which the EAW could serve as a model.

¹ Only after the indictment has been delivered into the hands of the accused, is it possible to perform procedural acts that involve or could involve the presence of the accused or his counsel. The indictment must contain the identification of the accused, description of the act, legal qualification of the underlying offence, and justification and information concerning remedial measures.

² In the framework of such proceedings a defence counsel is appointed ex officio, the serving of documents on him having the same effect as if served personally upon the person concerned.

³ Sections 302 - 306a of the CCP.

⁴ Section 385.

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Even in those cases in which the EAW is sent directly to the executing judicial authority, an SIS alert and, where appropriate, a search via Interpol, are issued. Therefore all EAWs¹ are forwarded to the SIRENE office for entry of an alert². A copy of the EAW must also be sent to the MoJ for statistical purposes and to the relevant body within the Police responsible for the search for the requested person at national level.

3.2. VERIFYING THE POSSIBLE EXISTENCE OF MULTIPLE REQUESTS

There are four databases in the Czech Republic that provide information on wanted persons, namely the central database of prosecuted persons in the Czech Republic, the police national wanted persons database (PATROS), SIS and the ASF (Interpol database). Whereas the former is accessible to judges and public prosecutors through authorised persons at public prosecutor's offices and courts, the three latter are accessible via police. According to the information provided, in practice use is mainly made of the SIS and the ASF in connection with incoming EAWs, due to the practical nature and exhaustiveness of the information stored in these systems.

As already mentioned, all EAWs issued by the Czech courts must be sent to the SIRENE office for entry of an alert in the SIS. Upon receipt of the EAW, a check is made by the SIRENE officers to verify whether an alert has been already entered or whether there are requests for investigations or outstanding domestic arrest warrants against the requested person. If so, the issuing court is informed for further coordination with the other authorities interested in the requested person. There are no fixed criteria as to the further procedure to be followed in these cases; it depends on the assessment of the particular circumstances of the case by the authorities involved. In any event, if an earlier EAW issued for the same person is found, there are no means to merge it with the new one in a single unified EAW.

3.3. THE COMPLETION OF THE FORM/COURT PAPERS

An EAW may be issued by using the form provided for by Regulation of the Ministry of Justice No. 258/2006 Coll, which is the same as the annex to the Framework Decision.

¹ Any available translation of the EAW must also be forwarded.

² There are some cases, however, in which it is not considered necessary to declare a search, e.g. when the requested person is already in custody or serving a custodial sentence in the executing Member State.

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Pursuant to the CCP, in addition to the information specified in the Framework Decision, EAWs issued by the Czech authorities must include the relevant provisions on limitation, where appropriate together with a description of the acts affecting the expiry of the prescription period¹.

Written guidance to assist the judicial authorities in completing the EAW form has been prepared by the SIRENE office in cooperation with the MoJ and the SPPO, by means of a template produced on the basis of the official EAW form with explanatory notes providing advice on how to fill in the different sections of it ("bubble form"). A table has also been drawn up with the classification of the offences according to the Czech Criminal Code in relation to the categories listed in Article 2(2) of the Framework Decision.

The MoJ, the SPPO and the SIRENE office may provide individual assistance at the request of the judicial authorities concerned².

Completion of the EAW is the sole responsibility of the judge who issues it³. There is no screening procedure. It has to be noted, however, that when an EAW is received for entry of an alert, the SIRENE office checks whether the form is duly completed and, if some deficiency is found, it contacts the issuing court. According to the information provided during the interviews, judges usually follow the suggestions made by the SIRENE office.

¹ Section 405(2)(f) of the CCP reads: *"The European arrest warrant shall state:... the provisions on limitation together with a description of the acts affecting the expiration of the prescription period, if a period of more than three years has lapsed between the commission of the offence and the issuing of the European arrest warrant"*. Section 405(3) reads: *"... The European arrest warrant must also contain the provisions on limitation together with a description of the acts affecting the expiration of the prescription period, if a period of more than five years has lapsed between the validity of the sentence and the issuing of the European arrest warrant"*.

² 5403/05 - Council Framework Decision on the European arrest warrant and the surrender procedures between Member States - Notifications and Declarations by the Czech Republic: Declaration to Article 7(1): *'Ministry of Justice of the Czech Republic, Supreme Prosecutor's office of the Czech Republic and Police Presidium of the Czech Republic are the central authorities designated to assist the judicial authorities.'*

³ Section 405(1) of the CCP reads: *"... a European arrest warrant shall be issued... by the judge on a proposal from the public prosecutor in the case of preliminary proceedings or by the presiding judge in the case of court proceedings"*.

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No recurrent issues were reported in relation to the EAW form or any field of it in particular, apart from difficulties encountered in some cases with box (e) as to the space available for the description of the circumstances of the offence/s.

Guidance for issuing and using the EAW form is given in Instruction of the Ministry of Justice No. 66/2004¹. For the needs of public prosecutors, the SPPO issued IGN 1/2005, which includes detailed instructions on the intervention of public prosecutors and templates to be used by them in connection with, among others, EAW procedures.

3.4. TRANSLATION OF THE EAW

The translation of the EAW is a matter for the issuing court.

EAWs are issued by the Czech judicial authorities in Czech. Working translations for the needs of the SIS and Interpol requests are ensured by the SIRENE office itself. As a rule EAWs are translated only following notification that the requested person has been arrested in another Member State. A "preventive" translation is only produced if the whereabouts of the requested person in a specific Member State are known and the EAW is therefore communicated directly to the competent executing judicial authority, as well as in cases where the search must be ensured in the United Kingdom or Ireland. In practice, if there are particular indications for the possible location of the requested person, the SIRENE office also recommends the court to translate the EAW into the relevant language.

Downloadable versions of the EAW form in the official languages of the other Member States are available on the extranet of the MoJ. Instruction of the Ministry of Justice No. 66/2004 provides the list of languages in which other Member States accept an EAW.

¹ Instructions of the MoJ are not binding on judges.

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It should be noted that there are particular arrangements with Austria and the Slovak Republic, under which the Czech authorities are exempted from translating EAWs forwarded to those countries¹.

According to the information provided, the Czech Republic may face difficulties in providing language-compliant EAWs within the short deadline set by some Member States (Poland was expressly mentioned). In that connection the limited availability of certified interpreters for some languages was stressed. In the view of the Czech authorities this problem could be solved by adopting at EU level the rule that translation of the EAW should be undertaken by the executing State, or by standardising language requirements (e.g. by agreeing on one language that should be accepted by all Member States whereas bilateral arrangements on this matter would not be excluded). They are also in favour of setting a unified manageable deadline for the transmission of EAWs.

3.5. TRANSMISSION OF THE EAW

The transmission of the EAW to the competent authority in the executing Member State is the responsibility of the issuing court. In doing so the court may seek the assistance of the MoJ or the SIRENE office, especially if the case admits no delay or difficulties arise in the process.

The authorities competent for the receipt of EAWs in the different Member States are listed in Annex 3 to Instruction of the Ministry of Justice No. 66/2004. The addresses and contact data of those authorities are available on the extranet of the MoJ. The MoJ and the SIRENE office can also be called upon to provide their assistance in this matter. As a rule, the relevant data on the recipient authority are confirmed by the SIRENE office when it notifies the court of the arrest of the requested person.

The mode of transmission is determined by the law of the executing State².

¹ Article 3 of the Treaty between the Slovak Republic and the Czech Republic on Mutual Assistance rendered by Judicial Authorities and regulation of some legal relations in civil and criminal matters, done in Prague on 29 November 1992, and Article XV of the Treaty between the Czech Republic and Austria on supplement to the European Convention on Extradition of 13 December 1957 and on facilitation of its application, done in Vienna on 27 June 1994.

² Section 405(5) reads: "... the court shall transmit the European arrest warrant to the competent authority in the surrendering State in accordance with laws of that State...".

When the whereabouts of the requested person are not known and therefore the EAW cannot be transmitted directly to any specific executing authority, the SIRENE office ensures, immediately after notice of the arrest of the requested person has been given, the sending of a copy of the EAW in Czech or in any other available language, electronically or by fax, in an advance transmission for the information of the competent authority in the executing State.

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

Information was given on reports about specific cases in which a number of Member States queried an EAW that had been duly completed from the Czech Republic's point of view, for several reasons [e.g. inaccuracies in the information provided (FR), the concept of continuing offence applied in the executing Member State in relation to the penalty imposable to the offence/s underlying the EAW (SK)]. However, the Czech authorities' comments on recurrent issues focused mostly on the United Kingdom and Ireland. In that connection, a number of issues regularly raised by these two Member States were stressed in the replies to the questionnaire and during the evaluation visit, namely the following: the need to forward a language-compliant EAW (the Czech authorities noted that IE requires the written original) for the search of the requested person to be launched, the UK authorities' practice of requesting evidential material extracted from the case file in addition to the EAW form (in some cases setting extremely short deadlines for delivery), the practice of the UK and IE authorities of requesting extremely detailed information concerning the underlying offence or the underlying criminal proceedings, the practice of the UK and IE authorities of considering that the case of several EAWs issued by the same issuing Member State must be processed in the same way as a conflict of EAWs envisaged in Article 16 of the Framework Decision (therefore, only one being executed but not the others), and requests for the issue of a new EAW (UK).

According to the information provided, if any difficulty emerges as to the execution of an EAW, a solution is sought by the Czech authorities preferably by way of bilateral written contacts. Use has been also made of the European Judicial Network¹ and Eurojust to try to sort out such situations.

¹ Czech EJM national contact points are located in the MoJ and the SPPO.

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3.7. REQUESTS FOR FURTHER INFORMATION MADE BY EXECUTING MEMBER STATES

No instance was reported in which the Czech Republic had been unable to comply with such requests. It was noted that even in those cases in which the Czech authorities considered that a request for additional information exceeded the framework of the EAW, they chose to provide the information requested.

According to the information provided, requests for additional information, as well as the answers to them, are mostly sent either directly by fax or e-mail, or through SIRENE channels. In that connection the evaluation team was informed of the practice of the SIRENE office of anticipating the information required in some cases (e.g. when the text of the relevant provisions concerning in absentia cases is required).

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

As a general principle, the CCP determines that where a person is surrendered subject to a condition, that condition shall be complied with¹. In this regard, as to cases where the executing Member State surrenders an own national subject to a return guarantee, Section 405(6) of the CCP prescribes that the presiding judge of the court which tries the case shall, if the person is sentenced, forward the judgment to the executing Member State within 30 days of its taking effect together with a translation into the official language of that State. The Czech authorities explained, however, that the process will be carried out in accordance with the 1983 Council of Europe Convention on the Transfer of Sentenced Persons if the executing State so requires.

3.9. YOUTH SURRENDERS AND CORRESPONDING GUARANTEES

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

¹ Section 388(1) in connection with Section 405(6).

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3.10. GENERAL COMMUNICATIONS WITH THE EXECUTING MEMBER STATE

Although the principle of direct contacts between the Czech judicial authorities and their counterparts abroad is explicitly reflected in several provisions, it became clear from the replies to the questionnaire and the interviews during the evaluation visit that, in practice, SIRENE plays a relevant role as a conduit for the exchange of information between the authorities involved. It has to be noted that, in general, the authorities interviewed assessed very positively the work of the SIRENE office. In that connection, for instance, the Czech authorities proposed that the EAW be sent electronically in the form of a scanned copy by means of SIRENE and Interpol secured communication systems, as a means of solving the current problems associated with the delivery of written originals until SIS II comes into operation.

According to the replies to the questionnaire, the level of information about the progress of EAW procedures differs considerably from one Member State to another, although, in general, it is considered to be insufficient. The expert team was told that in most cases information is received by the Czech courts only as to the arrest of the requested person and the final decision on surrender.

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

The handover of the requested person is organised and coordinated by the SIRENE office. In that connection, the expert team was informed that it is the practice of the Czech courts to designate the SIRENE office under box (i) of the EAW form as the body responsible for all necessary practical arrangements for the surrender.

Surrender at the land border is carried out by the police unit responsible for the search of the requested person at national level, or by the escort unit of the Alien and Border Police Service. Surrender by air is carried out by a special unit of the Alien and Border Police Service (air marshals). The SIRENE office does not itself take part in the escort. Upon arrival in the Czech Republic, the person is brought before the competent court (prosecution cases) or taken into the nearest place of confinement (conviction cases).

Pursuant to the CCP, in prosecution cases the judge who issued the EAW must hear the person concerned and decide on his custody within 24 hours of the handover¹.

¹ Sections 387 and 405(6).

As to problematic experiences in this field, the Czech authorities noted the increasing number of cases in which the surrender could not take place due to the fact that the requested person was not in custody in the executing State and did not appear when summoned by the executing authority. Stress was also laid upon the high administrative demands of the whole operation, the lack of information on the progress of the EAW procedure (so that certain arrangements can be made in advance), the difficulties in providing travel documents for the surrendered person¹ and the impossibility of ensuring a direct air connection, as factors with a potential impact on compliance with the prescribed time limit for the surrender of the person.

Only one case was reported in which, due to logistical reasons (no seats available on the plane), the actual surrender could not take place within the prescribed 10-day deadline. According to the information provided, this case was solved by negotiating (with the mediation of Eurojust) an extension of the term with the executing State.

3.12. THE MECHANICS OF THE SURRENDER IN RESPECT OF REQUESTED PROPERTY

At the time of the evaluation visit no EAW with a request to seize and hand over property issued by the Czech authorities had been recorded.

3.13. CONFLICT OF EAWS/EXTRADITION REQUESTS. ONWARD SURRENDER

Only one case was reported of conflicting EAWs, which was still ongoing at the time of the evaluation visit.

No practical experience on onward surrender cases was recorded.

3.14. EXPENSES

At the time of the evaluation visit the Czech Republic had experienced no difficulty in respect of the payment of expenses associated with EAW procedures.

¹ According to the information provided, under Czech law, no ID documents are required for the requested person to enter the territory of the Czech Republic. However, problems remain with carriers unwilling to let the surrendered person on board without valid travel documents.

RESTREINT UE

3.15. MISCELLANEOUS COMMENTS

Speciality rule

Pursuant to Section 406(3) of the CCP, a person surrendered to the Czech Republic may not be prosecuted for a different offence committed prior to his surrender, except if he explicitly renounces the entitlement to the speciality rule or the executing State consents. On the other hand, the whole set of exemptions envisaged in Article 27(3) of the Framework Decision applies to the other restrictions inherent in the speciality rule (conviction and deprivation of liberty)¹.

4. ORGANISATION AND PRACTICES - AS EXECUTING MEMBER STATE

During the 2006 calendar year the Czech Republic received 99 EAWs and surrendered 49 persons based on an EAW. Of the persons surrendered, 34 consented to surrender and 15 did not. In 2007 the Czech Republic received 176 EAWs and surrendered 108 persons based on an EAW, 81 of whom consented to surrender². The Czech Republic refused to execute 11 EAWs in both 2006 and 2007³.

4.1. RECEIPT PROCEDURES

The authority competent for the receipt of the EAW is the regional public prosecutor's office in the jurisdiction where the requested person resides or is apprehended⁴.

¹ Section 406 of the CCP.

² 11371/07 and 10330/08 - Replies to the questionnaire on quantitative information on the practical application of the European arrest warrant - Years 2006 and 2007.

³ Detailed information on the grounds for refusal is provided in chapter 4.6 below.

⁴ Section 408(1) of the CCP.

RESTREINT UE

The means to transmit an EAW to the Czech Republic are not explicitly regulated by the CCP¹. According to the information provided, forwarding a signed EAW by fax is accepted for initiating proceedings. Usually this is done by the issuing State at the request of the SIRENE office in parallel with the notification about the arrest of the requested person. The authenticity of documents is verified by the SIRENE office in contact with its counterpart in the issuing State.

The Czech Republic accepts EAWs in Czech or accompanied by a translation into Czech. It must be an official translation by a certified interpreter. In relation to the Slovak Republic and Austria, EAWs are also accepted in Slovak and German respectively².

The original EAW, together with the translation into Czech, must be received within 40 days of the preliminary custody (this term may not be extended)³, and, in any event, before the court hearing on surrender.

4.2. INVESTIGATIONS CONCERNING THE LOCATION OF THE REQUESTED PERSON

During the visit to the SIRENE office the expert team was informed that all new SIS/EAW-based Interpol alerts are checked, irrespective of whether or not there is any indication that the requested person is in the Czech Republic. Upon receipt of the alert, the requested person's profile is run through all available police databases (police records, foreigners' register and asylum seekers) in order to find out whether or not he is located in the Czech Republic.

¹ However, Section 379 - "Service of requests and exchange of information" in Title One - "General Provisions", Chapter Twenty-five - "Legal relations with foreign countries", reads: *"(1) Bodies in the Czech Republic may initiate proceedings in accordance with this chapter on the basis of a request from a body in a foreign State delivered to them by telephone, fax or electronically in accordance with the relevant legal provisions, provided they have no doubts regarding its authenticity and the case does not allow for any delay. The original of the request must be submitted subsequently within the time limit stipulated by the requested body. (2) Requests within the meaning of this chapter may be sent to a foreign State or received from a foreign State also through the intermediary of the International Criminal Police Organisation ("Interpol") or by the Police Presidium of the Czech Republic, in particular where the case does not allow for any delay."*

² See footnote in chapter 3.4 above.

³ See chapter 4.3 below.

RESTREINT UE

When the whereabouts of the requested person have been established, or if the alert provides specific information regarding them, the SIRENE office contacts the locally competent police unit to verify such information and, where appropriate, to trace and arrest the requested person. In certain complex cases use is made of the Targeted Search Unit, with nation-wide competence.

If the EAW is forwarded directly to the public prosecutor, he will call on the SIRENE office to ensure that the search takes place. The latter, after confirming the validity of the EAW with its counterpart abroad, will proceed as stated above.

The SIS and the national police search database (where the EAW-based Interpol alerts are entered) are accessible to all police and customs units, as well as, indirectly (the so-called hit/no hit system, without notification of the source of entry), to the municipal and communal police and the army police.

4.3. ARREST PROCEDURES/FIRST HEARING

Arrest procedures

A person may be arrested on the basis of an EAW/SIS alert/EAW-based Interpol alert following an order by the local competent public prosecutor. Only if the case is urgent and the public prosecutor's order cannot be obtained in advance, may the requested person be arrested by any police officer without a prior order from the public prosecutor, who must be notified promptly¹.

Pursuant to Section 395(1) of the CCP, the requested person may be arrested if there are "*grounds for custody*", meaning by that, according to Article 48 of IGN 1/2005, reasons for "*provisional custody*" pursuant to Section 396(1) of the CCP (detention pending decision on the EAW: see below), i.e. "*if the facts established give rise to fear that the person may flee*"².

¹ Sections 395(1) and 410 of the CCP. Pursuant to the latter, Sections 395 and 396, under Title Two - "Extradition" shall apply likewise to EAW procedures.

² In domestic procedures, under Section 67 of the CCP, additional grounds apply (namely the concern that the accused will affect the witnesses or co-defendants, or otherwise frustrate the clarification of circumstances significant for the criminal prosecution, or that he will repeat or complete the criminal activity for which is being prosecuted), and consideration must be given in deciding this issue to whether the purpose of custody can be achieved by any other measure in view of the circumstances of the case (with regards to the person of the accused, and the nature and gravity of the criminal offence).

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Following apprehension the requested person is questioned by the police, and a report is drawn up that must be forwarded, together with any available relevant material, to the public prosecutor. The public prosecutor may set the requested person free if he considers that, on the basis of all available information, the conditions for provisional custody are not met; otherwise, within 48 hours of the arrest, the requested person must be handed over to the Regional Court in the territory where he was arrested, and a provisional custody proposal must be submitted by the public prosecutor.

The court shall take a decision after it has heard the requested person. As already stated, pursuant to the CCP, the only ground for ordering provisional custody is the risk of absconding. The decision of the Regional Court may be appealed against in the High Court.

Provisional custody is not subject to any specific time limit: it lasts until a decision is taken on the execution of the EAW. However, the requested person shall be released if a language-compliant EAW is not received within 40 days of his being taken into custody¹.

Pending the decision on surrender, restraining measures more lenient than provisional custody may be applied². The evaluation team was told, however, that the Czech authorities seldom agree to do that, since, according to their practical experience, in most cases in which the EAW procedure was conducted without the requested person being kept in custody, the latter did not appear before the court again, thereby frustrating the execution of the EAW.

First hearing

Pursuant to the CCP, following arrest of the requested person a "preliminary investigation" is carried out by the public prosecutor with a view to ascertaining whether the conditions for surrender are met. The public prosecutor is under a statutory obligation to hear the requested person in connection with the EAW during this phase³, although in doing so he is not subject to any deadline.

¹ Section 396(5) of the CCP.

² Pursuant to Section 396(5) of the CCP, the public prosecutor shall, on his own or on a proposal from the person concerned, release the latter if the reasons for custody no longer obtain.

³ Section 409(2) of the CCP.

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

Assessment of the content of the EAW form is carried out by both the public prosecutor (within the framework of the preliminary investigation) and the court (in the course of the trial phase). No formal process exists for such a check.

There is no specific provision on these matters other than Article 47(5) of IGN 1/2005, according to which public prosecutors are obliged to request the necessary additional information from the issuing authority, whenever they come to the conclusion that the EAW is not sufficient to file a motion to surrender the requested person. It is within the powers of the courts to require from the issuing authority any information/clarification which they consider necessary for trying the case.

According to the information provided, requests for additional information are usually transmitted directly to the issuing authority or channelled via SIRENE. Instances in which Eurojust or the SPPO intervened were also reported. The same linguistic regime as for EAWs applies.

As to the most common grounds for these requests, the Czech authorities reported instances of unclear or unsatisfactory description of the acts, also in connection with the provision of the guarantees referred to in Article 5(1) and 5(3) of the Framework Decision, as well as of information on circumstances that might be taken into consideration in assessing the issue of the statute of limitations.

At the time of the evaluation visit only one case (with France) was recorded in which the EAW had not been executed on the basis that the issuing authority had not provided the required additional information (namely, the justification that the judgment was final, in relation to the allegation of the requested person that a legal remedy had been duly filed).

4.5. THE SURRENDER DECISION

The decision on surrender falls within the competence of the Regional Court covering the area where the requested person resides or is apprehended. The court decides on the question of surrender in public session upon a proposal by the public prosecutor following completion of the preliminary investigation¹. However, the public prosecutor may "*return*" the EAW to the issuing authority without referring the case to the court in certain cases specified in Section 406(3) of the CCP, namely if:

- a) the requested person has died;
- b) in accordance with the legal system of the Czech Republic, the requested person may owing to his age not be held criminally responsible for the acts underlying the EAW;
- c) it is not possible to arrest the requested person;
- d) the requested person is located outside the territory of the Czech Republic, or his whereabouts are not known;
- e) the EAW was served after the legal validity of a decision on the surrender of the requested person or on his extradition;
- f) the surrendering Member State has not given the consent required by Section 421(1) of the CCP for onward surrender from the Czech Republic to another Member State;
- g) the extraditing third country has not given the consent required by Section 421(3) of the CCP for onward surrender from the Czech Republic to another Member State, where such a consent is necessary, or
- h) the criminal prosecution, custodial sentence or detention order is statute-barred in the issuing State.

The CCP does not provide a deadline for the preliminary investigation by the public prosecutor, whereas, in principle², a decision on the execution of the EAW must be issued by the court within 60 days of the arrest of the requested person. During the visit to the Regional Court in Ostrava the judges interviewed explained that there were cases in which difficulties arose in complying with the abovementioned deadline due to the late referral of the file to the court.

¹ Section 411(1) of the CCP.

² In line with the Framework Decision, Section 411(12) of the CCP provides that in exceptional circumstances the court may extend the deadline for taking a decision on surrender by a further 30 days.

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If a decision is issued that the requested person must be surrendered, the court is under a statutory obligation to take the latter into "*transfer custody*" until the actual surrender takes place¹.

The Regional Court's decisions on surrender and on transfer custody may be appealed against in the High Court with suspensory effect².

Summary transfer proceedings in consented cases

Pursuant to the CCP³, when hearing the requested person in the course of the preliminary investigation, the public prosecutor must inform him of the possibility of consenting to surrender and of renouncing entitlement to the speciality rule, as well as of the consequences of this.

Consent to surrender (and renunciation of entitlement to the speciality rule) becomes legally effective only if given before the court and put on record. This may take place at any time during the preliminary investigation; in practice, as a rule, the consent of the requested person is already sought during the court hearing on provisional custody. Once given, consent to surrender cannot be revoked.

¹ Section 411(4) of the CCP. This provision reads: "*If the competent court decides that the requested person is to be surrendered, it shall take the person into transfer custody, if it has not already done so in accordance with Section 410... (if) the person concerned was already in provisional custody in accordance with Section 410, the court shall decide to convert this custody into transfer custody*".

² Section 411(5) of the CCP.

³ Section 409(2).

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In these cases the decision on surrender must be issued by the court within 10 days of the declaration of consent being made¹, although in exceptional circumstances this time limit may be extended by a further 30 days. It has to be noted that consent to surrender does not make the grounds for refusal envisaged in Articles 3(2), 4(2), 4(3), 4(5) and 4(6) of the Framework Decision avoidable (this covers almost the whole list of grounds for refusal laid down in the implementing legislation). Therefore the preliminary investigation by the public prosecutor must be completed and the case must be tried by the Regional Court in accordance with the procedure described above². This may have an impact on the duration of the proceedings and the possibility of complying with the prescribed time limit for a decision on surrender, especially if consent is given at a very early stage (e.g. when the person appears before the court for the hearing on preliminary custody) and/or an appeal is lodged.

According to the information provided, consent to surrender and renunciation of entitlement to the speciality rule are not linked and are dealt with separately.

4.6. REFUSALS TO SURRENDER

In 2006, the Czech Republic refused execution of an EAW in 11 cases. According to the information provided³, the grounds for refusal were: the act underlying the EAW was not punishable under Czech law; the requested person was a Czech national (conviction cases); the existence of domestic proceedings for the same act; the requested person was not located in the territory of the Czech Republic.

¹ Section 413(4) of the CCP.

² Section 413(3) of the CCP reads: *"If the requested person makes a declaration in accordance with paragraph 1, the provision of Section 411 shall apply mutatis mutandi. The court shall refuse the surrender of the requested person only in the cases listed in Section 411(6)(c) -it corresponds to Articles 3(2), 4(3) and 4(5) of the Framework Decision-, (d) -it corresponds to Article 4(2) of the Framework Decision- and (e) -it corresponds to Article 4(6) of the Framework Decision-".*

³ 11371/07 - Replies to the questionnaire on quantitative information on the practical application of the European arrest warrant - Year 2006.

RESTREINT UE

In 2007 the execution of an EAW was refused by the Czech Republic in 11 cases, on the following grounds¹: the act underlying the EAW was not punishable under Czech law (1 case); the requested person was a Czech national and the act underlying the EAW was committed before 1 November 2004 (4 cases); the requested person was a Czech national and the EAW was issued for the purpose of executing a custodial sentence (2 cases); and the existence of domestic proceedings against the requested person for the same acts (4 cases).

All grounds for non-execution envisaged as optional in the Framework Decision have been implemented as mandatory in the CCP, with the single exception of the ground relating to territoriality of Article 4(7) of the Framework Decision, which has not been explicitly incorporated into Czech law.

The mandatory ground for non-execution relating to minors of Article 3(3) of the Framework Decision has been listed as one of the instances in which the EAW must be "returned" by the public prosecutor upon completion of the preliminary investigation².

Violation of the Constitution and protection of State interests

Pursuant to Section 377 - "Protection of State interests" of the CCP, "*a request from a body in a foreign State may not be complied with if handling it would violate the Constitution of the Czech Republic or any provision of Czech Law that applies unconditionally or if handling the request would damage some other significant protected interest of the Czech Republic*". This provision is included in Title One – "General provisions" of Chapter XXV, and therefore applies to EAW procedures. When questioned on the impact of this provision on such procedures, the officials interviewed explained that this matter is subject to interpretation by the courts. They indicated that, according to the Czech Constitutional Court, Section 377 of the CCP refers mainly to the interest of the State that no violation occurs to the fundamental rights, as enshrined in the Czech Constitution.

¹ 10330/08 - Replies to the questionnaire on quantitative information on the practical application of the European arrest warrant - Year 2007.

² Section 409(3)(b). See chapter 4.5 above.

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Czech nationals

Surrender of Czech nationals is guided by two principles:

- No surrender for offences committed before 1 November 2004¹;
- A Czech national may be surrendered on the basis on an EAW only on the condition of reciprocity².

It has to be noted that the Czech system follows the principle of active personality, whereby, in the case of non-surrender, the Czech authorities will initiate prosecution or enforce the sentence passed against an own national who committed a crime abroad, provided that the double criminality standard is met and that a request by the issuing State which meets the conditions laid down in the relevant provisions is submitted.

Additional limitations on the surrender of own nationals stem from the Czech Constitutional Court's decision on the constitutionality of surrender of Czech citizens based on an EAW³. In line with what has been already mentioned, the Constitutional Court explicitly indicates the possibility of refusing the surrender of an own national pursuant to Section 377 of the CCP in connection with Article 1(3) and recital 12 of the Framework Decision⁴, if the surrender would be in breach of the fundamental rights of Czech citizens, as enshrined in the Constitution.

¹ Article II of the Act No. 539/2004 Coll. as amended by Article VIII of Act No. 253/2006 Coll. of 19 April 2006, amending Act No. 141/1961 Coll. Code of Criminal procedure as subsequently amended.

² Section 403(2) of the CCP.

³ Decision of the Constitutional Court No. Pl. US 66/04, of 3 May 2006.

⁴ None of these have been converted into an explicit ground for non-execution in the CCP.

RESTREINT UE

Furthermore, according to the Constitutional Court, Section 377 of the CCP should be interpreted in light of Article 4(7) of the Framework Decision, meaning that a Czech citizen (or permanent resident in the Czech Republic) *"should not be surrendered to another Member State on suspicion of a crime that is alleged to have been committed on the territory of the Czech Republic, except in cases where, in view of the special circumstances under which the crime was committed, it is necessary to give precedence to conducting the criminal prosecution in the foreign State, for example because it may be difficult to determine the actual situation regarding conducts that, for the most part, took place abroad, so that a prosecution in the member State in question would in such a case be more appropriate than a prosecution in the Czech Republic"*¹. However, the Constitutional Court declared that remote crimes (e.g. cyber crimes) where the tort is caused by an activity which is not a criminal offence under Czech law fully fall under the principle of territoriality, and therefore the EAW should be refused in such cases.

Statute of limitations according to the law of the issuing State as a ground for the return of the EAW

As already mentioned, the EAW must be returned by the public prosecutor to the issuing authority upon completion of the preliminary investigation in a number of cases listed in the CCP. This "return" of the EAW has the same consequences in practice as a decision by the court not to execute an EAW, since in such instances a decision by the court on the execution of the EAW does not follow.

Territoriality

As already mentioned, the CCP does not provide explicitly for the non-execution of EAWs on the ground that the underlying act was committed in the territory of the Czech Republic. There seem not to be major problems in practice in surrendering the requested person in cases where the crime has been committed partly in the Czech Republic and partly abroad, if the issuing State is better positioned to prosecute. In that connection, the approach of the Czech Constitutional Court on this issue as described above should be noted.

¹ § 112 of Decision of the Constitutional Court No. Pl.US 66/04, of 3 May 2006.

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4.7. APPEAL PROCEDURES AND THEIR IMPACT ON TIME LIMITS

The Regional Court's decision on surrender (even in those cases in which the requested person consented to be surrendered) may be appealed against in the High Court within three days of its announcement. The appeal is adjudicated by a panel of three judges in closed session, although the prosecutor and the requested person may be asked by the court to express their opinion. In adjudging the appeal, the High Court may either confirm the Regional Court's decision, or revoke it and issue a new decision of its own, or refer the case back to the Regional Court to remedy any deficiency encountered in the procedure (usually in relation to the production of evidence).

Whereas the time limits for the decision on the execution of the EAW envisaged in the CCP are in line with the Framework Decision, it is not clear from the wording of the relevant provisions whether those time limits refer to the decision-making of the Regional Court, or if they also include the time necessary for the decision of the High Court in the event of an appeal¹.

Moreover, pursuant to Section 415(3) of the CCP, a complaint may be filed with the Constitutional Court against any act of the authorities participating in the EAW procedure. During the time that the Constitutional Court is considering the case, the deadline prescribed for issuing a decision on surrendering the requested person will be suspended.

4.8. OWN NATIONALS AND YOUTH ARREST AND SURRENDER ISSUES

Own nationals

The Czech Republic opted for regulations applying both Article 4(6) and Article 5(3) of the Framework Decision. Such provisions apply to Czech nationals and permanent residents.

¹ Section 411(11) of the CCP reads: "*The court shall decide...*". As to summary transfer proceedings in case of consent of the requested person to surrender, Section 413(3) reads: "*The decision on surrender... shall be issued by the court...*".

RESTREINT UE

Conviction cases. Pursuant to Section 411(6)(e) of the CCP, surrender shall be refused if the requested person has stated on record in court that he refuses to submit to the enforcement of the judgment underlying the EAW in the issuing State. In such a case, the court shall inform the relevant authority in the issuing State and invite it to send, within 30 days, an authenticated copy of the enforceable judgment together with a translation into Czech for recognition and enforcement¹. After receipt, the sentence imposed in the issuing Member State shall be recognised and converted following the procedure established in the CCP². The Czech authorities explained, however, that the process will be carried out in accordance with the 1983 Council of Europe Convention on the Transfer of Sentenced Persons if the issuing State so requires.

Prosecution cases. Pursuant to Section 411(7) of the CCP, the court shall make the surrender subject to the proviso that the person will be returned to the Czech Republic for enforcement of the sentence passed against him if he does not consent to the enforcement of it in the issuing State. The return guarantee must be provided by the issuing State before the court makes its decision. Pursuant to IGN No. 1/2005³, it is for the public prosecutor to request such a guarantee in the course of the preliminary investigation. The Czech authorities explained that the guarantee had always been provided so far, although in most cases it was necessary to ask for further specification, since the request was not always understood correctly. In order to avoid such a situation, the SIRENE office informs the issuing authority, already when notifying a hit, of the need for such a guarantee and, on request, provides the text of it.

Once the court is notified of the sentence passed against the requested person, it will call on the relevant authority in the issuing State to send an authenticated copy of the enforceable judgment together with an official translation into Czech for the purposes of recognition and enforcement⁴. After receiving it, the court will proceed as stated above for conviction cases.

The Czech authorities recognised difficulties in monitoring the fulfilment of the return guarantee in cases of this kind which had occurred so far, due to the lack of information by the issuing authorities on the state of the proceedings.

¹ Section 417(1) of the CCP.

² Section 417(4) of the CCP.

³ Article 47(6).

⁴ Section 417(3) of the CCP.

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Youth surrenders

At the time of the evaluation visit no issues had been reported¹.

4.9. ACCESSORY SURRENDER

There is no provision allowing surrender on the basis of an EAW in respect of offences which do not meet the penalty thresholds laid down in the Framework Decision. At the time of the evaluation visit no case was recorded in which an EAW had been refused on this ground.

4.10. SPECIALITY

No specific issues in relation to this matter were reported.

4.11. ONWARD SURRENDER/EXTRADITION

No difficulties arising from this issue were reported.

4.12. TEMPORARY/CONDITIONAL SURRENDER

At the time of the evaluation visit there were no reports about actual instances of conditional surrender.

4.13. THE MECHANICS OF SURRENDER (INCLUDING TEMPORARY AND CONDITIONAL SURRENDER) OF REQUESTED PERSONS

As soon as there is a final decision on surrender the SIRENE office contacts its counterpart (or other competent authority in non-SIS Member States) in the issuing State, to organise the physical surrender. If the person has to be surrendered to a neighbouring country, the handover takes place at the border in the place and on the date fixed by the SIRENE office. Surrender by air is always at the international airport in Prague on the date agreed with the issuing State's authorities, based on the available flights.

¹ According to Section 11 of the CCP, a person who had not reached the age of 15 at the time when the offence was committed may not be held criminally responsible.

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The SIRENE office requests the competent court to issue the necessary documents for the release of the person from custody, and organises the escort of the wanted person to the border/airport. The escort between the place of confinement of the person to be surrendered and the prison nearest to the particular border/airport is carried out by the Prison Service; the escort from the latter to the border/airport is executed by the Police. In case of surrender by air, a representative of the SIRENE office is present throughout the process at the airport; he coordinates all steps and also supports the foreign escort during its stay in Prague.

The foreign escort receives from the Czech side the information on the duration of the detention, as well as a sealed medical report and the packed property of the person surrendered, with a list of belongings. All this is reflected in a protocol recording the surrender signed by the Czech official and the foreign escort. This protocol is handed over to the Regional Court after the person has left the Czech Republic.

4.14. CONFLICT OF EAWS/EXTRADITION REQUESTS

The implementing provisions in the CCP are in line with the Framework Decision.

4.15. EXPENSES

At the time of the evaluation visit no issues had been reported in respect of the payment of expenses associated with EAW procedures.

4.16. MISCELLANEOUS COMMENTS

Prohibitive validity flags

Pursuant to the CCP¹, the cases in which the SIRENE office may, on its own, add a restrictive validity flag to an Article 95 alert are to be determined by instruction of the SPPO. In that connection, the following instances were identified by Instruction of the SPPO of 3 September 2007: when the requested person could not be considered criminally responsible due to his age, and, if the alert refers to a Czech national, when the offence was committed prior to 1 November 2004. According to the information provided, in those cases in which a prohibitive validity flag is added, the locally competent police authorities and public prosecutors are notified by the SIRENE office.

¹ Section 408a.

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Transit cases

The Czech Republic designated the Supreme Court as the authority responsible for receiving transit requests and related documents¹. During the visit to the SIRENE office, the expert team was informed that difficulties in obtaining transit authorisation within the prescribed time limits for physical surrender arise from the processing of the corresponding request by the Supreme Court.

5. TRAINING PROVISIONS

Training for judges and public prosecutors

The Judicial Academy is in charge of the training of judges and public prosecutors. It comes under the Ministry of Justice and has 8 branches distributed throughout the Czech Republic.

According to the information provided, there is a module on international judicial cooperation in the first and the third year of the regular programme for trainee judges and prosecutors, where the topic of the EAW is included. This topic is also included in a training module for trainers.

In 2005, when the application of the EAW started in the Czech Republic, the International Department of the SPPO organised one-day training seminars in all Regional Public Prosecutor's Offices, in which public prosecutors, judges and police officers participated. Throughout 2008 it is envisaged to hold a refresher training with the same target groups in all regional court districts.

A network of public prosecutors specialised in judicial cooperation matters was established in 2002 and meets every 6 months. A number of meetings of this network to date have been focused on the practical application of the EAW².

The lecturers on these training courses are mainly experts from the International Department of the SPPO, the Ministry of Justice and the SIRENE office. Foreign lecturers as well as the National Member to Eurojust have also participated.

¹ 5403/05 - Council Framework Decision on the European arrest warrant and the surrender procedures between Member States - Notifications and declarations by the Czech Republic. Declaration on Article 25(2).

² A network of judges specialised in these matters has been recently set up; they met for the first time in January 2008.

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As to language training, the Judicial Academy organises training on English, French and German legal terminology. It does not organise general language training. It has to be noted, however, that according to the information provided in the replies to the questionnaire, judges and prosecutors show little interest in participating in such activities.

Training for SIRENE staff and police officers

The SIRENE office itself organises continuous training of its staff. It also organises training of police officers on these matters. According to the information provided, in connection with the launching of the SIS, large-scale training of all Czech police officers was performed, including the topic of the EAW.

Information on the issue of EAWs is available for all police officers on the intranet of the SIRENE office.

6. DEFENCE PERSPECTIVES

The requested person is entitled to receive legal assistance from the moment he is arrested. The participation of a defence lawyer in EAW procedures is mandatory. Therefore, if the requested person does not choose a defence counsel on his own, one will be appointed by the court, at the latest upon the initiation of the hearing on provisional custody. The rights and duties of defence counsels are expressly envisaged in the CCP.

The expert team had the opportunity to meet a representative of the Czech Bar Association who had appeared as defence counsel in EAW cases. During the interview, details were given as to the legal and linguistic assistance regime in EAW procedures. According to the information provided there are hardly any lawyers specialised in judicial cooperation matters. Where the requested person needs to have a defence counsel appointed, this is allocated by the court in alphabetical order from a list of lawyers within its jurisdiction who are interested in criminal cases. The lawyer interviewed assessed positively the system put in place in the Czech Republic for the payment of pro-deo defence lawyers intervening in EAW cases, stressing that fees are much higher than for domestic cases.

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As to linguistic assistance provided in EAW procedures, the lawyer interviewed considered that there was no problem in practice. He made it clear that not only those provided by the court but also interpretation services arranged by the defence counsel may be used.

When questioned about the functioning of the EAW in practice, the lawyer interviewed indicated that time limits are problematic in the Czech Republic. Incompleteness/lack of necessary information was identified as the most common ground for appeals in the High Court.

7. CONCLUSIONS

The expert team acknowledges the high level of preparation of the visit. The experts appreciated the frankness and professionalism of the practitioners and officials interviewed. Their comprehensive replies, together with the high quality presentations and information materials received, enabled the team to achieve the objective of the visit and get an overall picture of the implementation of the EAW in the Czech Republic.

7.1. GENERAL CONCLUSIONS

Implementing legislation

7.1.1. The Czech Republic's transposing legislation is mostly in line with the Framework Decision. However, notable divergences can be observed as regards an issue that is crucial for the functioning of the system, i.e. the surrender of nationals. In this regard, certain limitations apply under Czech law that go far beyond those permitted by the Framework Decision.

7.1.2. Although extradition and EAW procedures are regulated separately in the Code of Criminal Procedure, general provisions governing the former apply partly to the latter and provisions on extradition apply in a subsidiary manner to EAW procedures¹. This way of legislating not only weakens the impression that these two systems are radically different from each other, but may also lead to misunderstandings as to the applicability to the EAW of certain provisions rooted in the old extradition system. Furthermore, in this situation, the judicial authorities may automatically fall back on extradition legislation and case-law when provisions relating to the EAW are not completely clear to them, whereas in such a situation the development of specific case-law or even amending the legislation would help to find a solution more in line with the Framework Decision.

¹ Section 403(3) of the CCP.

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Procedures

7.1.3. In general the procedures put in place under Czech law are adequate for the purposes of the Framework Decision. However, certain elements may be identified that could diminish the efficiency of the system, such as the requirements for issuing an EAW, legal remedies in proceedings leading to a decision on surrender, and the procedure to be followed when the person consents to surrender.

Practice

7.1.4. Practitioners have a very positive opinion of the EAW. They consider it as a very efficient instrument and are aware of its advantages compared with the extradition system.

7.1.5. Although the EAW is seen as a necessity imposed by the level of integration reached in the European Union, the number of EAWs issued by the Czech authorities appears to be low. This fact deserves further consideration in light of the geographical situation of the country and the suppression of border controls following accession to the Schengen area.

7.1.6. In the Czech system a wide variety (geographical and institutional) of (judicial) authorities play a role in EAW procedures. This may carry the risk that divergent practices will develop. Furthermore, one may fear, in connection with the relatively low number of EAW cases, that most prosecutors and judges will not be able to gain experience in this field. However, this risk is diminished by the active role played by the Ministry of Justice, the Supreme Public Prosecutor's Office and the SIRENE office in providing expertise and assisting judges and prosecutors in these matters, as well as by others mechanisms developed within the judiciary [specialised panels (e.g. in the High Court of Olomuc), regular meetings of the high courts to discuss EAW practice, existence of judges' and prosecutors' specialised networks].

7.1.7. The close relationship and collaboration among all bodies involved in EAW proceedings, including the National Member to Eurojust, are remarkable and contribute to the smooth operation of the system. The active role of the National Member to Eurojust in these matters is backed by his legal status at domestic level and enhanced by his assignment in the Supreme Public Prosecutor's Office.

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7.1.8. As to relations with other Member States, the authorities in the Czech Republic appear to be coordinated and flexible in their approach, trying to assist them where possible.

7.1.9. Whereas direct contact between the Czech judicial authorities and their counterparts abroad are not rare, the SIRENE office plays a key role as a conduit for the exchange of information, as well as in removing obstacles and clarifying problems that arise in the process. The work of SIRENE is supported by a noteworthy user-friendly IT system (EVIN).

7.1.10. The extensive training programme on EAW offered to judges and prosecutors must be commended. The expert team considers however that the linguistic capacities of judges and prosecutors should be improved as a means to enhance direct contacts with foreign colleagues.

7.2. CONCLUSIONS IN RESPECT OF THE CZECH REPUBLIC'S ACTIVITIES AS AN ISSUING MEMBER STATE

7.2.1. Issues

7.2.1.1. Conditions for issuing an EAW

The process leading to the issue of an EAW appears to be particularly complicated in the Czech Republic.

An EAW may not be issued for the arrest of a suspect. Initiation of criminal prosecution does not suffice either. An EAW can only be obtained for a person who has the legal status of "accused" (meaning that the person to whom the decision on the initiation of criminal prosecution relates has been personally notified) or has been legally declared as "fugitive" after all legal means to summon him have been exhausted. This may cause unnecessary delays, especially in cases where the individual cannot be found immediately after the crime. Moreover, if the person is found to be abroad, service of the decision instituting prosecution has first to be tried by means of MLA, which in the view of the expert team might facilitate the absconding of perpetrators. In purely domestic cases such a risk is diminished by the possibility of apprehending the person simultaneously with the delivery of the notification based on the "preliminary consent to the arrest" by the public prosecutor; a similar possibility in an EAW case does not exist.

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On the other hand, as to the material grounds for issuing an EAW in relation to persons whose whereabouts are not known, it is the practice of the Czech judicial authorities not to issue an EAW unless there are relevant indications that the individual is located in another Member State. This results in a situation that ignores to a great extent the reality of open borders within the European Union, especially after 21 December 2007, when the Czech Republic joined the Schengen area.

The expert team is of the opinion that all these circumstances put together may jeopardise the efficiency of the EAW and that this may have an impact on other Member States.

7.2.1.2. Timely provision of language-compliant EAWs

During the interviews the Czech authorities reported difficulties in providing the EAW duly translated within the tight deadline set by some Member States. This issue is associated with the limited availability of interpreters for certain languages.

The expert team shares the Czech authorities' view that steps should be taken towards standardisation of language requirements and time limits for the transmission of EAWs, as a means to improve the efficiency of the system as a whole.

7.2.1.3. Speciality rule

There is a problem at national level in connection with this issue concerning the exchange of information between the authorities active in criminal procedures. The expert team was informed that, in conviction cases, the prison authorities do not keep specific records on the fact of the surrender indicating that the person cannot be prosecuted or sentenced for acts other than those for which he was surrendered. In this situation, there is a risk that the speciality rule may be violated when other authorities involved in criminal proceedings do not have such information to hand. Although the officials interviewed explained that this issue is addressed in training activities, with a view to promoting the practice amongst police and public prosecutors of checking for a previous surrender with the SIRENE office and the Ministry of Justice, it seems that in such cases the operation of the speciality rule in practice relies solely on the fact that the surrendered person raises this question.

7.2.2. Good practice

7.2.2.1. Proportionality test

In issuing an EAW the Czech judicial authorities are under a statutory imperative to apply a proportionality test, based on the circumstances expressly identified in the relevant provision¹. It has to be noted, however, that there are no indicators, guidelines or best practice to assess the appropriateness of submitting a motion to issue an EAW/issuing an EAW in the light of such legal criteria.

7.2.2.2. Guidance for the completion of the EAW form

A series of instruments, in the form of Instructions of the Ministry of Justice, Instructions of a General Nature of the Supreme Public Prosecutor's Office and methodological tools, have been produced to assist the judicial authorities in using and filling in the EAW form. Particular mention has to be made of the "bubble form" prepared by the SIRENE office in cooperation with the Ministry of Justice and the Supreme Public Prosecutor's Office². The project on a European Handbook on how to issue an EAW has been inspired by this approach.

7.3. CONCLUSIONS IN RESPECT OF THE CZECH REPUBLIC'S ACTIVITIES AS AN EXECUTING MEMBER STATE

7.3.1. Issues

7.3.1.1. Surrender of Czech nationals

This is the most problematic issue in relations with other Member States, since additional restrictions apply under Czech law that are not at all in line with the Framework Decision, namely that Czech nationals will not be surrendered for offences committed before 1 November 2004, and that surrender of Czech nationals is subject to the condition of reciprocity.

¹ See chapter 3.1 above.

² See chapter 3.2. above.

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In the view of the expert team these restrictions are contrary to the Framework Decision. The argument that in all these cases the offence will be either prosecuted or sentenced in the Czech territory, by the Czech authorities and under Czech law, based on the principle of active personality, cannot be shared, since it implies a return to the double criminality standard and does not match the aim of the Framework Decision to allow trial in the Member State where the crime was committed and to avoid the necessity for transfer of proceedings. Moreover, it might not be in line with the Union's objective under Article 29 of the TEU to create an area of freedom, security and justice.

7.3.1.2. Grounds for refusal not foreseen in the Framework Decision

Pursuant to Section 377 of the CCP, an EAW will not be executed when it would violate the Constitution of the Czech Republic or any provision of Czech Law that applies unconditionally, or if it would damage some other significant protected interest of the Czech Republic. The officials interviewed confirmed that this is a principle of criminal law that should be applied by any authority and in any situation, including the processing of an EAW.

This provision does not have any correspondence in the Framework Decision and is contrary to the principle of mutual trust. Moreover, uncertainty about the meaning of "*damage (to) some other significant protected interests of the Czech Republic*" may cause problems in practice and creates the risk of misuse.

The expert team notes that the way in which this provision has been interpreted by the Czech Constitutional Court, as a basis for a ground for non-execution inspired by Article 1(3) and recital 12 of the Framework Decision¹, is questionable, since the text of the Framework Decision provides an exhaustive list of grounds for non-execution and neither Article 1(3) nor recital 12 is included in it.

¹ See chapter 4.6 above.

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7.3.1.3. Grounds for the return of an EAW

Pursuant to the implementing legislation, the public prosecutor must “return” the EAW without referring the case to the court in a number of cases expressly identified in the relevant provision¹.

This return has in practice the same consequences as a decision by the court not to execute an EAW, since in such instances a decision by the court on the execution of the EAW does not follow.

The expert team noted that some of the circumstances envisaged in Section 409(3) of the CCP imply an examination in substance of the case and do not conform with the Framework Decision, namely paragraph (h), according to which the EAW shall be returned if the criminal prosecution or punishment is statute-barred *"in the issuing State"*.

7.3.1.4. Length of the proceedings

Czech law and practices make it difficult to comply, in both consented and non-consented cases, with the time limits for a decision on the execution of the EAW laid down in the Framework Decision. The following tables summarise the information provided on the duration of EAW procedures in the Czech Republic in 2006 and 2007²:

	2006	2007
Average duration of the procedure where the person agreed to the surrender (time between the arrest and the decision on surrender)	54 days	60 days
Average duration of the procedure where the person did not consent to the surrender (time between the arrest and the decision on surrender)	84 days	83 days
Cases where the 90-day time limit of Article 17(4) of the Framework Decision was not complied with*	5	24

* This time limit refers to non-consented cases. There were 15 and 27 of these cases in 2006 and 2007 respectively.

¹ See chapter 4.5 above.

² 11371/07 and 10330/08 – Replies to the questionnaire on quantitative information on the practical application of the EAW – Years 2006 and 2007.

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In the view of the expert team there are some structural conditions in the Czech system that may have an impact on the duration of the proceedings:

- As to summary transfer proceedings in cases where the person consents to surrender, in fact the procedure is the same as for non-consented cases: the preliminary investigation must be carried out anyway in order to verify whether grounds for refusal concur, a motion for a decision on surrender must be filed by the public prosecutor, the case can only be tried by the court upon receipt of the original EAW duly translated, and the court decision may be appealed against¹.
- There are no specific time limits for the public prosecutor to complete the preliminary investigation and submit the corresponding motion for a decision on surrender to the court².
- A complaint may be filed with the Constitutional Court at any moment and against any act of any authority participating in the proceedings. There is no time limit for the decision by the Constitutional Court³.

The expert team would like to note that the systematic use by the Czech authorities of the possibility of extending the standard time limits for a final decision on surrender (as demonstrated in the tables above) is not in conformity with Article 17(4) of the Framework Decision, which envisages such a possibility for specific cases.

7.3.1.5. Grounds for non-execution in summary transfer proceedings

Pursuant to the CCP, even if the requested person consents to be surrendered, surrender must be refused if any of the grounds for refusal envisaged in Articles 3(2), 4(2), 4(3), 4(5) or 4(6) of the Framework Decision occurs⁴. Therefore the mandatory grounds for refusal relating to amnesty in the executing State and to minors of Articles 3(1) and 3(3) of the Framework Decision are not covered by the court examination in these cases.

¹ See chapter 4.5 above.

² See chapter 4.5 above.

³ See chapter 4.7 above.

⁴ See chapter 4.5 above.

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The expert team is of the view that, even if the requested person consents to surrender, the executing judicial authority should verify that none of the grounds for non-execution envisaged as mandatory in the Framework Decision is relevant to the case, since they are applicable whatever the subjective procedural position of the requested person.

The expert team would like also to point out that the verification of the ground for refusal listed in Section 411(6)(e) of the CCP (which corresponds to Article 4(6) of the Framework Decision) is not applicable, since the consent already stated by the requested person excludes the refusal to submit to the enforcement of the sentence in the issuing State, which operates as a condition for the operation of this ground for non-execution, as laid down in the CCP.

7.3.1.6. Accessory surrender

Czech legislation does not allow the surrender of a person on the basis of an EAW in respect of accessory criminal acts. The expert team considers that this situation should be corrected, although not expressly covered by the Framework Decision.

7.3.1.7. Original of the EAW

The original EAW is required for the court decision on surrender. The expert team is of the opinion that consideration should be given to a general waiver on originals and the possibility to work e.g. with scanned copies sent by verifiable e-mail, as a means to speed up the proceedings. Some of the judges interviewed were expressly in favour of such a possibility. Even more, the Czech authorities, in their replies to the questionnaire, explicitly referred to the possible use of SIRENE channels for those purposes until the SIS becomes operational.

7.3.2. Good practice

7.3.2.1. Prevention of double prosecution

Although Article 4(2) of the Framework Decision has been transposed as a mandatory ground for refusal, the Czech authorities explained that in these cases a solution is always sought with the issuing State authorities either in bilateral contacts or by means of Eurojust. In that connection, one should note the Constitutional Court's approach, in saying that the corresponding provision in the transposing law does not prevent an EAW from being executed when the crime has been committed partly abroad and partly in the Czech Republic, and the issuing State is better positioned to prosecute¹.

8. RECOMMENDATIONS

8.1. RECOMMENDATIONS TO THE CZECH REPUBLIC

GENERAL

Recommendation 1.- Consider making a clear distinction in the domestic legislation between the provisions applicable to extradition and those applicable to surrender on the basis of an EAW (see 7.1.2).

Recommendation 2.- Adopt measures to upgrade the linguistic capacities of judges and prosecutors, as a means to enhance direct contacts with their foreign counterparts (see 7.1.10).

AS ISSUING MEMBER STATE

Recommendation 3.- Consider amending the legislation with a view to simplifying the procedure for issuing an EAW as to the requirement of personally serving the indictment to the person concerned beforehand (see 7.2.1.1).

¹ § 110 of Decision of the Constitutional Court No. Pl. US 66/04, of 3 May 2006 reads:
"... When a crime has been committed partly abroad and partly in the Czech Republic, the criminal prosecution would take place in the Czech Republic. This creates an obstacle to the surrender of a person for criminal proceedings abroad [compare Section 411 Paragraph 6 letter d) of the Penal Procedure Code] unless, in view of the nature of the conducts in question, it would be more efficient to mount a prosecution in the other member State, for example because the decisive material evidence is in that State, or because the deed took place mostly in that State, etc."

N.B.: Section 411(6)(d) corresponds to Article 4(2) of the Framework Decision.

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Recommendation 4.- Take the necessary measures (e.g. by setting up appropriate databases) to allow the Czech authorities to check the conditions of the surrender, irrespective of whether the person has been surrendered for prosecution or for conviction purposes, with a view to respecting the specialty rule (see 7.2.1.3).

AS EXECUTING MEMBER STATE

Recommendation 5.- Amend the implementing legislation so that the condition of reciprocity does not apply to surrender of Czech nationals (see 7.3.1.1).

Recommendation 6.- Amend the implementing legislation so that no limitation applies to surrender of Czech nationals based on the date of the offence underlying the EAW (see 7.3.1.1).

Recommendation 7.- Consider rewording Section 377 of the CCP in conformity with the Framework Decision (see 7.3.1.2).

Recommendation 8.- Amend the implementing legislation in order to bring Section 409(3) of the CCP, namely as regards paragraph (h), into line with the Framework Decision (see 7.3.1.3).

Recommendation 9.- Consider amending the legislation in order to simplify/speed up the procedure to be followed when the requested person consents to surrender (see 7.3.1.4).

Recommendation 10.- Consider amending the implementing legislation in order to introduce clear strict time limits for the public prosecutor's preliminary investigation and court proceedings (including proceedings before the appeal court and the Constitutional Court), thereby ensuring that the time limits prescribed in the Framework Decision are met (see 7.3.1.4).

Recommendation 11.- Take the necessary measures to ensure that the possibility of extending the time limit for a decision on surrender envisaged in Article 17(4) of the Framework Decision is used only as an exception (see 7.3.1.4).

Recommendation 12.- Amend the implementing legislation so that all grounds for non-execution of EAWs regarded as mandatory in the Framework Decision are examined in summary transfer proceedings (see 7.3.1.5).

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Recommendation 13.- Revise the current practice of requiring the original of the EAW for the court decision on surrender, and accept for that purpose a copy of the EAW sent by any secure means able to produce written records under conditions allowing authenticity to be established (e.g. scanned copies sent by verifiable e-mail) (see 7.3.1.7).

8.2. RECOMMENDATIONS TO CERTAIN OTHER MEMBER STATES

Recommendation 14.- Make full use of the capacities of Eurojust when processing EAWs, taking note of the Czech Republic's practice (see 7.1.7).

Recommendation 15.- Consider accepting EAWs and related information provided in a language other than the official language in the respective State, especially those more commonly used (see 7.2.1.2).

Recommendation 16.- Allow the reception of EAWs by any secure means able to produce written records under conditions allowing authenticity to be established (e.g. scanned copies sent by verifiable e-mail) (see 7.3.1.7).

8.3. RECOMMENDATIONS TO THE EUROPEAN UNION

Recommendation 17.- Discuss at the appropriate level the benefits of setting up common manageable time limits for the transmission of language-compliant EAWs (see 7.2.1.2).

Recommendation 18.- Discuss at the appropriate level the need of instituting a proportionality test when issuing an EAW (see 7.2.2.1).

Recommendation 19.- Consider introducing in the Framework Decision a provision to allow surrender in respect of accessory offences (see 7.3.1.6).

Recommendation 20.- Discuss at the appropriate level the possibility of introducing a mediation mechanism in case of concurrent prosecutions in two or more Member States (see 7.3.2.1).

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ANNEX A

PROGRAMME FOR VISIT

Tuesday 17 June 2008

- 9.00 – 12.00 Meeting at the Ministry of Justice – Vyšehradská 16, Prague 2
Organisational questions
Presentation of national legislation regarding the EAW
Experts' debate
- 14.00 – 16.00 Meeting with SIRENE - Strojnická 27, Prague 7
Practical aspects concerning the European Arrest Warrant (practical application by SIRENE and Police of the Czech Republic)
- Evening Travel to Ostrava

Wednesday 18 June 2008

- 9.30 – 12.00 Regional Court in Ostrava, Havlíčkovo nábreží 34, Ostrava
Meeting with the judges of the Regional and District Court in Ostrava and with public prosecutors of the Regional and District Prosecutor's Office in Ostrava.
- Practical aspects of the application of the European Arrest Warrant from the perspective of the competent judicial authorities of the Czech Republic
- Travel to Olomouc
- 15.00 – 17.00 High Court in Olomouc, Masarykova tř. 1, Olomouc
Meeting with the competent judges of the High Court in Olomouc and with public prosecutors of the High Prosecutor's Office in Olomouc.
- Practical aspects of the application of the European Arrest Warrant from the perspective of the competent judicial authorities of the Czech Republic
- Evening: Travel to Prague

Thursday 19 June 2008

- 10.00 – 12.00 Municipal Court in Prague, Spálená 2, 112 16 Praha 2
Meeting with the judges of the Regional and District Courts in Prague and with public prosecutors of the Regional and District Prosecutor's Offices in Prague.
- Practical aspects of the application of the European Arrest Warrant from the perspective of the competent judicial authorities of the Czech Republic
- 15.00 – 16.30 High Court in Prague, Náměstí Hrdinů 1300, Praha 4
Meeting with the competent judges of the High Court in Prague and with public prosecutors of the High Prosecutor's Office in Prague.
- Practical aspects of the application of the European Arrest Warrant from the perspective of the competent judicial authorities of the Czech Republic

Friday 20 June 2008

- 9.00 – 12.00 Meeting at the Ministry of Justice – Vyšehradská 16, Prague 2
Meeting with representatives of the institutions providing training to judicial authorities.
- Meeting with representatives of the Czech Bar.
- Wrap-up meeting (remaining questions, conclusions and evaluation of the visit)

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ANNEX B

LIST OF PERSONS MET

Ministry of Justice

Jiří Pospíšil

Tomáš Boček, Deputy Minister of Justice. International Relations Section

Petra Otevřelová, Director. International Department for Criminal Matters, International Relations Section

Nicole Petrikovitsová, Head of Unit. International Criminal Law Unit, International Department for Criminal matters, International Relations Section

Kateřina Gauthierová, Officer. International Department for Criminal matters, International Relations Section

Jan Juřica, Officer. International Department for Criminal matters, International Relations Section

Světlana Kloučková, Director. International Affairs Department, Supreme Public Prosecutor's Office

Renata Vystrčilová, Judicial Academy

Jiří Císař, Representative of the Czech Bar Association

Ministry of the Interior

Lucie Hasnedlová, Security Policy Department

Supreme Public Prosecutor's Office

Alena Košutová, Prosecutor

Petr Klement, Prosecutor

SIRENE Bureau

Ivo Malecha, Head of the SIRENE bureau, International Police Cooperation Division, Police Presidium of the Czech Republic

Michael Weiss, SIRENE Bureau, International Police Cooperation Division, Police Presidium of the Czech Republic

Regional Court in Ostrava

Vít Veselý, Vice Chairman of the Regional Court in Ostrava

Roman Pokorný, Vice Chairman of the District Court in Ostrava

Igor Krajdl, Judge of the District Court in Ostrava

Radek Adamus, Judge of the District Court in Ostrava

Martina Hlušítková, Prosecutor of the District Prosecutor's Office in Ostrava

Jaroslav Sýkora, Prosecutor of the Regional Prosecutor's Office in Ostrava

High Court in Olomouc

Vladimír Štefan, Judge

Martina Kouřilová, Judge

Petr Angyalosi, Judge

Ivo Kouřil, Judge

Roman Smělý, Prosecutor of the High Prosecutor's Office in Olomouc

Petr Šereda, Prosecutor of the High Prosecutor's Office in Olomouc

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Municipal Court in Prague

Bohuslav Horký, Vice Chairman
Luboš Vlasák, Vice Chairman
Petr Beneš, Judge

Veronika Boháčková, Judge
Tomáš Stuchlík, Judge
Jaroslav Cihlář, Judge

Alexander Sotolář, Judge
Jana Ťoupalíková, Judge
Danuše Krejčová, Prosecutor of the Regional Prosecutor's Office

Renáta. Johannovská, Prosecutor of the Municipal Prosecutor's Office in Prague
Michal Vacek, Vice Chairman of the District Court in Prague 1
Monika Křikavová, Vice Chairman of the District Court in Prague 2

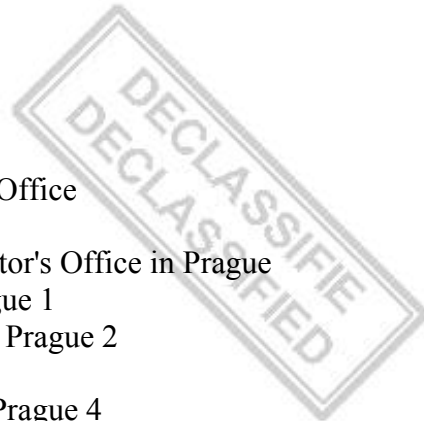
Jaroslava Pytloun, Vice Chairman of the District Court in Prague 4
Jan Novotný, Judge of the District Court in Prague 5
Kryštof Nový, Judge of the District Court in Prague 6

Petr Novák, Judge of the District Court in Prague 8
Jiří Englich, Judge of the District Court in Prague 9
Vendula Žaludová, Judge of the District Court in Prague 10

High Court in Prague

Blanka Kozelková, Judge
Karel Šemík, Judge
Alice Havlíková, Prosecutor of the High Prosecutor's Office in Prague

Marcela Kratochvílová, Prosecutor of the High Prosecutor's Office in Prague



LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

ACRONYM ABBREVIATION TERM	ENGLISH EXPLANATION
ASF	Interpol database
CCP	Code of Criminal Procedure
EAW	European arrest warrant
IAD	International Affairs Department, Supreme Public Prosecutor's Office
IGN	Instruction of General Nature of the Supreme Public Prosecutor
IPCD	International Police Cooperation Division
MoJ	Ministry of Justice
PATROS	Police national wanted persons database
SIS	Schengen Information System
SPPO	Supreme Public Prosecutor's Office
