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Delegations will find attached the declassified version of the above document.

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# RESTREINT UE



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

**REPORT ON FINLAND**

# RESTREINT UE

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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. The MDG of 11 July 2005 adopted the topic of the fourth round of mutual evaluations<sup>1</sup>, namely "The practical application of the European Arrest Warrant and corresponding surrender procedures between Member States"<sup>2</sup>.
- 1.3. With a view to conducting the evaluations, experts with substantial practical knowledge of the European Arrest Warrant ("EAW") were nominated by Member States pursuant to a written request to delegations made by the Chairman of the MDG on 9 September 2005<sup>3</sup>.
- 1.4. At its meeting on 28 October 2005 the MDG approved the evaluation questionnaire for the fourth round of mutual evaluations. The objectives of the evaluation exercise and the questionnaire itself are set out in document 14272/05.
- 1.5. Also at its meeting on 28 October 2005 the MDG discussed and approved document 13824/05, the revised sequence for the mutual evaluation visits. Finland is the ninth Member State to be evaluated during the fourth round of evaluation.
- 1.6. The experts charged with undertaking this evaluation were: Ms Laureta ULBIENE (Judge, Lithuania), Mr Ola LÖFGREN (Chief Prosecutor, Sweden) and Mr Dominic MICALLEF (Police Inspector, Malta). Two observers were also present: Ms Emma PROVAN (Eurojust) and Ms Helge ZEITLER (Commission), together with the General Secretariat of the Council.

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

<sup>2</sup> Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1; "FD").

<sup>3</sup> 6206/1/06 REV1 - Timetable for 2006 and designation of experts.

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- 1.7. This report was prepared by the expert team with the assistance of the Council Secretariat, based upon their findings arising from the evaluation visit of 23-25 January 2007, and upon Finland's detailed and helpful responses to the evaluation questionnaire and a written request for further information.
- 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 Finland both in its role as issuing and executing Member State, to assess relevant training provisions and the views of the defence, before moving on to conclude and to make such recommendations as they felt were appropriate to enhance the means by which the EAW and its corresponding surrender provisions may be further streamlined and improved.

## 2. THE AUTHORITIES AND THE LEGAL BASIS

### 2.1 THE AUTHORITIES

- The District Courts - Criminal<sup>1</sup>, civil and EAW jurisdiction in the first instance is exercised by the district courts of Finland. In issuing EAWs all 61 district courts (56 as of 1 April 2007) are competent, further to a request by a prosecutor, to take an initial decision on remand (in absentia). On the basis of such a decision, the prosecutor will then proceed to issue an EAW. In respect of executing EAW matters, four district courts have been designated as competent to determine EAW requests<sup>2</sup>. Further to the apprehension of a requested person and at the request of a prosecutor, district courts are competent to take a decision on the continued detention of the person concerned. Following a subsequent request by a prosecutor, the appropriate district court also decides in the first instance on the surrender of a requested person to the issuing Member State.

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<sup>1</sup> 90% of the 90,000 cases settled by the district courts each year are criminal matters.

<sup>2</sup> District courts of Helsinki, Oulu, Kuopio and Tampere (although no EAWs have been processed in the jurisdiction of the Kuopio and Oulu district courts).

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- The Supreme Court - In respect of appeals against surrender decisions of the district courts the first and last instance appeal will be determined by the Supreme Court<sup>1</sup>. These appeals are of right, that is to say that no leave is required to lodge an appeal. Appeal decisions must be delivered within 20 days of the conclusion of the time limit for the provision of a response<sup>2</sup>.

In respect of its general business, the Supreme Court determines approximately 3,000 applications for leave each year, of which under 10% will be granted permission to be heard.

During 2005 four matters were appealed to the Supreme Court; during 2006 two matters were appealed.<sup>3</sup>

- The District Prosecutors - are appointed by and subordinate to the Prosecutor-General<sup>4</sup>. In the issuing of EAWs and on the basis of a domestic decision of remand by a district court, the district prosecutors are competent to issue prosecution EAWs in respect of their own investigations<sup>5</sup>. In respect of cases in which several district prosecutors have an interest in the same suspect, it is open to them to liaise so that a combined EAW may be drafted and issued. In executing EAW matters and further to the apprehension of a requested person, district prosecutors are responsible for taking the initial judicial decision to keep the person concerned in detention. District prosecutors are also responsible for reviewing the form and content of EAWs received, requesting that a district court decide on the surrender of a requested person and conducting the surrender case before the court.

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<sup>1</sup> The six Finnish Courts of Appeal have been excluded from the EAW surrender process to enable better compliance with time-limits provided under the FD.

<sup>2</sup> EU Extradition Act, section 41.

<sup>3</sup> See Annex A to this report.

<sup>4</sup> The Prosecutor General is the head of the prosecution service as established by the Constitution and appointed by the President (section 104 of the Constitution). The work of the Office of the Prosecutor General is conducted by the State Prosecutors, who are appointed by the Government and are competent to operate throughout the territory of Finland.

<sup>5</sup> EU Extradition Act, section 54.

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- The Criminal Sanctions Agency ("CSA") – directs the enforcement of sentences in Finland. The CSA operates under the direction of the Ministry of Justice and implements the policy on crime defined by the Ministry. The Director of the Judicial Cooperation Unit of the CSA is competent to issue EAWs in respect of Finland's conviction cases<sup>1 2</sup>.
- The International Unit of the Ministry of Justice ("MOJ") – is composed of two teams, the International Legal Assistance team and the International Relations team. The first team is responsible for EAW matters insofar as they fall under the competence of the MOJ by virtue of the Finnish implementing legislation. This team is currently composed of four lawyers (two in criminal matters, two in civil matters) and also deploys two liaison Magistrates: one in Tallinn and one in St. Petersburg. The team has one translator, who takes care of translations from and into Finnish/Swedish/English. All other translations are outsourced. To be noted that preparation of Finland's implementing legislation was carried out by the Law Drafting Department of the MOJ.
- The National Bureau of Investigation ("NBI") – is one of the national units of the Finnish police force. Its tasks can be divided in two main areas: crime prevention and the provision of expert services. The Communications Center of the Criminal Intelligence Division of the NBI, which is responsible for EAW matters, has 16 police officers and 13 civilian administrators. The Communications Center operates 24/7 as Finland's SIRENE bureau. The Criminal Intelligence Division operates as the national center for Interpol and Europol.

The NBI has central competence for the translation of EAWs and is the routine communication channel for incoming and outgoing transmissions.

The NBI is responsible for the practicalities of the surrender of persons<sup>3</sup> on the basis of EAWs and non-EU extradition requests. In 2006 the NBI brought 53 wanted persons to Finland.

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<sup>1</sup> EU Extradition Act, section 54.

<sup>2</sup> In those cases in which conviction and prosecution EAWs are required in respect of the same person the district prosecutors and the CSA will issue separate EAWs in accordance with their competence.

<sup>3</sup> EU Extradition Act, section 45.

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## 2.2 THE LEGAL BASIS

- The EU Extradition Act, 2003 - transposes the FD into Finnish law. Chapter II of the Act contains detailed provisions on the role of Finland as an executing Member State. Chapter III contains similar provisions regarding the role of Finland as an issuing Member State. The text of the Act substantially follows the text of the FD.
- The Constitution of Finland – Chapter 9 of the Constitution, comprising Sections 98-105 entitled "Administration of the Law", contains basic provisions on the Finnish court system, regarding inter alia the various Courts of law (Section 98), the duties of the Supreme Court (Section 99) and the appointment of judges (Section 102). The same chapter also addresses the prosecutors (Section 104)<sup>1</sup>.
- The Coercive Measures Act – Finland's domestic legislation (applicable in EAW proceedings) which governs the detention of requested persons and property seizures.
- The Penal Code of Finland - sets out inter alia the scope of application of the criminal law of Finland.
- The Act on District Prosecutors, as amended, 1997 – sets out provisions on the appointment of district prosecutors and the internal organisation of the District Prosecutor's Offices.
- The Act on International Cooperation in the Enforcement of Certain Penal Sanctions, as amended, 1987 - *inter alia* sets out provisions on the enforcement in Finland of a sanction imposed in a foreign State.

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<sup>1</sup> Although the prosecutors are not expressly stated to be judicial authorities. To be noted however that in its notification to the Council General Secretariat (5166/04) Finland has identified in application of Article 6(3) of the FD, that:

- In respect of Article 6(1) FD: "*Prosecutors are the competent authorities for the issue of a European arrest warrant for the purposes of conducting a criminal prosecution.*"
- In respect of Article 6(2) FD: "*The competent authorities for receiving a European arrest warrant are the district prosecutors working in the area of jurisdiction of the district courts in Helsinki, Kuopio, Oulu and Tampere. In special cases some other prosecutor may also be competent.*"

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- Instructions to the Communications Center on the application of the European Arrest Warrant.
- The EAW handbook for prosecutors – an internal guide drafted on assignment by the Office of the Prosecutor General and by key prosecution EAW professionals upon consultation of all the authorities involved in national EAW procedures. This guide is a practical and regularly updated analysis of the steps necessary to progress an EAW. The guide is additionally consulted by the CSA and by the judges of the district courts.
- Member States may also refer for assistance to Finland's "Fiche Française" - which sets out the practices issuing Member States must adopt when seeking to obtain a surrender from Finland<sup>1</sup>.

## 3. ORGANISATION AND PRACTICES - ISSUING MEMBER STATE ROLE

The expert team was advised that during 2006 the Finnish judicial authorities had issued 68 EAWs, in respect of which 22 EAWs had been revoked, 12 persons had been apprehended and surrendered and 34 EAWs were still outstanding. Finland reported that no surrenders had been refused.

### 3.1. THE DECISION TO ISSUE

Prosecution cases - Prosecutors in domestic criminal proceedings have exclusive jurisdiction to decide upon the issue of EAWs in respect of persons suspected of the commission of criminal offences. Where the requested person is wanted by prosecutors from different areas, liaison will be undertaken so that one combined EAW may be drafted and issued. Prior to an EAW being sought the prosecutor will have considered the evidential test and will have committed to commencing a prosecution.

The expert team was advised that in considering which cases to pursue the prosecutors will impose a level of proportionality over and above the bare statutory criteria. They will also consider the EAW history of the executing Member State<sup>2</sup>.

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<sup>1</sup> 5168/1/04 REV 1.

<sup>2</sup> In countries such as the UK, where Finland has experienced long surrender delays, the seriousness of the offence will be required to be correspondingly higher.

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Conviction cases - The judicial unit of the CSA is responsible for decisions to issue EAWs in circumstances in which the requested person has been sentenced and the enforcement of the sentence has not commenced on account of the person concerned not having been reached for enforcement, and in respect of persons who have absconded from detention.

Local bailiffs are required to ensure that sentenced persons submit themselves to prison by agreement and it is the bailiffs who will advise the judicial unit of the CSA of the requirement for a domestic and/or EAW. The expert team was advised that the CSA conducts quarterly reviews of its registers to follow up on the bailiff files and in consequence, in respect of conviction EAWs, there are corresponding increases in issuing activity.

By virtue of the distinct issuing competencies separate EAWs must be prepared in respect of conviction and prosecution matters.

Accessory offences are contained within the same EAW as the principal offence(s).<sup>1</sup>

## 3.2. VERIFYING THE POSSIBLE EXISTENCE OF MULTIPLE REQUESTS

There is no mandatory obligation requiring persons issuing EAWs to conduct a verification of other domestic investigations linked to the requested person. To assist prosecutors working in this area, the Office of the Prosecutor General published a detailed EAW prosecutors handbook which sets out both law and guidance. This publication advises that requests be submitted to the SIRENE bureau concerning pre-existing EAWs and that verification of ongoing investigations be undertaken in the prosecutors electronic case management system. The SIRENE bureau verifies with respect to every outgoing EAW whether the person in question has any other outstanding cases in Finland.

In respect of any overlap in prosecution cases the interested parties are required to liaise and issue a joint EAW. The prosecutors do not contact the CSA prior to issuing their EAWs.

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<sup>1</sup> EU Extradition Act, section 53(4).

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Each Monday the CSA receives an electronic circular from the courts concerning persons who have received custodial sentences which are required to be enforced (a sentenced person will normally be allowed two weeks period in which to surrender himself to custody). During the course of the same week the CSA distributes the information to the so-called "execution officers" of each sentenced person's place of residence for enforcement.

In addition the CSA informs the Office of the Prosecutor General of all EAWs that it issues, thereafter the Prosecutor General will disseminate that information to concerned prosecutors.

The expert team was advised that on 1 January 2004 a rolling program was introduced whereby the NBI reviewed all pre-existing alerts and advised the appropriate issuing body that a corresponding EAW should be created. This review process was completed during 2004.

### 3.3. THE COMPLETION OF THE FORMS

The EAW handbook additionally sets out and provides model examples for the completion of the EAW<sup>1</sup>. In addition to the core information set out in the form the guide suggests that specific care should be taken in respect of sections:

- (b) Information on non-payment of fines to be executed
- (e) Listing each offence for which the imprisonment was imposed<sup>2</sup>
- (f) Specifying that a remand in custody is felt to be appropriate on apprehension.

The guide sets out the general requirements of the FD and also Member State specific practices so that, where the location of the requested person is known, it is possible to tailor the EAW to the particular standards of the executing Member State and so minimise the chance of EAWs being rejected on the basis of non-compliant drafting.

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<sup>1</sup> The handbook also sets out sequential procedural steps required in the issue and execution process.

<sup>2</sup> In respect of accessory offences, standard criminal judgements do not contain an allocation of the combined sentence.

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Finnish authorities reported that it has now been established<sup>1</sup> that persons surrendered to Finland on the basis of criminal conduct disclosed in the EAW may be prosecuted on the basis of those facts but under a more severe criminal nomenclature than that referred to in the EAW.

The three officials within the Judicial Cooperation Unit of the CSA are responsible for the drafting of all conviction EAWs. The EAW guide is the practical text relied upon to assist with this exercise. However the expert team was advised that it is common practice that the unit liaises with SIRENE prior to the final drafting and submission of the EAW and they will apply any intelligence discovered on the location of the requested person<sup>2</sup> in the EAW.

## 3.4. THE APPLICATION PROCESS

Prior to the formal issue of the EAW the prosecutor must apply to the appropriate district court for an in absentia remand order to be obtained under standard domestic provisions<sup>3 4</sup>. Once this domestic order is in place the EAW will be issued by the prosecutor without further reference to the court. The CSA will issue an EAW on the basis of an unexecuted criminal sentence.

Once an original EAW is received by the NBI<sup>5</sup> it will be the subject of a mandatory "technical check" by the commanding police officer. The team was advised that because of this centralised competence issues on EAW forms were "quite often" noted and passed back to the prosecutor or CSA to remedy. During their interviews with Finland's issuing authorities the expert team noted a high degree of willingness to comply with such drafting suggestions transmitted by the NBI.

The expert team was advised by the prosecutors that their working methods ensured that these in absentia remand orders could be obtained within one day in cases of urgency.

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<sup>1</sup> Following a successful appeal to the Court of Appeal by the prosecution service against an adverse first instance finding in respect of a list offence request.

<sup>2</sup> The unit also reviews the criminal record and penitentiary databases prior to drafting the request.

<sup>3</sup> The Coercive Measures Act.

<sup>4</sup> These are always oral hearings where the authority seeking an in absentia remand must be present.

<sup>5</sup> In non urgent cases receipt is by mail.

## 3.5. TRANSLATION OF THE EAW

The original Finnish EAW is automatically translated into English by the translation service at the NBI when it is filed into the SIS or Interpol systems<sup>1</sup>.

If the requested person is ultimately apprehended in a Member State that requires the EAW to be submitted in a different language the NBI will endeavour to ensure that the appropriate translation is prepared in accordance with the stated time limits. If that cannot be achieved by the internal translation service then the translation will be outsourced.

In cases of direct transmission, the appropriate translation will also be undertaken by the NBI.<sup>2</sup>

## 3.6. TRANSMISSION OF THE EAW

The NBI is the principle means by which EAWs are transmitted<sup>3</sup> either directly or as Article 95 Alerts or Interpol Diffusions. The office checks whether any other authority has cases pending against the requested person and will notify the issuing body if such a conflict is detected so that the EAW may be amended to include the additional matters. The SIRENE office then prepares a national, Schengen and Interpol warrant of apprehension on the basis of the EAW.

Direct transmission to the competent judicial authority or central authority is permissible where the location of the requested person is known<sup>4</sup>, similarly issuing judicial authorities may request that the transmission of the EAW be undertaken by the MOJ, although these are exceptions rather than the rule. If assistance in locating the appropriate authority is required the issuing authority may request assistance from the NBI.

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<sup>1</sup> NBI in-house translations may be undertaken in Danish, English, Estonian, French, German, Spanish and Swedish (and Russian); there is some additional capacity in Dutch, Italian, Polish and Portuguese.

<sup>2</sup> EU Extradition Act, section 57.

<sup>3</sup> All Interpol, SIRENE, Europol and BDL (bureaux de liaisons) communications are located within the NBI.

<sup>4</sup> In all cases of direct transmission the issuing authority must be notified of the EAW.

Following the apprehension of a requested person (notified by the receipt of a G form or Interpol communication) the NBI is also responsible for ensuring that the EAW is further translated in accordance with the language regime of the executing Member State within the designated time period. It is at this point that available fingerprints and photographs<sup>1</sup> are transmitted to the executing Member State.

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

Due to the low volume of EAWs issued by Finland no broad trends could be observed. However a small number of individual cases were brought to the attention of the evaluation team in which properly issued EAWs were challenged by an executing Member State:

- The Netherlands - Following an arrest in one prosecution matter the Dutch authorities requested (via the Finnish police) that Finland review its own criminal legislation to ensure that the EAW had not been issued in breach of its domestic statutory bars. In that case the Finnish prosecutor decided that the Dutch request could be accommodated and the EAW was withdrawn and a subsequent EAW issued.
- Sweden - Finland reported that in respect of two distinct conviction requests, issues had been raised by the Swedish authorities concerning:
  - The absence of the sought person in respect of a Court of Appeal judgement. It turned out that the hearing at the Court of Appeal had never taken place. The CSA erased the sentence from the EAW;
  - The person was surrendered on the condition that the sentence for one particular offence (prisoner's escape) would not be enforced. An application to reverse the composite sentence was lodged with the Supreme Court which in turn meted out a separate punishment for the escape offence making it thus possible to enforce the rest of the composite sentence.

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<sup>1</sup> The expert team was advised that the UK will not accept e-mailed photographs in ".jpeg" or ".tiff" formats.

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- Germany - The issues relating to Germany were expressed in an historical context in that the facts<sup>1</sup> fell between the time of the German Constitutional Courts' voiding ab initio Germany's implementing legislation and the coming into force of amended implementing provisions.

In these cases a variety of written and telephonic communications were relied upon and were considered to have been entirely adequate.

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

Other than those matters set out above the Finnish authorities reported no systematic requests for further information or clarification in respect of substantive proceedings. They did however note that further information was requested in one UK matter in which Finland sought consent in respect of the specialty rule. In that case Finland discovered outstanding prosecution matters after a surrender had been effected. The UK, although stated to have been striving to be helpful, requested substantial information on the further conduct, the corresponding law and a photograph of the person surrendered (to ensure identity).

Finland withdrew the application when the surrendered person belatedly consented to the further prosecution.

The NBI is able to utilise their translation service to facilitate any foreign language requests transmitted via police channels but any requests sent to the prosecution service would be delayed if outsourcing of the translation needed to be undertaken.

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

In respect of return of own nationals Finland applies the Act on International Cooperation in the Enforcement of Certain Penal Sanctions.

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<sup>1</sup> Concerning a requested person of joint German and Finnish nationality.

Where an executing Member State requires that a surrender is conditional on the return of the requested person in order to serve any sentence imposed this undertaking will be provided by the prosecutor<sup>1</sup> who is competent to bind Finland in this regard.

## 3.10. YOUTH SURRENDERS AND CORRESPONDING GUARANTEES

The age of criminal majority in Finland is 15. No EAW may be issued for criminal conduct carried out by a person below that age. Although criminally liable from the age of 15, reduced criminal tariffs apply to persons between 15 and 18 years of age.

Finland has no experience of any issues in respect of youth surrenders.

## 3.11. EVOLVING BEST PRACTICES

The expert team found the Prosecutor's handbook, which was drafted and regularly updated by key prosecutors experienced in this area, to be a good example of a practical and well-indexed guide to law and procedure. It was apparent that the practitioners working in this area relied upon the guide to a great extent.

The Office of the Prosecutor General has set up an EAW-team, composed of all the authorities involved in national EAW procedures and of a representative from the Law Drafting Department of the MOJ. The EAW-team is tasked with following legal praxis, mapping problems and seeking solutions. Any best practices will appear in the Prosecutor's handbook.

The Finnish authorities have also established an internal coordinating group ("KARI") staffed by representatives of the MOJ, the Ministry of the Interior, the NBI, the prosecution service and representatives of the judiciary. This group meets regularly and follows EAW procedures on a general level.

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<sup>1</sup> Such undertakings have been provided in respect of surrenders from Sweden and the Netherlands.

## 3.12. GENERAL COMMUNICATIONS WITH THE EXECUTING MEMBER STATE

Although in general the NBI serves as Finland's main communication's route with executing Member States<sup>1 2</sup> the expert team was advised that direct communications could be accommodated if necessary.

If difficulties were to arise in respect of locating a suitable counterpart agency (or if a surrender became problematic) recourse would be made to Eurojust and EJM-Atlas or, if appropriate, to Finland's liaison Magistrate in Estonia.

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

At the same time as the communications centre of the NBI receives notification that a positive surrender decision has been delivered it is usual to receive a surrender deadline issued by the executing Member State.

The communications centre is responsible for the logistics of booking flights for the police escorts in accordance with the stated deadline. If the transit of the requested person involves a stopover the NBI advise the relevant prosecutor (initiator) who will apply for any necessary permissions.

Once in Finland the requested person is detained and processed on the basis of the domestic warrant (obtained as a precursor to the issue of the EAW) or sentence. The expert team was advised that Finland has experience of requested persons being returned to its territory without the associated details pertaining to the amount of time that they have been remanded in custody in the executing Member State<sup>3</sup>.

## 3.14. THE MECHANICS OF THE SURRENDER IN RESPECT OF REQUESTED PROPERTY

The submission of evidence or the return of property may accompany the physical surrender of the requested person or be resolved pursuant to a parallel request for mutual legal assistance.

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<sup>1</sup> In terms of the notification of surrender decisions and the routing of case information.

<sup>2</sup> In all competencies (EAW and non-EAW communications) 71.506 transmissions had been dispatched during 2006.

<sup>3</sup> A requirement mandated by Article 26(2) of the FD.

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The Finnish authorities reported that their experiences in this regard had been minimal.

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

Finland had no experience of conflicts between EAWs and other extradition requests/onward surrender and was therefore unable to comment on the means of resolution deployed by executing Member States in this regard.

## 3.16. EXPENSES

Finland reported that matters pertaining to expenses had proceeded according to the provisions of Article 30 of the FD. Domestically the NBI receives a separate budgetary allocation to facilitate all EAW and extradition transports.

## 4. ORGANISATION AND PRACTICES - EXECUTING MEMBER STATE ROLE

The expert team was advised that during 2006 a total of 13 EAWs had been received. From this total 13 arrests had been undertaken, all of which resulted in surrender<sup>1</sup>.

### 4.1. RECEIPT PROCEDURES

In the majority of cases notification of the existence of EAWs is received via the SIRENE or Interpol units of the NBI. The expert team was advised that the prosecution service had limited experience in respect of receipt of directly transmitted EAWs and that in such cases the prosecutors routed the EAWs to the NBI. In any event on receipt, the NBI will commence checks of its domestic database registers<sup>2</sup> to ascertain/confirm the location of the requested person on Finnish territory.

The expert team was advised that the 3,000 general Interpol diffusions searched by the NBI during the course of 2006 had resulted in a single hit/arrest.

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<sup>1</sup> Two first instance surrender decisions having been appealed to the Supreme Court of Finland.

<sup>2</sup> Finland's two principle law enforcement databases being PATJA (the national police information system) and ULKONET (which reads into aliens [including passports and visa databases], convictions, intelligence and border guard databases).

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Finland does not issue prohibitions/validity flags. Therefore, if issues present themselves on the face of the EAW<sup>1</sup>, it will proceed to the court stage for judicial determination even in the case of an EAW issued in circumstances in which a refusal ground was apparent e.g. an EAW received in respect of a person below the age of criminal liability in Finland.

If a hit is recorded against such a search the local police force are advised of the fact so that an arrest can be undertaken; if no such hit is recorded then the existence of the EAW is entered into the PATJA register.

Once a requested person has been apprehended the EAW may be transmitted by the issuing Member State to the NBI who will route it internally to the appropriate district prosecutor. On-call prosecution rotas ensure that prosecutor cover exists during the weekends but no such cover is in place out of hours during the week.

Finland accepts receipt of the EAW in written, faxed or e-mailed forms. Original documentation is not required unless a case specific reason presents itself in a particular instance.

## 4.2. THE FORM OF THE WARRANT AND REVIEW PROCEDURES

EAWs may be submitted to Finland in Finnish, Swedish or English<sup>2 3</sup>, although the expert team noted that this (already generous) linguistic provision does not sit comfortably with section 15(3) of the EU Extradition Act which states that:

*"If the request is submitted in a language other than Finnish or Swedish the National Bureau of Investigation shall be responsible for the translation of the request into Finnish or Swedish."*

The expert team was advised that recourse was made to section 15(3) only in cases of exceptional urgency and that, given that the majority of EAWs are transmitted via the SIS, equivalent information is already available to the Finnish authorities in English.

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<sup>1</sup> Unless so directed by the judicial authority following the arrest of the requested person.

<sup>2</sup> EU Extradition Act, section 15(1).

<sup>3</sup> The expert team was advised that the district courts reserve a discretionary right to accept EAWs in other languages.

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

The prosecutor with conduct of the surrender process is required to review the EAW to ensure that it complies with the content requirements specified in Finland's domestic legislation<sup>1</sup> (equivalent to Article 8 of the FD) and thereafter to request that the issuing judicial authority provide such further information as is deemed appropriate within a specified time-limit<sup>2</sup>. This review is not binding on the subsequent analysis undertaken by the court at the time of the surrender hearing<sup>3</sup>.

The prosecution service confirmed that replies to such responses would not delay the apprehension of a suspect<sup>4</sup> as they would be expected to be provided in time for the ultimate surrender hearing rather than the initial review of detention. E-mailed replies to such requests were said to be the norm.

Any information required in consequence of the review undertaken by the prosecutor may be transmitted directly or via the NBI.

The Finnish authorities reported that, in consequence of this review stage, they had sought additional information in the following cases during 2006:

- Estonia – Following a first instance refusal, and pending the hearing of the prosecutors appeal, Estonia was asked to provide further detailed information confirming that the offences itemised in the EAW accorded with Estonian EAW law. The Supreme Court of Finland reversed the decision of the district court and ordered that the requested person be surrendered.

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<sup>1</sup> EU Extradition Act, section 14.

<sup>2</sup> EU Extradition Act, section 23.

<sup>3</sup> EU Extradition Act, section 31.

<sup>4</sup> Although same day replies were stated to be commonplace.

# RESTREINT UE

- Sweden – The following cases were reported:
  - Detail was requested regarding the amount of time outstanding on a part-served criminal sentence;
  - Detail was requested to clarify a drafting error made on the face of the EAW<sup>1</sup>. The issue was clarified without undue delay;
  - Detail was requested in respect of the precise nature of property required to be seized and returned in accordance with the EAW. Once the further information was provided the correct mobile phone was located, seized and surrendered.
- Spain – The EAW did not list the time of the commission of the offence. An enquiry was made. At the same time the Spanish authorities were informed that the person sought was serving a sentence in Finland and that he would be released in 10 months at the earliest. The Spanish authorities were enquired whether they would be content with a postponement or whether they would need the person earlier in which case a temporary surrender could be arranged. In their response the Spanish authorities specified the time of the commission of the offence but were ambiguous as to the preferred mode of surrender. That gave rise to another enquiry. This time the Spanish authorities were enquired about the length of the time they would need that person in Spain. The enquiry went unanswered. The District Court postponed the surrender<sup>2</sup>.

The expert team was advised that requests for further information may be transmitted directly by the prosecutor or via the NBI. In either instance the request would normally be transmitted in English.

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<sup>1</sup> 15 offences having been cited with only 14 sets of facts having been presented.

<sup>2</sup> EU Extradition Act, section 49 – The executing judicial authority in Finland is competent to postpone the surrender decision or to conditionally extradite the requested person under conditions determined by mutual agreement if the person is the subject of domestic criminal proceedings.

# RESTREINT UE

## 4.4. INVESTIGATIONS CONCERNING THE LOCATION OF THE REQUESTED PERSON/CIRCULATION PROCEDURES

EAWs bearing no link to Finland are searched against the PATJA and ULKONET databases, whereas a link to Finland will trigger further database reviews into property, corporate and vehicle registers.

All Finnish law enforcement authorities (including police mobile units, customs officers and the border guards) can access PATJA. Additionally, a part of police and border guard personnel have access to the I24/7 system that separately schedules all persons wanted by Interpol. An expansion of direct access is pending.

All circulations concerning EAWs are filed into PATJA in the NBI communications centre in any event.

## 4.5. ARREST PROCEDURES/FIRST HEARING

All Finnish law enforcement agencies are competent to arrest a person pursuant to an EAW, Article 95 Alert, or Interpol Diffusion or Red Notice. The expert team noted that no express legal basis existed for provisional arrests to be undertaken. The expert team was informed that in practice, the powers existing in this regard under the "old" extradition law would be applied *mutatis mutandis*.

The arresting officers are under a statutory obligation to inform the NBI of the fact of the arrest "without delay"<sup>1</sup> and the NBI in turn is obliged to advise the competent authority of the issuing Member State. The NBI has established a core of EAW competence within its small central homicide unit with whom all arresting officers will establish contact for guidance as to the practices to be adopted in the case of such an arrest<sup>2</sup>.

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<sup>1</sup> EU Extradition Act, section 16(3).

<sup>2</sup> All requested persons are fingerprinted and photographed in accordance with domestic practices.

# RESTREINT UE

At the time of arrest the police must inform the requested person in a language that they understand the reason for the arrest and make enquiries as to their consent to be surrendered. A record of this dialogue is drawn up by the police and forwarded to the prosecutor; the measures taken are entered into PATJA. All requested persons are entitled to no cost linguistic assistance and to legal advice and assistance throughout the EAW proceedings.

The arresting officer may decide to place the requested person in preventive detention (and in practice this will be done) whilst the arrest paperwork is finalised. Without undue delay the arresting officer will pass the papers to the appropriate district prosecutor<sup>1 2</sup> who will review the file. The prosecutor will then make appropriate representations to the relevant district court concerning continued detention<sup>3</sup>. Any (single) judge with competence to deal with coercive measures within the appropriate district court may conduct this review. The court shall then within four days of the arrest determine whether detention or the imposition of a travel ban is the most appropriate treatment in accordance with domestic practices<sup>4</sup> and the risk presented to the execution of the EAW<sup>5</sup>. The judges interviewed by the expert team confirmed that they apply the statutory criteria equally to Finnish citizens and to foreigners. The requested person is permitted to have the matter of his detention heard by the district court at two-week intervals.

At this first hearing the court may have documentation in Finnish but it is more probable that the EAW information will be in the form of printed A and M forms/Interpol notices in English<sup>6</sup>.

The expert team noted that, although there was a clear statutory right to challenge the detention decision of the district court by submitting a complaint to the Supreme Court<sup>7</sup>, only one such challenge had been lodged at the time of the evaluation visit. The Supreme Court upheld the District Court decision.

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<sup>1</sup> EU Extradition Act, section 17.

<sup>2</sup> Prosecutors with experience of the EAW are spread throughout the various prosecution specialities rather than having a discrete EAW cadre.

<sup>3</sup> Bringing the attention of the court to any remaining defects in the EAW/apparent refusal grounds.

<sup>4</sup> The Coercive Measures Act and the Detention Act.

<sup>5</sup> EU Extradition Act, section 18(2).

<sup>6</sup> Which will have been translated into Finnish prior to the surrender hearing.

<sup>7</sup> EU Extradition Act, section 19.

# RESTREINT UE

On the application of the prosecutor to determine the EAW the district court will adjourn the matter for the question of surrender to be considered.

## 4.6. THE SURRENDER DECISION/ GUARANTEES REQUIRED AND PROVIDED

The district court is under a statutory requirement to proceed to hear the question of extradition "without delay"<sup>1</sup>, although it retains discretion to change the date fixed at the initial hearing if so required. The expert team was advised that if no deficiencies were present on the face of the Alert, as a matter of general practice, the designated judges with EAW competence at the district courts would be unlikely to require the original or authenticated copy of an EAW in order to proceed to hear the case. The executing judicial authorities of Finland will also determine accessory offences contained on the face of the EAW<sup>2</sup>.

In cases where consent to surrender has been given the district court shall make the final surrender decision<sup>3</sup> within three days of the consent having been given/reiterated before the court<sup>4</sup>.

Revocation of consent may be made at any time up until the execution of the EAW. This issue will be addressed by the court and, should consent be revoked, the period between the initial consent and the revocation will not count for the purposes of EAW time-limits.

In considering the question of surrender the district court<sup>5</sup> may be composed of a chairman alone<sup>6</sup>. The prosecutor presents the contents of the EAW and the requested person is afforded the opportunity to be heard (if the requested person had been released from detention and fails to attend this court session without lawful excuse the determination may proceed in his absence).

The court is empowered to request supplementary information prior to reaching its findings<sup>7</sup> although the judges interviewed by the expert team expressed satisfaction that the review undertaken by the prosecutor would likely have resolved any such outstanding issues.

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<sup>1</sup> EU Extradition Act, section 26.

<sup>2</sup> EU Extradition Act, section 4.

<sup>3</sup> EU Extradition Act, section 7. Taking into consideration certain of the discretionary (not mandatory) refusal grounds provided in section 6 of that Act.

<sup>4</sup> In practice this may occur on the same day as the consent was given to the court.

<sup>5</sup> This may be the same judicial authority that determined detention.

<sup>6</sup> EU Extradition Act, section 27(1).

<sup>7</sup> EU Extradition Act, section 31.

# RESTREINT UE

Finland's implementing legislation requires the issuing Member State to be advised of the fact of the surrender decision once it is determined<sup>1</sup>. As a matter of practice however prosecutors' conduct of files is more generous and communications with issuing Member State authorities takes place on a more frequent basis and generally by e-mail so that a contemporaneous written record is maintained.

## 4.7. REFUSALS TO SURRENDER

The volume of EAWs determined by the courts of Finland is small and at the time of the evaluation visit only one refusal to surrender had been recorded. Challenges to the EAWs have been made on the basis of the unreasonableness of the request or possible "risks" to the requested person in the executing Member State.

Finland's implementing legislation sets out an exhaustive list of 7 mandatory<sup>2</sup> and 8 discretionary<sup>3</sup> refusal grounds. Two of the mandatory grounds are not contained within the FD, namely:

- Section 5(1)(6) - Risk of breach of fundamental rights, as particularised in recital 12 of the FD<sup>4</sup>;
- Section 5(2) - Refusal based upon humanitarian grounds that could not be mitigated by a postponement of the surrender<sup>5</sup>.

One optional ground for refusal set out in the FD has been elevated to a mandatory ground for refusal by Finland's implementing legislation, namely:

- Section 5(1)(5) - This ground for refusal pertains to the territoriality clause introduced by Article 4(7)(a) of the FD: Finland has limited the generic nature of the territoriality clause by introducing supplementary conditions for its application (double criminality and time bar situations).

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<sup>1</sup> EU Extradition Act, section 36.

<sup>2</sup> EU Extradition Act, section 5.

<sup>3</sup> EU Extradition Act, section 6.

<sup>4</sup> In one case a plea was made by the requested person that he would be tortured by agencies of the issuing Member State. The executing judicial authorities, presented with no more than a bare assertion, dismissed the plea and executed the EAW.

<sup>5</sup> Finland's executing judicial authorities confirmed that they would consider that any such plea should be accompanied by appropriate medical evidence.

# RESTREINT UE

Accordingly, surrender shall be refused if the act on which the request is based is deemed in accordance with chapter 1 of the Criminal Code to have been committed in full or part in Finland or on a Finnish vessel or in a Finnish aircraft, on the supplementary conditions that either;

- the act is not punishable in Finland [Section 5(1)(5)(a)] or
- the right to bring charges, according to the law of Finland, has become time-barred or punishment may no longer be imposed or enforced [Section 5(1)(5)(b)].

Finland advised the expert team that, notwithstanding the elevation of this optional ground for refusal to a mandatory ground for refusal, the supplementary conditions set out above had made it less likely that this ground would in fact be relied upon.

## 4.8. APPEALS PROCEDURES AND THE IMPACT ON TIMELIMITS

Finland has elected to designate its Supreme Court as its first and only appellate court in EAW matters. In general domestic proceedings access to the Supreme Court is not as of right and the appellant is required to demonstrate that the case is one of general importance in which precedence is required.

Either party may lodge an appeal within seven days of the district court's decision to surrender<sup>1</sup>, thereafter the respondent has a further seven days to lodge a reply with the court office. The Supreme Court<sup>2</sup> is required to determine the matter in a chamber comprising five judges<sup>3</sup> within 20-days of the lapsing of that time-limit, that determination usually being on the basis of written submissions<sup>4</sup>.

The expert team was able to meet with a judge of the Supreme Court who was entirely content with this deviation from established domestic practices and with the corresponding 20-day time limit set out in Finland's implementing statute<sup>5</sup>.

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<sup>1</sup> All prosecution appeals must be lodged through the Office of the Prosecutor General.

<sup>2</sup> Comprised of 19 judges.

<sup>3</sup> Plenary sessions are required to overturn legal precedence.

<sup>4</sup> Although the Supreme Court retains the discretion to hear oral evidence if required.

<sup>5</sup> EU Extradition Act, section 41.

# RESTREINT UE

In one case the decision of the Supreme Court took 51 days, thereby contributing to a breach of the 90 day surrender time-limit set out in Article 17(3) and (4) of the FD. That matter was reported to Eurojust in accordance with Article 17(7) of the FD and Finland's domestic rules<sup>1</sup>.

## 4.9. OWN NATIONAL, YOUTH ARREST AND SURRENDER ISSUES

Finnish citizens must, on their request, be surrendered subject to a condition that they be returned "immediately" to Finland in order to enforce the sentence passed against them in issuing Member States<sup>2</sup>. Where the court makes such an order it will be recorded on the face of the surrender judgement. The judgement will be transmitted in Finnish with a covering letter in the appropriate language setting out the condition clearly.

The expert team noted that no agency is responsible for monitoring that requested persons surrendered pursuant to such conditions are in fact returned to Finland in due course. In one instance a Finnish citizen (surrendered on such a basis) completed a 12 month sentence of imprisonment in Germany with no action being taken by either Member State in respect of the "guarantee".

The repatriation of the requested person is conducted on the basis of the FD. However, in the case of incompatibility of the sanction with the array of Finnish penal sanctions, the foreign sentence shall be converted in accordance with Finland's sentencing practices to ensure conformity with Finnish law<sup>3</sup>.

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<sup>1</sup> EU Extradition Act, section 35.

<sup>2</sup> EU Extradition Act, section 8.

<sup>3</sup> The MOJ refers the file to the competent prosecutor who takes the matter before the District Court of Helsinki where the conversion is ruled upon by the court.

## RESTREINT UE

One problematic case involving an 18-year old requested person<sup>1</sup> was outlined to the expert team. In that case the Helsinki district court refused a surrender to Sweden on the basis that the sentence (psychiatric treatment) was not recognised as a criminal sanction in Finland. On the appeal of the prosecutor, the Supreme Court reversed that finding but held that the sentence be executed in Finland since the person was a Finnish citizen and had made a request to that effect. The sentence was converted into a period of imprisonment<sup>2</sup>. The same requested person was subsequently re-arrested in Sweden on the basis of the same facts. The Swedish authorities did not initially have information to consider but that the required sentence had not been carried out and considered that the EAW remained live. However, the person was ultimately released.

### 4.10. SPECIALTY

The Finnish authorities reported no issues in respect of specialty.

### 4.11. ONWARD SURRENDER/EXTRADITION

The expert team noted that section 34(2) of Finland's implementing legislation contains the following wide reaching prescriptive powers:

*"If the requests refer to different offences, the court may order at the same time that the person extradited to a certain Member State shall be subsequently extradited to another Member State in accordance with the conditions of this Act."*

The Finnish authorities confirmed that the Finnish language translation contains the same purported power, and also that it had in fact been exercised in one case in August of 2006. In that case the Tampere District Court decided in August 2005 to surrender a person to Spain for prosecution and at the same time postponed the surrender until that person would have served his sentence in Finland. While the person was incarcerated in Finland an EAW was received from Germany for surrender of the same person for prosecution. In August 2006 the District Court granted surrender of the person to Germany as well. The District Court ordered that the person be surrendered first to Germany and, upon completion of the trial there, from Germany to Spain as per the decision of August 2005. The decisions of August 2005 and 2006 were conditioned on his return to Finland to serve any sentences in Finland that might be imposed on him either in Germany or in Spain.

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<sup>1</sup> In respect of which reduced detention tariffs would automatically apply in any event.

<sup>2</sup> In this case 7 months and 29 days.

# RESTREINT UE

The surrender decision was sent to the German authorities and they were advised of its content separately. Eurojust has subsequently informed the Finnish authorities that should this person be released in Germany, the German authorities would at least take him into custody on the basis of the Spanish EAW.

## 4.12. ARTICLE 32 EXPERIENCES

The Finnish authorities reported that they had no experiences concerning these transitory provisions but that the EU Extradition Act<sup>1</sup> expressly permits the Finnish authorities to apply reciprocity if this situation were to be encountered in the future.

## 4.13. TEMPORARY/CONDITIONAL SURRENDER

Finland's executing judicial authorities are empowered<sup>2</sup> to postpone execution or temporarily surrender of requested persons at the request of an issuing Member State or of their own motion. The terms of any such agreement will be agreed between the authorities concerned and will be recorded in writing.

The expert team was advised that this mode of resolution had been deployed by mutual agreement in the case of a German EAW in respect of a requested person who was separately serving a two year and six months sentence imposed by the Tampere District Court. The German and Finnish authorities formed the view that, in the circumstances of that case, a postponement of the execution rather than a temporary surrender of the suspect would be the most suitable course of action.

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

The final decision on surrender is to be taken no later than a period of 60 days after the arrest of the requested person or, in cases where the requested persons has consented, within 10 days of the consent being given to the court<sup>3</sup>. The Finnish prosecutor shall inform the competent authority of the requesting Member State should the time limits be breached<sup>4</sup>.

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<sup>1</sup> EU Extradition Act, section 73(4).

<sup>2</sup> EU Extradition Act, section 49.

<sup>3</sup> FD Article 17(2) and 17(3).

<sup>4</sup> EU Extradition Act, section 35.

# RESTREINT UE

The requested person shall be surrendered to the issuing Member State as soon as possible but no later than 10 days after the surrender decision becomes final<sup>1</sup>. In the case of force majeure an alternative date may be agreed between the parties.

If the surrender is prevented by virtue of humanitarian reasons the surrender shall take place on an agreed date fixed as soon as those humanitarian grounds cease<sup>2</sup>.

In all instances the NBI is the body competent to arrange and undertake the logistics of surrender although the prosecutor is responsible for preparing a schedule of time spent by requested persons in detention.

The expert team was advised that one breach of the 10 day time limit had taken place (by virtue of the lack of flight availability) and that that breach had been reported to Eurojust.

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

Lack of direct experience of such requests precluded Finland from commenting on the practice of such evidential/property based requests. It was confirmed however that any such seizures would be conducted pursuant to the Coercive Measures Act. The exercise of power under the Coercive Measures Act must be exercised by the court in the region in which the property/evidence is situated rather than the district court with competence for the EAW.

Such property issues may be conducted on the basis of EAW requests or on the basis of distinct MLA cooperation.

## 4.16. CONFLICT OF EAWS/EXTRADITION REQUESTS

Finland's implementing legislation gives its courts jurisdiction to examine the facts and circumstances of conflicting EAWs in the terms set down in Article 16 of the FD and to reach judicial decisions as to the priority of requests. In case of a conflict between an EAW and an extradition request the MOJ decides on the priority<sup>3</sup>.

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<sup>1</sup> EU Extradition Act, section 46.  
<sup>2</sup> EU Extradition Act, section 47.  
<sup>3</sup> EU Extradition Act, section 34(3).

# RESTREINT UE

The Finnish authorities reported that they were content with the flexibility provided to them by the Act and reported no issues in this regard.

## 4.17. EXPENSES

Finland was content that financial provisions had proceeded in accordance with Article 30 of the FD.

## 5. TRAINING PROVISION

Finland's preparation for the introduction of the EAW regime began with a MOJ organised cross-discipline seminar in 2003. The 130 delegates were drawn from a pool of professionals to be involved with the new practice from: the MOJ; each of the four district courts; the Supreme Court; the CSA; the NBI; the prosecution service; and the National Board of Customs.

Thereafter in 2004 the MOJ hosted a two day AGIS funded conference on the EAW for prosecutors, judges and other officials from Finland, Sweden, Estonia, Latvia and Lithuania.

For the purposes of training the prosecutors are divided into 10 regional units, each of which received EAW information updates from the Prosecutor General and Deputy Prosecutor General who visited each region in turn.

Also in 2004 the Office of the Prosecutor General set up a national EAW expert team composed of one key prosecutor in international affairs (a local prosecutor), a lawyer from the Office's international unit, representatives of the Ministry of Justice (Law Drafting Department and International Unit), the Criminal Sanctions Agency and the police organisation (the Ministry for Internal Affairs and the SIRENE office in the NBI and also the Criminal Intelligence Division, which attends to matters relating to executive and legal assistance by the police).

The national EAW expert team met six times during 2004 and, in addition to discussing areas of practice, it drafted the EAW handbook for prosecutors<sup>1</sup>.

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<sup>1</sup> This regularly updated guide is posted on the prosecutors' intranet.

## RESTREINT UE

In order to facilitate understanding across the disciplines, key prosecutors attended a one day training event at the SIRENE office of the NBI specifically to observe police EAW practices.

During 2005 the Office of the Prosecutor General and the MOJ arranged a one-day training event on the execution of EAWs received by Finland. This cross-administrative training event was attended by 57 prosecutors, court representatives, legal counsel and police officers. The event specifically targeted the authorities competent in this process or otherwise required to be familiar with these matters. Defence lawyers and advocates from the cities in which EAWs are processed were also invited to and attended the event.

Also during 2005 the national EAW expert team met on five occasions in respect of EAW dedicated sessions.

The liaison magistrate posted in Estonia highlighted special issues relating to the application of the EAW in Estonia when visiting Finnish authorities.

The Training Unit of the Ministry of Justice together with the International Unit held three seminars in international affairs during 2004–2005 primarily for judges in district courts and courts of appeal as well as referendaires of the Supreme Court<sup>1</sup>. The seminars were attended also by key prosecutors in international affairs and by public defenders.

During 2006 the Finnish liaison magistrate to Estonia conducted a one-day seminar on the application of the EAW for prosecutors, judges and the Eurojust national members from the two Member States.

In addition to the above arrangements the individual agencies of Finland have conducted a range of smaller ad hoc training sessions on the subject of the EAW.

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<sup>1</sup> Responsible for preparing the memorandum of facts and law to be debated by the appellate chamber.

# RESTREINT UE

Finland has ensured that its prosecutors gain an EU-wide view of this instrument of mutual judicial recognition and the expert team was advised that they have attended the following international events:

- Conference in Athens, Greece; 18–22 June 2003
- Seminar in Trier, Germany; 30 June – 5 July 2003
- Seminar in Rome, Italy; 11–13 December 2003
- conference in Porvoo, Finland; 12–13 February 2004
- CCM EAW working group in Brussels, Belgium; 14 January 2004 and 22 September 2004
- Eurojust seminar in Prague, Czech Republic; 25–26 October 2004
- CCM EAW working group in Brussels, Belgium; 15 March 2005
- Eurojust strategic meeting in Budapest, Hungary; 17–18 May 2005
- CCM EAW working group in Brussels, Belgium; 5 September 2005
- Finland-Estonia seminar in Tallinn, Estonia; 5 May 2006
- CCM EAW working group in Brussels, Belgium; 27 June 2006
- SIS stage II working group in Brussels, Belgium; 13 July 2006 (prosecutor in attendance for the issue of flagging)
- Eurojust seminar in Bratislava, Slovak Republic; 29–31 October, 2006
- Prosecutors have also attended nearly all meetings of the European Justice Network, at which EAW issues have been part of the agenda.

## 6. DEFENCE PERSPECTIVES

The expert team was provided with the opportunity to interview members of the bar association although, again because of the low volumes of EAW cases before the courts, it was unfortunate that none of the advocates present had themselves conducted an EAW request<sup>1</sup>.

Requested persons were said to be provided with lists of defence advocates held at police stations<sup>2</sup> or at Embassies and (if they did not have their own advocate) would chose from those lists.

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<sup>1</sup> Although they had substantial experience of extradition cases under the old law.

<sup>2</sup> Police officers were said to have experience of the linguistic abilities of advocates on their lists.

The defence bar saw their general role as being to safeguard the best interests of the requested person, and to verify the documentary integrity of the request. They did not see their role as being to challenge issues relating to the facts of the case, because the facts were considered to be a matter to be determined by the trial court in the issuing Member State. They were content that the prosecutors released all available case information to them and considered that in respect of the most commonly encountered languages interpretation was excellent.

The rates of legal aid were also reported to be above those in corresponding domestic matters.

The bar association itself did not run EAW specific training but individual advocates were known to have taken advantage of training courses run by the Office of the Prosecutor General.

One negative comment raised by the bar association was the low threshold necessary to remand requested persons, even Finnish nationals, in custody. It was felt that such remands were a virtual certainty and it was remarked that the measure could therefore be disproportionate to the criminality alleged. It was accepted however that only one recourse had as yet been made to the statutory grounds available to challenge such a detention<sup>1</sup>.

## 7. CONCLUSIONS

### 7.1. GENERAL CONCLUSIONS

The team was presented with a well structured and comprehensive series of evaluation interviews.

Notwithstanding the low volume of EAW business undertaken by Finland as a Member State<sup>2</sup> the team was impressed with the resources and training that had been committed to the new instrument and with the level of preparation that had clearly been invested in making the evaluation a detailed one.

The team was also impressed with the degree of communication and cooperation between all of the participants and the clear willingness exhibited to make the EAW system function effectively.

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<sup>1</sup> EU Extradition Act, section 19.

<sup>2</sup> 14 EAW receipts in 2005 and 13 in 2006.

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

### 7.2.1. Issues

#### 7.2.1.1. Coordination of prosecution and conviction requests

The expert team noted that although the prosecutors and the CSA have systems in place to ensure that all outstanding matters in respect of requested persons are taken into consideration, prior to the issue of an EAW in their area of competence, no cross-check of pending convictions is conducted by the prosecution service. It is therefore possible that the current pre-issue coordination of action against a requested person could break down resulting in potential specialty issues. The expert team considered that this risk could be eliminated by the implementation of systematic cross-checking of all pending matters.

#### 7.2.1.2. Information concerning the duration of detention of surrendered persons

The expert team noted that the Finnish authorities had regularly experienced surrenders taking place in which the requirement<sup>1</sup> to advise the issuing Member State, at the time of surrender, of the total period in detention had been breached.

The expert team considered that detention periods were of crucial importance to the detained person and to the proper administration of justice and considered these obligations to be deserving of a prompt attention by executing Member States.

### 7.2.2. Good practices

#### 7.2.2.1. Cross discipline training

The expert team found the Finnish authorities practice of offering places on training sessions and seminars to the complete range of professionals engaged in EAW work (including the defence bar) to be an inclusive and value adding methodology. The team was particularly impressed with the thinking behind the opening of the SIRENE office for a one day training event to allow key prosecutors to familiarise themselves with police problems and working practices.

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<sup>1</sup> FD, Article 26(2).

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

### 7.3.1.1. Provisional arrest

The expert team noted that there was no express legal basis under the Finnish implementing legislation for provisional arrests to be conducted on the basis of circumstances of urgency prior to the actual issue of an EAW by a Member State.

The Finnish authorities advised the expert team that apart from the powers existing in this regard under the old extradition law, which would be applied *mutatis mutandis*, Article 12 of the Police Act gives officers the power to apprehend "wanted persons". According to the Finnish authorities this provision could also be used in a scenario in which a fugitive had committed a crime and immediately left the jurisdiction of a Member State (prior to the obtaining of an EAW) and was traced to a plane/ferry due to land in Finland. The team observed that this Article had so far not been used in such a scenario.

The expert team acknowledges that the FD does not explicitly require to put in place a mechanism for provisional arrest under the EAW. However, the team suggests that Finland's domestic legal base for provisional arrest assists the effective application of the EAW procedure and it invites other Member States, where applicable, to consider establishing similar provisions.

### 7.3.1.2. Police erroneously comprised under notion of judicial authority

The expert team observed that there is a degree of conflict between the provisions of section 23 of the EU Extradition Act, according to which "*The prosecutor and the police may, when necessary, request supplementary information from the competent authority of the requesting Member State. A time limit may be set for receipt of the information*", and Article 15(2) of the FD, which reserves such activities to the "*executing judicial authority*".

The expert team noted that this power was said not to be utilised by the police<sup>1</sup>. Nevertheless, the expert team felt that it would be advisable to modify the law so that the exercise of the power of enquiry to an issuing judicial authority would be reserved to an authority clearly recognisable to issuing Member States as "judicial".

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<sup>1</sup> It was accepted that for the purposes of EAW proceedings the police are not considered to be a "judicial authority".

## 7.3.1.3. Refusal grounds not foreseen by the FD

The expert team engaged in discussions with the legal draftsman of the EU Extradition Act in respect of the three mandatory refusal grounds inserted into Finland's implementing legislation<sup>1</sup>. The team was advised that the risk of breach of fundamental rights, which given the overarching nature of the Convention on Human Rights is superfluous, was drafted at the MOJ, but that the text “*is threatened by capital punishment, torture or other degrading treatment*” was inserted by Parliament. The humanitarian refusal ground<sup>2</sup>, which is contrary to the FD, was added in its entirety by Parliament whilst the government Bill was being debated. The remaining additional ground pertaining to the territoriality principle was drafted by the Ministry in that form.

The expert team noted that the territoriality ground for refusal had been limited by introducing supplementary conditions for its application. Accordingly, surrender shall be refused only if the act on which the request is based is not punishable in Finland or the right to bring charges, according to the law of Finland, has become time-barred or punishment may no longer be imposed or enforced<sup>3</sup>.

The expert team was satisfied with the Finnish ambition to limit the scope of this territoriality ground for refusal, but was nevertheless concerned about the reference to chapter 1 of the Finnish Criminal Code as well as to Finnish vessels or aircrafts. A consequence of the reference to the Finnish Criminal Code could be that surrender is refused i.a. regarding acts committed outside of Finland if they were committed by or against a Finnish citizen<sup>4</sup>.

The expert team was unable to discern concrete reasoning behind the inclusion of these deviations from the FD in what was to a large extent an otherwise faithful transposition of the instrument.

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<sup>1</sup> See section 4.7 of this report.

<sup>2</sup> See EU Extradition act, section 5(1)(6) and 5(2) respectively.

<sup>3</sup> See EU Extradition act, section 5(1)(5) (a) and (b).

<sup>4</sup> The Penal Code of Finland, section 5 and 6.

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## 7.3.1.4. Superintendence of undertakings received from issuing Member States

Section 8 of the EU Extradition Act requires that any requested person required to be repatriated to Finland by an issuing Member State is to be returned "immediately". The expert team noted however that none of the bodies involved in the EAW process was responsible for monitoring compliance with the domestic statute, or with ensuring that requested persons were in fact returned.

The team was concerned to note that one practical ramification of this monitoring absence was that one Finnish national served the entirety of a 12-month custodial sentence in Germany (breaching both the undertaking and Finland's own primary legislation). This underlines the necessity for the Finnish authorities urgently to remedy this behaviour. The expert team considers that this is relevant to all Member States.

## 7.3.1.5. Lack of legislative clarity in respect of NBI translation duties

The expert team noted that the EU Extradition Act expresses the translation burden on the NBI in contradictory terms; section 15(1) containing the provisions relied upon in day-to-day practice, namely that "*The request shall be made in Finnish, Swedish or English, or a translation into one of these languages shall be appended to the request*", whereas section 15(3) (expressed in mandatory wording) sets out the provisions relied upon in exceptional circumstances i.e. "*If the request is submitted in a language other than Finnish or Swedish, the National Bureau of Investigation shall be responsible for the translation of the request into Finnish or Swedish*".

Although the Finnish authorities advised that this Article has not yet presented any practical problems, this lack of legislative clarity should, in the view of the expert team, be remedied to give effect to the draftsman's intention.

## 7.3.1.6. Statutory authority purporting to direct that an issuing Member State shall surrender a requested person to a second issuing Member State

The expert team discussed the construction and purported scope of section 34(2) of the EU Extradition Act with the Finnish authorities and a consensus was reached that the wording of that section is ultra vires. Finland has no authority to direct one Member State to surrender a requested person to another Member State.

## RESTREINT UE

It was accepted that a surrender made subject to an obligation to return a requested person to Finland after the service of any custodial sentence for the purposes of onwards surrender would have been an acceptable requirement, but any measure which sought to withdraw proper judicial scrutiny from another Member State's appropriate authorities was misconceived.

The expert team was surprised to note that this power had been relied upon in one surrender during August 2006 <sup>1</sup>, although as noted in paragraph 7.3.1.4 above no agency is charged with the superintendence of such agreements.

### 7.3.1.7. Inconsistent application of the term "custodial sentence"

As described in paragraph 4.9 above, the distinction between Sweden and Finland's understanding of the term "custodial sentence" had resulted in a requested person, being a Finnish national, serving a period of (standard) imprisonment in a Finnish prison, because Finland does not recognize psychiatric treatment as a criminal sanction and therefore could not impose psychiatric treatment as desired by Sweden.

In this case the lack of harmonisation of this term of sanction seems to have led to real prejudice to the individual concerned.

### 7.3.1.8. Exercise of Coercive Measures Act jurisdiction

The expert team noted that competence for the surrender of a requested person and the surrender of associated property/evidence had been divided so that, where the person and the property are situated in different court areas, differing courts are competent to rule on these related matters. This seemed to the team to be an unnecessary and inefficient division of responsibilities and one which risked contradictory findings being reached in the same set of proceedings.

### 7.3.1.9. Judicial training

Although the level of training across all disciplines was comprehensive, the low volume of EAW activity in Finland made the retention of applicable practical information rather problematic. During their interview with Finland's judicial authorities the expert team was advised that the judges themselves felt that to some extent they were forced to "reinvent the wheel" in respect of the applications before them.

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<sup>1</sup> Judgment of 2 August 2006, see section 4.11 above.

As such, increased refresher based training on the subject would be of benefit in aiding consistency and the efficiency of the process.

## 7.3.2. Good practices

### 7.3.2.1. E-mailed receipt of further information

All parties to the surrender process were content that additional information received from issuing Member States, pursuant either to the request of the prosecutor<sup>1</sup> or the request of the Court<sup>2</sup> could be presented to the court in an informal manner.

Neither the parties to the litigation nor the court felt that the mode of transmission impacted upon the efficacy of the information therein. The expert team was advised that in the majority of instances in which such information was provided simple e-mailed transmissions from a competent authority within the issuing Member State were adequate to allow the surrender decision to be considered.

### 7.3.2.2. Expedited appeal process

The expert team felt that Finland's foresight in streamlining the domestic criminal appeals into a single tier fast track system was worthy of due praise.

In order to ensure that the EAW surrender process could be completed in accordance with domestic (and FD) time-limits the legislators chose to remove the Court of Appeal from the EAW process by providing appellants with unfettered access to the Supreme Court; both in terms of appeals against detention decisions and appeals against surrender decisions themselves. Further they had imposed a 20-day time limit for the Supreme Court to complete its deliberations.

The expert team was also impressed with the sanguine attitude expressed by the Supreme Court in respect of being bound to time limits in this way.

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<sup>1</sup> EU Extradition Act, section 23.

<sup>2</sup> EU Extradition Act, section 31.

## 7.3.2.3. Language flexibility

The expert team noted that the level of mutual trust exhibited by the Finnish authorities was such that it was commonplace for Finland's courts to proceed to the first (detention) hearing in surrender cases with the relevant documentation<sup>1</sup> being available only in English, translations being preferred but not fatal to the process.

Such was the desire of the Finnish authorities to cooperate with their Member State partners in EAW requests that, in situations of suitable urgency, Finland was prepared (via the NBI) to undertake translations into Finnish of EAWs and associated information received from a range of European languages relating to the ability to undertake the task promptly rather than pure statutory prescription.

## 8. RECOMMENDATIONS

### 8.1. RECOMMENDATIONS TO FINLAND

Recommendation 1 - That the prosecutors EAW handbook be amended so that prosecutors are directed to liaise with the Criminal Sanctions Agency prior to the issue of all prosecution EAWs (see 7.2.1.1).

Recommendation 2 - That section 23 of the EU Extradition Act be redrafted without reference to the police (see 7.3.1.2).

Recommendation 3 - That the expansion of the mandatory refusal grounds to include situations not foreseen in the FD be reconsidered at a political level (see 7.3.1.3).

Recommendation 4 – That section 5 (1)(5) be redrafted so that the scope of the territoriality ground for refusal is made clear and limited as intended by Finland (see 7.3.1.3)

Recommendation 5 - That Finland designate a competent authority/authorities to superintend all undertakings, given by Finland or by other Member States, in respect of EAW proceedings (see 7.3.1.4).

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<sup>1</sup> Typically printouts of Schengen A and M forms.

# RESTREINT UE

Recommendation 6 - That legislative clarity be established in respect of the translation provisions set out in sections 15(1) and 15(3) of Finland's EU Extradition Act (see 7.3.1.5).

Recommendation 7 - That legislative clarity be applied to the objectives of section 34(2) of Finland's EU Extradition Act (see 7.3.1.6).

Recommendation 8 - That, in respect of associated surrenders of property and of requested persons, jurisdictional competence between the Coercive Measures Act and the EU Extradition Act is aligned (see 7.3.1.8).

Recommendation 9 - That consideration be given to establishing regular judicial refresher training courses on the EAW (see 7.3.1.9).

## 8.2. RECOMMENDATIONS TO CERTAIN OTHER MEMBER STATES

Recommendation 10 - That executing Member States take steps to ensure that relevant information concerning the duration of the detention of requested persons is provided to issuing Member States in accordance with the requirements of Article 26 paragraph 2 of the FD (see 7.2.1.2).

Recommendation 11 - That Member States examine the possibility of shared training provisions across suitable EAW disciplines (see 7.2.2.1).

Recommendation 12 - That Member States consider the benefit of introducing a legal basis for provisional arrest in cases of urgency (see 7.3.1.1).

Recommendation 13 - That each Member State designate a competent authority/authorities to superintend all undertakings given by it or by other Member States in respect of EAW proceedings (see 7.3.1.4).

Recommendation 14 - That, in furtherance of the practice of mutual judicial recognition, Member States consider the degree of formality required in respect of the provision and receipt of additional information (see 7.3.2.1).

## RESTREINT UE

Recommendation 15 - That those Member States that have not implemented an expedited appeals procedure in EAW matters reconsider whether their own appeal structures allow them to comply with the surrender time limits set out in the FD and, if not, that they consider whether a streamlined process could be implemented (see 7.3.2.2).

### 8.3. RECOMMENDATIONS TO THE EUROPEAN UNION

Recommendation 16 - That consideration be given to addressing divergences in respect of what measures may be properly defined as "custodial sentences" for the purposes of EAW surrender proceedings (see 7.3.1.7).

Recommendation 17 - That consideration be given to introduce in the FD a provision requiring Member States to put in place a mechanism for "provisional arrest" (see 7.3.1.1).

# RESTREINT UE

ANNEX A

## STATISTICS OF FINLAND AS EXECUTING STATE

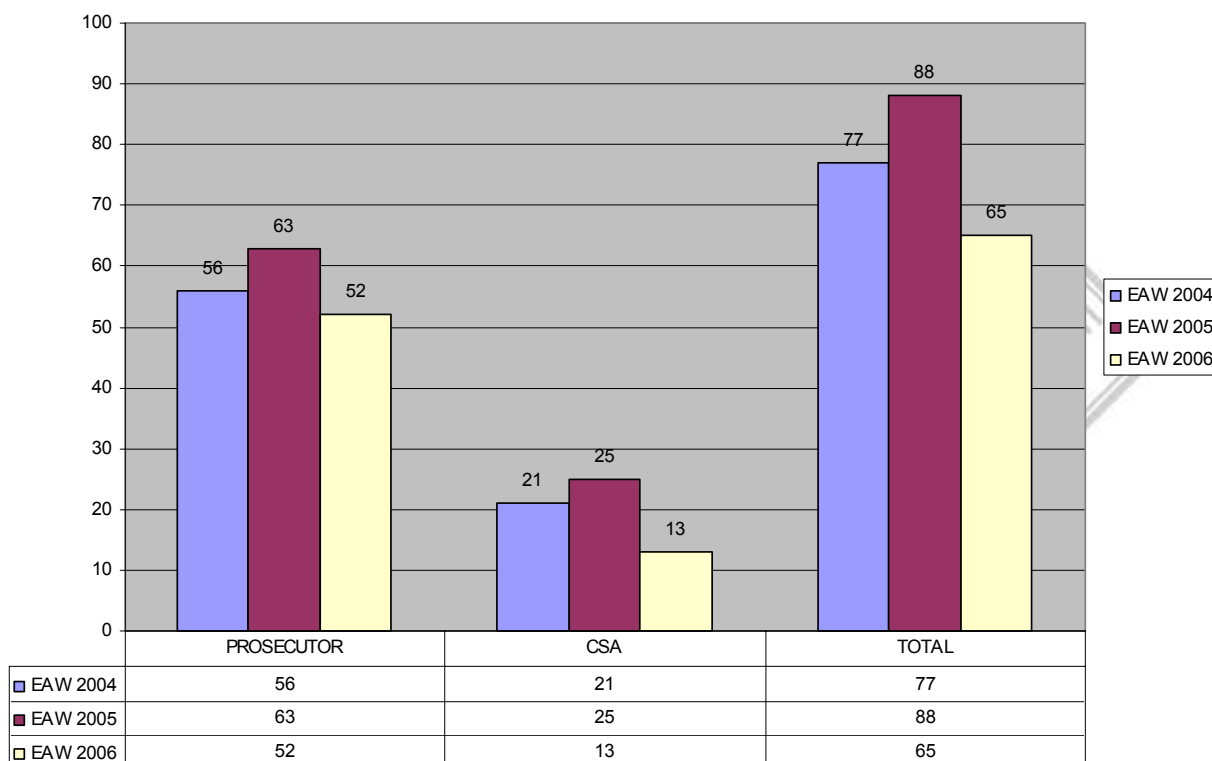
	2005		2006	
		Appealed		Appealed
<b>Helsinki</b>	5	3	10	2
<b>Tampere</b>	5	1	3	0
<b>Kuopin</b>	0	0	0	0
<b>Oulu</b>	0	0	0	0
<b>Total</b>	<b>10</b>	<b>4</b>	<b>13</b>	<b>2</b>

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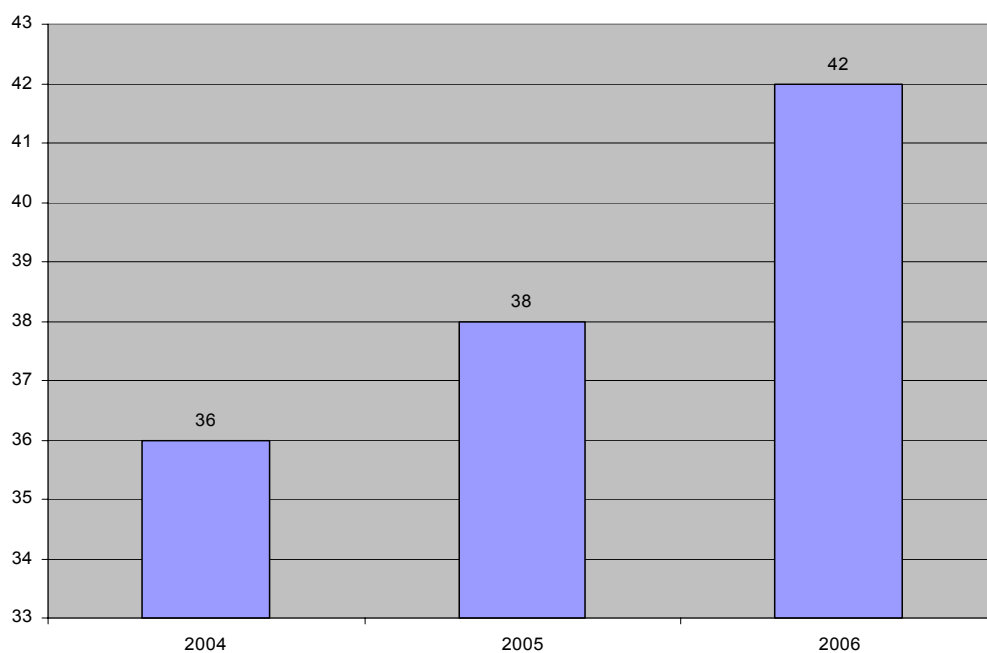
ANNEX B

## STATISTICS OF EAW AND ART. 95 SIC HITS 2004-2006

EAW FINLAND 2004-2006

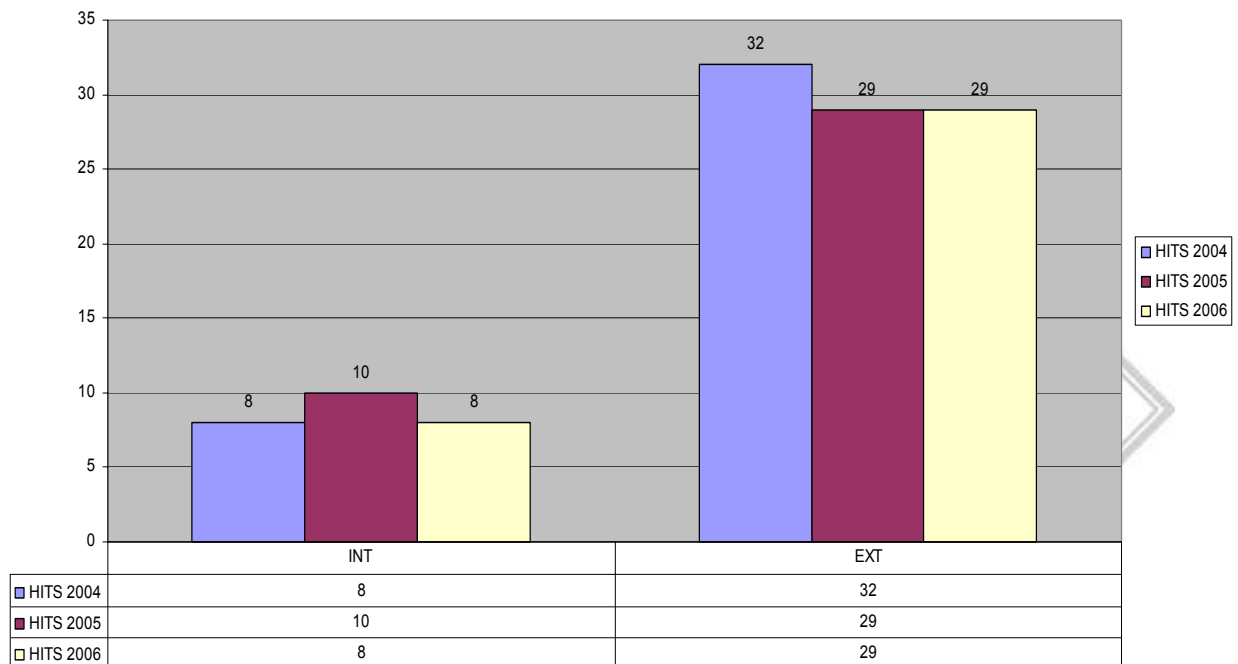


## EXTRADIDED PERSONS BY EAW TO FINLAND



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ANNEX C

## PROGRAMME OF VISITS

### Tuesday 23 January

10.00–11.30 Ministry of Justice.  
- Welcome, General presentation and statistics  
11.30–2.30 Criminal Sanctions Agency  
12.30 Transport to Helsinki Court House  
13.00–14.30 Lunch  
14.30–16.30 Prosecutor General's Office and Helsinki District Prosecutor's Office  
16.30–17.30 Helsinki District Court  
Transport to hotel  
19.00 Dinner

### Wednesday 24 January

7.45 Transport to the National Bureau of Investigation  
8.15–11.00 National Bureau of Investigation  
Transport to railway station  
11.22–12.52 IC train to Tampere  
Transport to Court House  
13.00–14.30 Lunch  
14.30–17.30 Tampere District Prosecutor's Office and Tampere District Court  
Transport to railway station  
18.07–19.52 IC train to Helsinki

### Thursday 25 January

10.00–11.15 The Supreme Court  
11.15 Transport  
11.30–12.15 The Finnish Bar Association  
12.15–13.45 Lunch  
13.45–15.00 Roundtable  
Departures

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# RESTREINT UE

ANNEX D

## LIST OF PERSONS MET

### Ministry of Justice

Merja Norros  
Juhani Korhonen  
Jenni Klemola  
Katariina Jahkola  
Mikko Monto

### Criminal Sanctions Agency

Raili Matinpuro  
Heljä Kokko

### Prosecutor General's Office

Raija Toiviainen

### Helsinki District Prosecutor's Office

Johanna Hervonen  
Tove Myhrberg

### Helsinki District Court

Kari Lappi  
Riitta Kiiski  
Jaana Helander  
Pia Sandvik

### National Bureau of Investigation

Sanna Palo  
Kimmo Ulkuniemi  
Jouko Kangasmaa  
Mika Ihaksinen

### Tampere District Prosecutor's Office

Jouko Nurminen  
Leena Koivuniemi

### Tampere District Court

Petteri Palomäki

### The Supreme Court

Gustaf Möller  
Pasi Kumpula

### Bar Association

Aarno Arvela  
Minna Melender



# RESTREINT UE

ANNEX E

## LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

ACRONYM ABBREVIATION TERM	ENGLISH EXPLANATION
CSA	Criminal Sanctions Agency
EAW	European Arrest Warrant
FD	Framework Decision on the EAW
KARI	Internal coordinating group on EAW with representatives of various bodies
MLA	Mutual Legal Assistance
MOJ	Ministry of Justice (International Unit)
NBI	National Bureau of Investigation
PATJA	National police information system (database)
ULKONET	National database which reads into aliens and border guard databases

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