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

REPORT ON FRANCE

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1. INTRODUCTION

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

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

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

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

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

1.6. The experts charged with undertaking this evaluation were: Johannes MARTETSCHLAEGGER (public prosecutor/counsellor, Ministry of Justice, Vienna), Ernest NILLES (judge, Luxembourg District Court), Fernando MARTINEZ PEREZ (investigating magistrate, Seville), Carlos ZEYEN (Eurojust) and Isabelle PERIGNON (European Commission), together with the General Secretariat of the Council.

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

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1.7. This report was prepared by the team of experts with the assistance of the Council Secretariat, based upon findings arising from the evaluation visit from 22 to 26 January 2007, and upon France's detailed and helpful responses to the evaluation questionnaire and a written request for further information.

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

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

2. THE AUTHORITIES AND THE LEGAL BASIS

2.1. THE AUTHORITIES

- The prosecutors in the Public Prosecutor's Office (Principal Public Prosecutors - *procureurs généraux* - and Public Prosecutors - *procureurs de la République*) attached to the examining magistrate's court, trial court or enforcing court are the authorities competent to issue a European Arrest Warrant (EAW) in prosecution cases, under Article 695-16 of the Code of Criminal Procedure, either at the request of the court or *ex officio*.

Where the execution of sentences is concerned, the Public Prosecutor's Office, as part of its general prerogative of pursuing the enforcement of criminal judgments, is competent to issue an EAW for the execution of custodial sentences of more than four months imposed by a trial court.

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The Public Prosecutor's Offices (*parquets généraux*), which have territorial jurisdiction, intervene in the execution stage of EAWs issued by foreign authorities. As executing authorities, the principal public prosecutors are responsible, during the initial hearing held within 48 hours of the arrest, for checking that the request is in order and deciding whether to continue detention in custody or to release the suspect. At this stage in the procedure, there is no possibility of adopting judicial review measures.

- France has elected to empower the examining chamber (*chambre de l'instruction*) of each appeal court - which is also the appeal body for the examining magistrate's courts - to hear disputes regarding the execution of European arrest warrants. The aim is to harmonise the procedure with that already laid down for extradition cases.
- The Central Operational Police Cooperation Section (*Section centrale de coopération opérationnelle de police (SCCOPOL)*) and the Justice Task Force (*Mission Justice*) (a specialised department of the Directorate for Criminal Matters and Pardons - Office for International Mutual Assistance in Criminal Matters) ensure that French and foreign EAWs are circulated on an interministerial basis (National Police Force, National Gendarmerie, Customs, Ministry of Justice). The SIRENE Bureau and Interpol work on the same platform. This central service is able to inform the issuing authority if other alerts have been issued on the same person, by directly accessing the SIS and Interpol databases. All European Arrest Warrants transmitted via the SIS or Interpol are also subject to quality control by the judges seconded to the Justice Task Force.
- The *police and gendarmerie authorities* for the relevant geographical area are responsible for carrying out initial checks, as soon as an EAW is received, in order to locate and apprehend the person sought. These authorities can also make use of the Wanted Persons Database, through which they can access the SIS and Interpol databases.
- The Central Wanted Persons and Fugitives Bureau (*Office central chargé des personnes recherchées ou en fuite*), although it has no specific competence in respect of EAWs, can enable the wanted person to be apprehended as a result of its investigations.

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- The Prisons Administration Transfers Service (*Service de transfèrements de l'administration pénitentiaire (SAP)*) is empowered to organise and carry out all surrenders involving France, whether for EAWs or extraditions. A transfer team, consisting of 28 officers, works on a full-time basis, abroad or in France (border posts, airports, stations), carrying out the physical surrender of wanted persons.
- The Ministry of Justice, Directorate for Criminal Matters and Pardons (DACG), Subdirectorate for Special Criminal Justice Matters, Office for International Mutual Assistance in Criminal Matters, (BEPI) is the authority designated to:
 - forward, through diplomatic channels, to the authorities of another State or to an international organisation, requests from French judicial authorities for the waiver of the privilege or immunity enjoyed by the person sought in respect of this other State or international organisation (under Article 7 of the Framework Decision);
 - receive, through diplomatic channels, requests from foreign judicial authorities for the waiver of the privilege or immunity enjoyed in France by the person sought (under Article 7 of the Framework Decision);
 - receive transit requests and all other official correspondence relating to transit requests (under Article 25(2) of the Framework Decision).

2.2. THE LEGAL BASIS

- Law 2004-204 of 9 March 2004 transposing the Framework Decision of 13 June 2002 on the EAW. Article 17 of the Law completely rewrote Title X of the Code of Criminal Procedure by introducing Chapter IV devoted to the EAW (Articles 695-11 to 695-51). Special provisions on the EAWs application in time are laid down in paragraphs I to V of Article 215 of the Law.

France has declared, in accordance with Article 32 of the Framework Decision on the European Arrest Warrant, that where France is the executing State, an EAW can be executed only in respect of acts committed after 1 November 1993. In respect of acts committed before that date, it will continue to apply the extradition system in force up to 1 January 2004.

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- Ministerial circular of 11 March 2004 on the application of the EAW and the extradition system. The circular is addressed for action to Principal Public Prosecutors attached to the Appeal Courts and Public Prosecutors attached to the courts of first instance and, for information, to the Presidents of Appeal Courts and of courts of first instance.

The circular contains instructions to facilitate the application of the EAW.

- Articles 696 to 696-24 and 696-34 to 696-47 of the Code of Criminal Procedure concerning the extradition of foreign nationals. As of 1 July 2005, by virtue of the provisions inserted by the legislator in the Code of Criminal Procedure, the Convention of 10 March 1995 on simplified extradition procedure between the Member States of the European Union and the Convention of 27 September 1996 relating to extradition between the Member States of the European Union apply.
- Law 84-11500 of 21 December 1984 transposing the Council of Europe Convention of 21 March 1983 on the Transfer of Sentenced Persons and its Additional Protocol.

3. ORGANISATION AND PRACTICES – AS ISSUING MEMBER STATE

The group of experts undertaking the evaluation was informed that during 2006, according to the data available to the Office for International Mutual Assistance in Criminal Matters at the time when the evaluation was carried out, the French judicial authorities issued 366 EAWs.

3.1. THE DECISION TO ISSUE

Article 695-16 of the Code of Criminal Procedure makes a distinction in this area between prosecutions and the enforcement of a sentence.

For prosecutions, the Public Prosecutor's Office attached to the examining magistrate's court, trial court or enforcing court which has issued an arrest warrant implementing it in the form of an EAW, acting either at the request of the court or *ex officio*.

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For the enforcement of a sentence, the Public Prosecutor's Office is also competent, where it deems it necessary, to issue an EAW for the enforcement of custodial sentences of four months or more delivered by the trial courts.

In general, the decision to issue an EAW is at the discretion of the competent judicial authority, which assesses whether it is appropriate to do so taking several factors into account.

One necessary precondition for the issue of an EAW is that an order for enforcement already exists, either a national arrest warrant or an enforceable judgment.

In the context of criminal prosecutions, an EAW can be issued if the offence is punishable by a sentence of imprisonment of one year or more.

For the execution of a sentence, an EAW can be issued only if a sentence of four months or more has been imposed.

In this respect, the ministerial circular grants the Public Prosecutor's Office discretion as regards the issue of an EAW for a sentence of four months or more imposed by a trial court without an arrest warrant being issued.

However, the circular recommends that an EAW be systematically issued for sentences of a certain degree of seriousness (for example, sentences of imprisonment of one year or more), with a case-by-case assessment in respect of other sentences.

In the course of the evaluation visit, the group of experts observed that issuing judicial authorities differed in their assessments as regards the minimum sentence threshold for issuing an EAW: some considered that it should be one year, others 18 months.

3.2. VERIFYING THE POSSIBLE EXISTENCE OF MULTIPLE REQUESTS

France has established an interministerial service (SCCOPOL) associating the French SIRENE Bureau, Interpol and the Justice Task Force, a specialised department of the Directorate for Criminal Matters and Pardons within the Ministry of Justice, which supervises, in a coordinated manner, the procedure for issuing an EAW.

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This central service, which has direct access to the SIS and Interpol databases, is able to inform the issuing authority if other alerts have been issued on the same person.

Since the SIS allows only one EAW per person to be circulated, when two or more courts wish to circulate EAWs concerning the same person, the Justice Task Force contacts the courts to establish priorities (a serious crime, list of the 32 offences, etc.) and decide which EAW to circulate.

As soon as the individual is apprehended, all the French judicial authorities concerned are informed so that the executing authority can be made aware of the other warrants concerning the same person.

Until the individual is apprehended, the other warrants are archived manually but not saved in an IT system.

At national level, searches to verify the existence of subsequent investigations in progress, of sentences or of prosecutions concerning the wanted person are carried out through the Wanted Persons Database (FPR).

3.3. RULES FOR COMPLETING THE FORMS/COURT PAPERS

Article 695-13 of the Code of Criminal Procedure details all the information which an EAW must contain. This is in fact as set out in the form contained in the Annex to the Framework Decision on the EAW.

The ministerial circular of 11 March 2004 specifies that only the standard form contained in the Annex to the Framework Decision can be used and that it may not be altered. However, the French authorities themselves have produced a model form for the United Kingdom, to anticipate the additional requests systematically made by the United Kingdom authorities.

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To ensure a certain degree of uniformity and consistency in the forms, all EAWs sent via the SIS are subject to quality control by the judges working in the Justice Task Force. If, on examination, the EAW does not meet the requirements in terms of clarity, consistency and precision in order for it to be executed by the foreign authorities, the form is sent to the French issuing authority for it to make the necessary changes.

In the course of the evaluation visit, the practitioners mentioned occasional instances of serious difficulties relating to the completion of the form and the requirements of certain Member States. Two instances were cited by way of example.

In two cases involving the United Kingdom, it proved difficult to reconcile the differing legal concepts of common law and Continental law, especially as regards the definitions of prosecution and sentencing *in absentia*. In one case, for instance, the UK authorities took the view that a person in respect of whom an arrest warrant had been issued by an investigating magistrate without the person having been questioned could not be considered as under prosecution.

In a case involving the Netherlands, a problem was encountered when filling in the form, since the Netherlands authorities were very demanding as regards the need to prove the desirability of prosecution in an issuing Member State when the offence had been committed partly in the territory of the Netherlands. The difficulties involved in completing the form were resolved through bilateral contacts.

3.4. THE APPLICATION PARTIES/PROCEDURE

As already mentioned in points 2.1 and 3.1, it is stipulated that the EAW is to be issued by the Public Prosecutor's Office (Public Prosecutor and Principal Public Prosecutor) having territorial jurisdiction, on the basis of a prior decision by an examining magistrate's court or trial court.

The Public Prosecutor's Office is therefore responsible for issuing the EAW, either at the request of the court or *ex officio*, in accordance with the rules and conditions laid down in Articles 695-12 to 695-15 of the Code of Criminal Procedure, as specified by the ministerial circular.

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In practice, some Public Prosecutor's Offices agree with the competent examining magistrates that the magistrates themselves will fill in the form, which is then checked by the issuing Public Prosecutor's Office.

In most cases, the completed form is sent to the Justice Task Force to be circulated via Schengen and Interpol. As already mentioned, the judges in the Justice Task Force carry out quality control on the form and, if necessary, return it to the issuing authority if changes need to be made.

If the wanted person is located, the EAW is addressed, and sent, directly to the executing authority.

Under Article 695-17 of the Code of Criminal Procedure, when the Public Prosecutor's Office has been informed of the arrest of the wanted person, it sends a copy of the EAW, without delay, to the Minister for Justice for the compilation of statistics. In practice, it has been observed that Public Prosecutor's Offices do not always fulfil this obligation.

In connection with the statistics maintained centrally by the Ministry of Justice - Office for International Mutual Assistance in Criminal Matters, it should also be mentioned that all EAWs which pass through the Justice Task Force are automatically forwarded to the Office for International Mutual Assistance in Criminal Matters.

3.5. TRANSLATION OF THE EAW

The issuing authority is responsible for translating the EAW into the official language of, or the language accepted by, the executing State (Article 695-14 of the Code of Criminal Procedure). A table containing information on the languages accepted by Member States is available on the Ministry of Justice Intranet site.

In general, judicial documents are translated by expert translators chosen from a national list drawn up by the Supreme Court of Appeal (*Cour de cassation*) or regional lists drawn up by the appeal courts.

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In order to comply with the time-limits set for the EAW, a list of translators undertaking to translate the EAW within 48 hours has been drawn up and made available to issuing authorities on the Ministry of Justice Intranet site. It is worth mentioning that the languages available also cover those which can be used to circulate forms via Interpol (Arabic, Chinese, Russian, etc.).

In addition, with a view to facilitating the procedure for issuing and transmitting the EAW, forms in all the official languages of the Member States of the European Union are available on the Ministry of Justice Intranet site.

In general, the French EAW is not translated if the person wanted has not been located. As soon as the person is located, and the appropriate language can be selected, the translation is done as quickly as possible.

If the wanted person has been definitely located, or his whereabouts can be assumed, the ministerial circular recommends that *"it would be particularly desirable, [...] to translate the said arrest warrant, in advance, into the language of the country where he is likely to be"*.

When the evaluation was carried out, the practitioners interviewed mentioned some difficulties in complying with time-limits owing to the lack of translators in less widely known languages. However, until the time when the evaluation was carried out, the Ministry of Justice had not been advised of any case in which the wanted person had been released owing to failure to comply with language requirements.

3.6. TRANSMISSION OF THE EAW

In accordance with the Framework Decision on the EAW, the law transposing the EAW in France provides for several different means of circulation, with no central authority designated for the transmission of EAWs.

Under Article 695-15 of the Code of Criminal Procedure, in the event of the wanted person being located, the EAW can be sent directly to the judicial authority which is competent to execute it. In this connection, the interministerial circular mentions the possibility of using the European Judicial Network (EJN) to identify the executing authority. Practitioners can also obtain this information from French liaison magistrates in Spain, Poland, Germany, Italy, the Netherlands and the United Kingdom, or via the SIS or Interpol if the wanted person has been found.

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In this connection, the French authorities indicated, when the evaluation was carried out, that issuing authorities had encountered problems owing to the fact that the lists contained in the FJN Atlas were not kept up-to-date and to discrepancies between the information contained in the SIS/Interpol and EJD databases.

If the wanted person is not located, the EAW is transmitted via the SIS or Interpol, as the case may be.

In any case, it is for the issuing judicial authority to decide on the procedures for and scope of the circulation of the EAW, mainly on the basis of the information available concerning the whereabouts of the requested person.

In practice, the SIS and Interpol are the channels most frequently used. Given the uncertainty regarding the whereabouts of the requested person, the EAW form is generally transmitted twice in parallel via either Sirene or Interpol. In the latter case, the request is equivalent to provisional arrest.

As regards methods of transmission, the Code of Criminal Procedure and, to a more detailed extent, the departmental circular, provide that transmission should be effected by any means which produces a written record enabling the executing authority to verify the authenticity of the request. Under the legislation in force in the requested State, transmission may be effected *inter alia* by post, fax or the e-mailing of digitised documents, with the latter two methods of transmission being the most widely used in practice.

3.7. QUESTIONS RAISED OR REQUESTS FOR ADDITIONAL INFORMATION PRESENTED BY EXECUTING MEMBER STATES AND THE CHANNELS OF COMMUNICATION USED

As already referred to in section 3.3, France has indicated that there had been cases where problems had arisen in respect of certain executing Member States which had proved to be extremely demanding as regards:

- proof of aspects relating to the involvement of the requested person;
- proof that the wanted person absconded voluntarily from the investigations in progress or from the execution of his sentence;

- the question of dual criminality.

In its practice with Italy, France has encountered two types of difficulties. Firstly, Italy required the categories of offences laid down in Article 2 of the Framework Decision to be interpreted in terms of the offences provided for in Italian law, and demanded proof that the requested person had been involved in the actions of which he was accused. Secondly, some public prosecutor's offices have reported that the Italian Ministry of Justice frequently requests the original EAW as well as the texts of French proceedings or judgments, sometimes translated into Italian.

As already mentioned, problems have arisen with completion of the EAW in cases involving the United Kingdom, and discussions between French magistrates and the Crown Prosecution Service have led to either the correction of EAWs or the issuing of new warrants.

In general, the judicial authorities are more likely to request additional information than the drafting of a new EAW (with the exception of the United Kingdom).

It should be noted that, in general, consultation with the executing authorities takes place either directly or via the intermediary of liaison magistrates or the EJN.

Moreover, the difficulties presented by European Arrest Warrants have been raised during the bilateral meetings which have taken place at regular intervals with certain States (Germany, the United Kingdom, Spain and the Netherlands) within the framework of international mutual assistance in criminal matters.

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

In principle, the French Justice Ministry considers that, given that the Council of Europe Convention of 28 May 1970 on the International Validity of Criminal Judgments has not been ratified, the legal basis for the transfer of nationals of the executing State can only be the Council of Europe Convention of 21 March 1983 on the Transfer of Sentenced Persons and its additional protocol.

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However, it should be stated that this doctrinal position is not shared by all the courts, which - on the contrary - consider the Framework Decision to be an appropriate legal basis. For further details see section 4.10.

3.9. SURRENDER OF MINORS AND THE ASSOCIATED GUARANTEES

Under French law, the age of criminal majority is 13.

No term of imprisonment may therefore be imposed on a minor below the age of 13 at the time of the offence which is the subject of an EAW. No such cases had been communicated by the French authorities at the time of the evaluation.

3.10. EVOLUTION OF BEST PRACTICE

Three years after the entry into force of the Law transposing the EAW, good practice has been implemented and consolidated in France.

The team of evaluation experts appreciated, in particular, certain initiatives of the Ministry of Justice which provide genuine support for practitioners in the application of the EAW.

In that connection, the EAW follow-up group, set up by the Ministry of Justice in 2004, is designed as a working party bringing together representatives of the Ministry and practitioners¹ to discuss problems raised by practice and case law.

¹ The EAW follow-up group includes three representatives of public prosecutor's offices (Paris, Aix-en-Provence and Pau), one member of the preliminary investigating chamber in Paris, one member of the Bar and one member of the Supreme Court of Appeal.

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The experts noted the usefulness of the Intranet site set up by the DACG, which contains a section dedicated to the EAW. The site, which is accessible to all magistrates and judicial officials, contains various sections relating to legislative texts, Ministry of Justice circulars, clarifications made by the Ministry on the basis of judgments of the Supreme Court of Appeal (Cour de cassation), the forms to be used and instructions for completing the EAW, a list of expert translators, statistics and an EAW question/answer forum. The latter contains all the replies given to practitioners on practical or legal issues relating to the Law implementing the EAW since its entry into force. Practitioners also have access to on-line assistance provided on a daily basis by DACG magistrates by telephone or e-mail.

The visit to the Ministry of Justice enabled the evaluation team to observe the efficient organisation of the system for collecting and compiling statistics. The programme implemented and administered by the BEPI (one serving official, supervised by two magistrates) constitutes an example of good practice despite staff shortages. Statistical data are collected mainly via the Justice Task Force, which routinely forwards to the BEPI a copy of the EAWs dealt with, and via the public prosecutor's offices in cases where the person in question is arrested (Article 695-17 of the Code of Criminal Procedure). The SAP also forwards information on surrenders effected. Furthermore, the BEPI forwards a standard data collection request to all judicial authorities once a year.

The statistics compiled by the BEPI present a summary of the EAWs issued and received each year, the countries concerned, the offences and the active and passive surrenders effected.

With regard to tools for assisting practitioners in the application of the EAW, reference should also be made to the departmental circular of 11 March 2004 and the drafting guidelines contained in the annotated form available on the Ministry of Justice's Intranet site. During the evaluation, it became clear that the French judicial authorities make wide use of such tools to complete EAWs.

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The experts noted the establishment of the Magistrates Unit in the Justice Task Force within SCCOPOL, which ensures the physical presence of the judicial authority in the Sirene-Interpol bureau. The evaluators commend that initiative on the grounds that it enables the judicial authority to provide expert advice in real time on any question concerning the EAW (in particular, the addition of flags or requests for additional information). In practice, four DACG magistrates are present in the Bureau each day and are on stand-by duty on a rota basis 24 hours a day, 7 days a week.

3.11. GENERAL COMMUNICATION WITH THE EXECUTING MEMBER STATE

In general, information is communicated between the French issuing and executing authorities mainly through direct contact between the judicial authorities concerned or through liaison magistrates, where such exist. The Ministry of Justice, which is an office for mutual international assistance in criminal matters, is also contacted by the judicial authorities in the event of problems with the executing Member State.

In cases where the EAW is transmitted via SIS or Interpol and the requested person's whereabouts are ascertained, the Justice Task Force or the National Central Bureau of Interpol notifies the issuing public prosecutor's office of that fact and provides details of the executing judicial authority and the time-limit for transmitting the translated EAW.

During the evaluation visit, the judicial authorities visited referred unanimously to the difficulty for the executing authorities of obtaining information as to the state of progress of the appeals procedures, and indeed the executing authority's decision on surrender. In particular, they stressed that information concerning the period of imprisonment served was not communicated sufficiently spontaneously by the foreign authorities.

The authorities questioned stated that, as an issuing State, France had never asked Eurojust to resolve any problem concerning an EAW. Reference was made to just one case in which the French national Eurojust member had approached the Ministry of Justice with a view to obtaining information on the status of French proceedings in connection with competing EAWs.

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3.12. ARRANGEMENTS FOR SURRENDER/TEMPORARY SURRENDER

The surrender procedure is the same for both temporary and permanent surrender.

Except where transmitted directly by the executing authority, a decision to surrender a wanted person is generally notified via the SIS or Interpol channel.

The public prosecutor's office, which receives the decision accepting surrender, takes the steps necessary to ensure that the wanted person is surrendered and sends requisitions to the Prisons Department (transfer office, SAP).

This central department is responsible for organising the operation to transfer and physically surrender the person at the land or air border of the executing State or in France (border posts, railway stations, airports). Upon arrival in French territory, the person is handed over to a magistrate from the public prosecutor's office at the point of entry into French territory or from the district court in the place of destination, depending on whether that court is located at more or less than 200 km from that point of entry.

The French authorities referred to certain difficulties in connection with the short (ten-day) time-limit which the Framework Decision lays down for surrender. Cases have been reported where the authorities of the executing State have not complied with the date set for surrender, and where *force majeure* has had to be invoked. In particular, the SAP complained of difficulties in coordinating with the authorities of certain countries, in particular Poland and Romania.

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

The French authorities reported that requests to seize and hand over property had been addressed to the executing authorities and that no particular difficulties had been reported.

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

At the time of the evaluation, one problem case had been reported by the French authorities. In a case involving competing arrest warrants relating to the same person, the decision of the executing authority had not made the grounds for surrender sufficiently clear. In the instance in question, the difficulties had been overcome through direct contact with either the liaison magistrates or the EJN.

3.15. EXPENSES

The French authorities explained that, in practice, they applied the principle whereby the costs of transferring convicted persons were borne by the State from the border-crossing to the place of imprisonment.

No difficulties over expenses were reported by the practitioners met during the evaluation visit.

4. ORGANISATION AND PRACTICES - AS EXECUTING MEMBER STATE

The group of evaluation experts was informed by the BEPI that, according to the statistics compiled up to the evaluation, the French judicial authorities had received 373 EAWs in 2006.

In accordance with the decision of the French legislator to decentralise the processing of EAWs, the designated executing authorities are the public prosecutor's offices and preliminary investigating chambers with territorial jurisdiction.

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4.1. RECEIPT PROCEDURES

Under Article 695-26 of the Code of Criminal Procedure, the foreign issuing authority may address and transmit the EAW directly to the chief public prosecutor with territorial jurisdiction in cases where the person's whereabouts are known. In other cases, use may be made of the SIS or Interpol channels which, in practice, are the most frequently used.

During the evaluation visit, the experts were informed by the BEPI of a problem which arises in particular with Poland, where the judicial authorities do not use of the Warsaw Interpol channel. Furthermore, issuing countries also experience difficulties when using the ATLAS of the European Judicial Network (EJN), which incorrectly indicates that EAWs should be transmitted to the central authority instead of to the competent Appeal Court. As they are obliged to transmit their warrants directly, the authorities comply with the information provided by the EJN ATLAS and send their EAWs to the central authority (the Ministry of Justice) as a legitimate recipient of the documents; the Ministry then has to send them on to the competent Appeal Courts.

An amendment made to the EJN site after the evaluation visit should put an end to this practice.

With regard to form, the Code of Criminal Procedure provides that "the original or a certified true copy of an EAW is to be sent, by any means which produces a written record" and which enables the executing authority to verify its authenticity. As regards the methods for transmitting and certifying EAWs, the departmental circular of March 2004 states that, save otherwise provided for by law, it is for the executing judicial authority to assess what is meant by the expression "any means" and to determine whether the secure facilities for sending faxes between Sirene Bureaux may be used for that purpose.

In that connection, the experts noted that, in practice, certain French executing judicial authorities are interpreting the law rigidly and are demanding only the original or a certified true copy of the EAW, despite the case law of the Supreme Court of Appeal, which is more flexible¹. Moreover, some judicial authorities frequently insist on the original, which is contrary to the Framework Decision (Article 10(4)).

¹ In its Judgment of 25 January 2006 (appeal No 05-87718), the Supreme Court of Appeal ruled that *"the decision stating that the European arrest warrant has been faxed to the registry not later than 6 working days after the date of arrest, [...], accompanied by a letter from the Italian Minister for Justice confirming that this document is a true copy of the original sent simultaneously by post, justifies the decision to authorise surrender"*.

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As regards the deadline for receipt of the original or certified true copy of the EAW, Article 695-26 provides that it must arrive not later than six working days after the date on which the requested person is arrested. Pursuant to the established case-law of the Supreme Court of Appeal¹, exceeding this deadline does not render an EAW invalid.

However, in practice, the experts noted that interpretations varied among judicial authorities as to the consequences of overrunning this deadline. Some of the prosecuting counsel who were interviewed consider that the person in question should be released, whereas others feel that, unless otherwise provided for by law, there are no grounds for releasing him.

Some of the practitioners met said that they had experienced difficulties with Italy in receiving EAWs and additional information within the stipulated deadlines, in particular as a result of the centralisation of the EAW handling procedure in the Italian Ministry of Justice. In most cases, requests had to be made by fax or through the liaison magistrate or EJM contact point.

4.2. FORM OF WARRANT AND REVIEW PROCEDURES

With regard to the execution procedure, the preliminary investigating chamber is the authority responsible for checking the form and substance of an EAW. The departmental circular of 11 March 2004 contains fairly detailed guidelines.

In general, the checks carried out by the preliminary investigating chamber concern aspects relating to the form and content of the EAW (in particular, the incriminating actions, the nature of the offences, the extent of involvement of the requested person and judgments by default, etc.).

The experts noted the following in the course of the evaluation:

¹ Judgments of the Supreme Court of Appeal of 1 September 2004, appeal No 04-84987, and of 21 July 2005, appeal No 05-84058.

RESTREINT UE

The role of the judiciary in the EAW procedure leads to a variety of approaches by the judicial authorities which, in the case of checking, is reflected in differing levels of discretion being used. Some authorities rely on the information provided by the issuing authorities on the EAW form or in the SIS alert, while others carry out a quite detailed examination of the substance. Sometimes, execution of an EAW is granted on the basis of a SIS alert containing the information which the law requires for an EAW, while at other times a copy of the EAW form, although correctly filled in, is not sufficient for execution.

In practice, the form and content of the EAW are also checked in advance of the hearing before the examining chamber. At their respective stages, the Sirene Bureau or Interpol, the Justice Task Force and the public prosecutor's office carry out checks on receipt of the EAW, to ensure that the case is properly prepared.

As regards form, EAWs addressed to the French judicial authorities must be accompanied by a translation into French by the issuing authority – a rather stringent requirement.

During the evaluation visit to the Central Operational Police Cooperation Section (*Section centrale de coopération opérationnelle de police, SCCOPOL*), experts were informed that all European arrest warrants (A and M forms) concerning France and distributed through the Schengen channel were translated into French by a group of translators before being sent to the competent national judicial authorities.

In general, the authorities told experts that there had been a general and gradual deterioration in the quality of foreign EAWs, particularly as regards the precision of the drafting of the form and the quality of the translation. Some examining magistrates interviewed during the evaluation pointed out that such failings gave rise to objections by the defence during court proceedings, and that to avoid this, additional requests for information were sent beforehand to the issuing State.

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Another problem pointed out to the expert team concerns the inappropriate use of EAWs by some foreign authorities, which apparently issue an EAW even to summon for questioning a wanted person who is subsequently released, or to prosecute minor offences (a Polish judicial authority issued an EAW for the theft of two tyres!). It is unfortunate that no rule of proportionality is observed when issuing an EAW.

4.3 REQUESTS FOR ADDITIONAL INFORMATION/CLARIFICATION AND RESPONSES TO THOSE REQUESTS

Article 695-33 of the Code of Criminal Procedure provides that the examining chamber may request additional information from the issuing State, if it feels that it does not have sufficient information to rule on the surrender.

The Article also lays down a maximum time-limit of ten days for the receipt of such information. According to the case-law of the Supreme Court of Appeal (Cour de cassation), failure to meet this delay will not lead to annulment of the case¹.

Nonetheless, it has happened in practice that surrender has not been authorised and the person has been released because of a failure to reply to a request for information, or because the information provided by the issuing authority was deemed insufficient.

On the basis of interviews with practitioners, experts noted that in most cases requests for additional information concerned the extent of the person's involvement in the criminal acts, the examination of optional or mandatory grounds for refusal, particularly where prosecution was statute-barred, and the examination of double jeopardy when the offence did not appear on the list of 32 offences.

As noted earlier, examination as to substance may vary from one court to another and may even include the requesting of evidence from the issuing State.

¹ Judgment of 25 July 2005, appeal No 05-84058.

RESTREINT UE

In the phase before the hearing by the examining chamber, the practice has developed – since the law is silent on this subject – that the Sirene/Interpol Bureau, the Justice Task Force and the principal public prosecutor also request the additional information they consider necessary so that they can prepare the case properly and save time, given the very short and strict deadlines. This generally involves clarification about the date and place the acts were committed and in general any key information on the form which might give rise to difficulties.

In practice, it may happen that all the parties involved in the execution of an EAW address requests for information to the issuing State.

Nonetheless, in general, requests by the Justice Task Force (the Sirene Bureau acting in full consultation with the magistrates attached to it) and by the principal public prosecutor are complementary, and replies to them are received very rapidly.

On the other hand, an altogether different practice is adopted by the Interpol office in Nanterre, which sends requests for additional information without consulting the magistrates of the Justice Task Force.

Requests for additional information are generally sent via the Sirene Bureau, the liaison magistrate, if there is one, or by fax.

4.4 ENQUIRIES AS TO THE WHEREABOUTS OF THE WANTED PERSON

On receipt of an alert/European arrest warrant, the Sirene/Interpol Bureau consults the three police databases (police, gendarmerie, customs), national vehicle registration files, identity files etc, and the wanted persons register (FPR).

All Schengen alerts are checked on arrival, so that the identity of wanted persons, their location, and any investigations under way can be established with certainty.

If the person's whereabouts can be determined or he is in detention in France, the EAW/alert is sent to the Justice Task Force which validates and authorises its dissemination at national level, or, where appropriate, its transmission to the territorially competent judicial authority. In parallel, the EAW is sent to the *Office central chargé des personnes recherchées ou en fuite* (OCPRF – Central office for wanted persons and fugitives) for distribution to the police/gendarmerie for the necessary checks to be made.

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The checking procedure carried out by the Sirene/Interpol Bureau involves the systematic registration of all foreign EAWs/alerts in the wanted persons register (FPR), with a note stating "contact the Sirene/Interpol Bureau" so that police on the ground can be provided with full information and instructions if a wanted person is arrested.

The Sirene/Interpol Bureau fulfils its function of providing support to the police very efficiently, thanks to effective organisation (round-the-clock cover provided by two teams of twelve, with four on duty at night, plus 16 translators on the spot) and a specialised team of police and gendarmes.

4.5 DISTRIBUTION PROCEDURES

During the evaluation visit, it was noted that almost all EAWs/alerts arrive via SIS/Interpol, since the issuing judicial authority does not know the person's whereabouts. Subsequent distribution at national level is carried out by SCCOPOL/the Justice Task Force as described above.

The Interpol channel is used not only for the transmission of red notices, but also to distribute EAWs. France receives many EAWs via Interpol, mainly from Spain and the Netherlands. Although both countries are part of the Schengen area they prefer this distribution method because Interpol allows bilateral transmission.

Experts were also informed that Italy had been systematically entering flags for its nationals for some months.

4.6 PROCEDURES RELATING TO THE ARREST/FIRST HEARING

A table showing execution procedures in France is attached to this report (ANNEX A).

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Arrest

When a person sought on the basis of an EAW or Interpol red notice is found in France, the police force or gendarmerie with territorial competence makes the arrest.

Under Article 695-27 of the Code of Criminal Procedure, the person must be brought before the principal public prosecutor with territorial competence within 48 hours.

During that period, the provisions of Articles 63-1 to 63-5 of the Code of Criminal Procedure apply.

They state that the detained person has the right to be informed , of the alleged offence, if necessary with the assistance of an interpreter, and also that he may have a person of his choice informed by telephone (relatives, employer, spouse), have a medical examination, and talk to a lawyer he has chosen or who has been appointed for him.

Presentation to the principal public prosecutor

Within 48 hours of arrest the person is brought before the principal public prosecutor, who acts as laid down in Articles 695-27 and 695-28 of the Code of Criminal Procedure.

In practice, before the hearing, the responsible public prosecutor checks the EAW and asks the issuing authority for additional information if necessary.

During the hearing, after checking the person's identity, the public prosecutor informs the person in a language which he understands:

- of the existence and contents of the EAW of which he is the subject, where appropriate on the basis of the information contained in the SIS alert;
- of the fact that he may be assisted by a lawyer of his choice, or one appointed by the court;
- of the fact that he may consent to or oppose the surrender, and of the legal consequences;
- of the fact that he may renounce the speciality rule, and of the legal consequences.

RESTREINT UE

During the hearing, the lawyer may consult the dossier and communicate freely with the person.

The principal public prosecutor orders detention, unless he considers that there are sufficient guarantees that the person will not try to evade the procedure. French law does not give the principal public prosecutor the power to place a person under judicial supervision.

This latter point led to an interesting discussion between the experts carrying out the evaluation and the practitioners they met, who agreed that there was an anomaly in the law, which should provide for some coercive power to reduce the risk of flight by the person who was the subject of the surrender. Experts were told that officials at the Ministry of Justice were considering a possible amendment to the law on this point.

Appearance before the examining chamber

Within five working days following presentation to the principal public prosecutor, the person must appear before the examining chamber of the court of appeal which rules on the surrender.

The procedure before the examining chamber, held in public, is conducted in accordance with the ad hoc procedures laid down for the EAW, with the person concerned being questioned following a presentation by the magistrate who has prepared the case.

The examining chamber must check whether the person wishes to consent to the surrender and to renounce the speciality rule, and must provide information on the legal consequences. Once consent has been given before the examining magistrate, it is irrevocable, as is renunciation of the speciality rule; there is no appeal. If the person does not consent to the surrender, the examining chamber must make a decision within 20 days unless there is an appeal to the Supreme Court of Appeal.

During the hearing, the examining chamber may:

- request additional information from the issuing authority and postpone the hearing;
- decide between several competing requests;
- authorise the issuing State to participate in the hearing, although without its being able to become a party, to clarify certain points. The French authorities said that this has happened only once in proceedings – on the execution of an Italian EAW – where the intervention of the Italian liaison magistrate in France was decisive;

RESTREINT UE

- make the surrender subject to guarantees, particularly the possibility for a person who has been sentenced in absentia to oppose the sentence, and the guarantee that a French national may serve his sentence in France.

The examining chamber may also decide on release, which may be requested at any point; unlike the principal public prosecutor, it may take safeguard measures, such as the payment of bail, to ensure the person's return.

4.7 DECISION ON SURRENDER

The examining chamber rules on the surrender in a reasoned judgment containing a decision to surrender, a refusal to surrender or a decision to surrender under certain conditions.

The decision must be made within ten days of the hearing if the person consents to surrender. In practice, the examining chamber tries to give a ruling on the same day as the hearing so as to accelerate the surrender procedure.

If the person opposes surrender, the examining chamber must take a decision within 20 days of the hearing, unless further information has been requested.

Once it has ruled on the execution of the EAW, under Article 695-38 of the Code of Criminal Procedure the examining chamber may temporarily stay surrender for serious humanitarian reasons. The experts observed that in practice the exclusive competence of the examining chamber regarding postponement was not always respected.

During the evaluation, experts were informed of a difficult case involving Austria, where the examining chamber, having decided in principle on surrender, postponed execution of the measure.

The public prosecutor's office decided to execute the surrender decision finally taken by the examining chamber, but then, following a further medical report, itself decided to postpone surrender¹, notwithstanding the terms of Article 695-38 which appear to reserve this power to the examining chamber.

¹ Following the transmission of further information to prosecuting counsel and thanks to the involvement of Eurojust, the wanted person was surrendered on 13 February 2007.

4.8 REFUSAL OF SURRENDER

At the time of the evaluation, the Ministry of Justice did not have statistics on how often the various grounds for refusal of execution – mandatory and optional – arose. However, the team observed from the overall statistics that the proportion of surrenders carried out during the first two years of application of the EAW was significant in relation to the number of EAWs received, and that the number of its own nationals surrendered by France was relatively significant as a proportion of the total number of persons surrendered.

During the court visits, the authorities told experts about cases where surrender had been refused, and the reasons for those decisions.

In some cases, the grounds for refusal were a matter of form, namely the lack of a translation into French of the EAW despite repeated requests, or divergences between the information on the EAW and in the SIS alert.

Refusals on grounds of substance included cases involving offences committed before 1 November 1993, statute-barring for French nationals, the lack of the equivalent in French law to the Italian practice of domiciliary orders, *ne bis in idem*, etc.

Discussions with the judicial authorities covered statute-barring, which was laid down in the Framework Decision on the EAW as an optional ground for non-execution but was transposed by France as a mandatory ground, and discrimination, which has been made a mandatory ground for non-execution in France although it appears in a recital in the preamble to the Framework Decision.

In the experts' view, the provision on statute-barring is a backward step even in relation to the system envisaged in the 1996 Convention on extradition, in which consideration of statute-barring is on the basis of the legislation applicable in the requesting Member State (observance of time-limits for statute-barring in the requesting Member State, also for acts which interrupt or suspend the statute-barring, etc.).

4.9 APPEALS PROCEDURES AND THEIR EFFECTS ON DEADLINES

The statistics which France has provided to the Council of the European Union show that in 2004 there were two cases where the 90-day deadline laid down by Article 17(4) of the Framework Decision was exceeded; there were three such cases in 2005¹. At the time of the evaluation, the BEPI did not have full data for 2006.

The figures illustrate that the French courts only miss the deadlines for their rulings in exceptional cases. In every case the wanted persons had appealed to the Supreme Court of Appeal.

Under Article 695-31 of the Code of Criminal Procedure, where the person does not consent to surrender, the examining chamber has to give a ruling within 20 days, except when additional information has been requested. This decision may be subject to appeal to the Supreme Court of Appeal within three full days by the principal public prosecutor or the wanted person. The Supreme Court of Appeal has 40 days in which to rule, plus a further 20 days if a ruling is annulled and referred back to another court.

Article 695-43 of the Code of Criminal Procedure lays down that if the 60-day deadline is exceeded the principal public prosecutor must notify the issuing judicial authority, and that only cases where the 90-day deadline is missed must be notified to Eurojust, giving the reasons for the delay.

4.10 ARREST AND SURRENDER OF OWN NATIONALS AND OF MINORS

Under the French law transposing the EAW and in accordance with the Framework Decision, French nationality may give rise to two particular cases: either a decision to surrender with a condition imposed by the examining magistrate, when the EAW was issued for the purposes of bringing a prosecution, that the person must be returned to France to serve their sentence; or a decision to refuse surrender, for an EAW issued for the serving of a sentence, when the sentence is compatible with French legislation and the French authorities undertake to ensure that the sentence is served.

¹ 7155/4/05 COPEN 49 EJN 15 EUROJUST 15; 9005/5/06 COPEN 52 EJN 12 EUROJUST 21.

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The effect which statute-barring as a ground for mandatory non-execution has produced on surrenders (or rather refusals to surrender) of French nationals was mentioned in section 4.8 above.

Regarding minors, Article 695-22 of the Code of Criminal Procedure provides that the requested person being under thirteen years old at the time of the offence for which the EAW was issued constitutes grounds for mandatory refusal.

The French authorities did not mention any examples of this type of refusal during the evaluation.

As mentioned in section 3.8 above, as regards the transfer of wanted persons, the formal position of the French Ministry of Justice is to consider that legally only the Council of Europe Convention of 21 March 1983 applies, since the Framework Decision and the law transposing it are silent on this subject.

However, this formal position is not shared by all the French courts, which instead base themselves on the Framework Decision, even if it contains nothing about guarantees.

In the light of the French law transposing the Framework Decision and the system stemming from it, the handling of EAWs and the surrender of wanted persons are interpreted in France as giving the judicial authorities full discretion in the decisions necessary to fulfil the commitments made to the issuing authorities.

Following the same logic of interpretation, the French Ministry of Justice considers that it is for the public prosecutors, i.e. the executing authorities, to provide guarantees and to respect the guarantee given to the issuing State (that their own nationals will be returned to serve their sentences).

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By way of exception and by agreement with the Netherlands authorities, the French Ministry of Justice gives this guarantee itself. Before a Dutch national or a well-integrated foreigner is surrendered, the Netherlands continues to demand the production of a double guarantee; the first, laid down in Article 5(3) of the Framework Decision, provides that the person is to be returned to his country of origin to serve his sentence, and the second requires that, in connection with that transfer, the sentence delivered by the issuing Member State may be converted by a Dutch court.

4.11 SPECIALITY

During the evaluation, the judicial authorities pointed to a problem in the drafting of Article 695-46, which had two aspects. The first related to the speciality rule, which gave rise to difficulties in application and had led to surrender being refused. In one case, an EAW issued by the Hungarian judicial authorities in compliance with the speciality rule, after the wanted person had been surrendered to Hungary on the basis of the original warrant, was rejected on the grounds that Article 695-46 provides that the offence for which an extension of the period of surrender is requested must be committed before the offence which gave rise to the original surrender. This is not in conformity with Article 27 of the Framework Decision on the EAW, which provides that the offence must be committed prior to the surrender of the person (not prior to the offence which gave rise to the surrender).

To overcome this obstacle, the BEPI (Ministry of Justice) suggested, in a letter addressed to its Hungarian counterpart, that the surrender should be extended on the basis of the European Convention of 13 December 1957.

The other aspect concerned the extension of surrender. Experts have noted that practice differs between French courts as regards the practice of extending the terms of surrender. Some courts refuse an extension, which must then be treated as an extension of a traditional extradition, whereas others grant it readily.

During the evaluation visit, experts were informed that officials at the Ministry of Justice were intending to propose a legislative amendment to bring Article 695-46 into line as regards speciality.

4.12 SURRENDER/EXTRADITION

At the time of the evaluation, there was no experience on this point.

4.13 AD HOC QUESTIONS ON COMMITMENTS

The authorities met during the evaluation visit had no specific comments on this heading.

4.14 EXPERIENCES IN RELATION TO ARTICLE 32

France has not had any problems here, as it uses the extradition procedure instead of the EAW.

It should also be noted that, during the initial phase of the application of the EAW, provisions in the law introduced very flexible measures on the handling of extradition requests for a transitional period, which helped attenuate the problems inherent in certain transposition laws becoming invalid.

4.15 TEMPORARY/CONDITIONAL SURRENDER

In Article 695-39 the French legislator introduced cases where the examining chamber may grant deferred or temporary surrender.

For temporary surrender, the decision is not dependent on an express request from the issuing State. In practice, experts noted that the judicial authorities hardly ever granted this sort of surrender, for two main reasons.

Firstly, temporary surrender inevitably leads to a lengthening in the issuing State of the proceedings for which the surrender was granted.

Secondly, according to some magistrates, it poses problems of a legal nature connected with the difficulty of identifying the correct grounds to detain a person during the period of temporary surrender. One case was mentioned concerning a French national held in Spain who was temporarily surrendered to France, where he was being prosecuted.

Magistrates from the Ministry of Justice met during the evaluation visit indicated to the team that there was a gap in the Framework Decision of 13 June 2002, since it did not provide for ancillary surrender in the case of a number of offences some of which did not fall within the scope of the Framework Decision.

4.16 ARRANGEMENTS FOR THE SURRENDER OF WANTED PERSONS (INCLUDING TEMPORARY SURRENDER AND CONDITIONAL SURRENDER)

Within ten days from the date when a decision becomes final, the principal public prosecutor takes the necessary steps to surrender the person. If the person is at liberty, he may order his arrest and detention.

The principal public prosecutor informs the issuing authority of any such proceedings.

Under the responsibility of the principal public prosecutor, the Prison Administration Transfer Department is responsible for organising and carrying out the surrender. This is a department which has nation-wide competence to carry out surrenders further to EAWs and extraditions to and from France. The team of 28 officers works full time at border posts, stations and airports in France and abroad.

The experts' visit to the transfer service was very interesting, and gave a detailed insight into the reality and problems of surrenders.

The service cooperates well with French public prosecutors and their counterparts abroad, which helps speed up surrenders.

The head of the department described some difficulties, in particular with:

- compliance with the ten-day deadline for carrying out surrenders, often on account of poor organisation on the part of the foreign authorities. In such cases, *force majeure* is invoked and the principal public prosecutor informs the issuing authority so that a new date can be set;

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- administrative difficulties and problems cooperating with some foreign authorities (Poland, Romania);
- the need for current identity documents for the person being surrendered (Lithuania, Romania, Poland).

Experts were informed that the Transfer Department has established a procedure by which, at the same time that the person is surrendered, the examining chamber's decision and a "criminal record form" provided by the prison establishment and showing the time spent in detention are also handed over.

4.17 ARRANGEMENTS FOR THE SURRENDER OF REQUESTED OBJECTS/DEADLINES/GUARANTEES

Under Article 695-41 of the Code of Criminal Procedure, if the requesting authority so requests in the EAW, objects may be seized to serve as evidence or which are the products of the offence.

When the examining chamber rules on the surrender of the person, he also orders the surrender of objects which have been seized, unless he considers it necessary to retain them temporarily for national procedural reasons; they may also be handed over on condition that they are returned.

This surrender may take place even if the EAW cannot be executed because of the death or escape of the wanted person.

4.18 CONFLICTS BETWEEN EUROPEAN ARREST WARRANTS/EXTRADITION REQUESTS

– **Conflicts between European arrest warrants issued by several Member States**

When several EAWs have been issued for the same person, including for different offences, Article 695-42 of the Code of Criminal Procedure lays down that the choice of which EAW to execute is made by the examining chamber, after consultation with Eurojust as appropriate. That provision lists a number of criteria to be taken into account when choosing which warrant to execute, particularly the gravity of the offences and the places where they were committed, the dates of the various EAWs, whether the EAW was issued for prosecution or to serve a sentence or other custodial security measure.

In practice, practitioners indicated that up to the time of the evaluation there had been no need to ask for Eurojust's involvement, since the choice between competing EAWs had been made on the basis of the criteria given in the law, in particular as regards the seriousness of the offences.

– **Conflict between a European arrest warrant and an extradition request**

Article 695-42 of the Code of Criminal Procedure gives the examining chamber competence to decide what priority to give to the EAW or the extradition request, having regard to the criteria given in the first subparagraph of that Article and the conditions in the applicable convention or agreement.

The ministerial circular specifies that in every case the principal public prosecutor must consult the DACQ before making a petition to the court.

4.19 COSTS

The French authorities made no comments on this point during the evaluation.

5. TRAINING

The French National Magistrates College (*Ecole nationale de la magistrature, ENM*) organises initial training courses for court officials and further training for magistrates and prosecutors. During initial training, one module is devoted to the mechanisms of international assistance in criminal matters, especially the European arrest warrant. The training is organised through exchanges of students with other EU countries (Spain, Portugal, Bulgaria, and the Czech Republic). During those sessions, trainee magistrates carry out exercises in real time in drafting international letters of request and European arrest warrants.

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As regards further training, in 2004 the ENM organised specific training in the form of a thematic seminar entitled "The European arrest warrant" which lasted three days and involved 150 participants, of which 70 were French magistrates and 80 foreign magistrates (in the framework of the European Judicial Training Network (EJTN)). Although it was offered in the ENM's training catalogue for 2005 and 2006 the seminar had to be cancelled as Community funding under the AGIS programme could not be obtained, and because there was not a sufficient number of participants.

The subject of the European arrest warrant is also covered systematically for several consecutive hours in the further training activities in law and criminal procedure organised by the ENM, and sometimes jointly organised with the national police college (*École nationale supérieure de la police*).

From meetings with the judicial authorities, experts noted that as well as the training given by the ENM or occasionally organised by the authorities at local level, knowledge was most often acquired by consulting BEPI's intranet site, which contains a wealth of legal, regulatory and practical information, and information about case-law.

During the evaluation, experts also noted that magistrates' knowledge was focused on primary and secondary transposition legislation and on national case-law, altogether neglecting the provisions of the Framework Decision on the EAW and the case-law of the Court of Justice of the European Communities.

As regards training for administrative staff, annual further training is organised by the national college for court clerks (*École nationale des greffes*), and includes specialised sessions on European criminal law.

For the police, besides further training, police, gendarmes and customs officers working at SCCOPOL have access to online training specifically on the EAW forms.

6. VIEWS OF THE DEFENCE

The experts had the opportunity during the evaluation visit to meet representatives of the Paris Bar Council and of the Marseille, Aix-en-Provence and Versailles bars.

The team of experts held an exchange of views with lawyers on the operation of the EAW and on the role of the defence and observed that, with the exception of one of the bars, interest in matters relating to the EAW and knowledge of the procedures were rather low. In general, particularly at the level of public defence counsel, the lawyers concerned were young, with limited experience and earning low fees.

The training programmes for lawyers did not contain modules dealing with the EAW, except at the initial stage for young lawyers. The most frequent scenario is on-the-job training, when specific cases are being dealt with by lawyers who already have expertise in the area. In only one case did lawyers mention the existence, on the intranet site of the local bar, of a vade-mecum on the processing of EAWs, explaining the role of the defence, the points to be checked and the aims.

The talks highlighted certain viewpoints expressed by the defence on questions of principle and procedural aspects.

In relation to principles, the lawyers, while emphasising the benefits of accelerating the process compared with the former extradition system, complained about the marginalisation of the defence in the processing of EAWs and the deficient quality of the procedure. In other words, they consider that the principle of mutual recognition and the impossibility of finding equivalences in the categories of the most serious offences (the list of 32) considerably curtail the ability of the defence to argue its case and are contrary to the principle of an adversarial process, eliminating defence guarantees for the most serious offences. According to the lawyers, the optimum solution would have been to find a balance between the legal debate and the speed of the procedure.

As regards procedure, the lawyers reported problems concerning the difficulty of access to documents relating to the EAW, particularly prior to appearing before the examining chamber. The flexibility demonstrated by some judicial authorities in certain cases enables them to prepare their cases more effectively.

In one case, the lawyers deplored the practice adopted by the registry of one examining chamber of not giving the defence a copy of the surrender decision, so that the defence is not apprised of any grounds for refusal of the pleas it has raised to oppose the surrender, within the time limit for introducing its appeal. In this regard, it should be noted that, after the evaluation visit, the Public Prosecutor and First President of the Court of Appeal in question sent a letter of clarification to the Council of the European Union. The letter stated that, in view of the absence of provisions in the Code of Criminal Procedure regarding notification of the decision to the person concerned or to his lawyer, there was no automatic delivery, but that it was always possible for the lawyer to learn of the grounds at the hearing or from the registry of the examining chamber. Moreover, they confirmed that they had asked the court registry to respond positively to all requests for a copy of the decision as promptly as possible.

One lawyer also mentioned the problem of the availability of interpreters, an aspect also mentioned by a number of magistrates in the context of cutbacks under the French budget laws.

7. CONCLUSIONS

7.1. General conclusions

The team of experts greatly appreciated the professionalism and receptiveness of the authorities they met in the course of the evaluation, which enabled them to conduct a detailed analysis of the practical application of the EAW in France by means of a frank dialogue allowing criticism to be voiced.

In general, the experts felt that France had a good understanding of the challenges and innovatory nature of the EAW as compared with the old extradition system, and that its criminal law system had assimilated the necessary cultural changes.

From the statistics available for the first three years of application of the EAW, it emerges that the percentage of surrenders carried out (including surrenders of French citizens) is significant and that the surrender deadlines are generally met.

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As regards legislation, although in general the French implementing law properly reflected the letter and spirit of the Framework Decision of 13 June 2002, it appeared necessary, in the light of practice over these years and the body of case-law from the Supreme Court of Appeal (*Cour de cassation*), to make a number of adjustments in order to improve the application of the EAW.

The experts appreciated the considerable efforts made by France to facilitate the activities of practitioners in the practical application of the EAW. In particular, they highlighted the preparation of the departmental circular containing very detailed guidelines for the processing of the EAW, the establishment of a monitoring group to analyse problems relating to the application of the EAW, the creation of an intranet site with a section on the EAW accessible to all magistrates, the setting-up of the Justice Task Force within the Sirene/Interpol Bureau, and other practices and tools which have been shown to be very useful to the judicial authorities.

During the evaluation, the experts noted that, notwithstanding the standardisation of rules and procedures aimed at by the circular, and despite the case-law from the Supreme Court of Appeal, the practices and interpretations of the law differed from one jurisdiction to another, with the result that similar cases were treated differently. Although aware that this was part of the process of implementing judicial control over the procedure, the experts considered that certain practices could be harmonised.

The interviews with the practitioners revealed frequent difficulties in relations with other Member States in the application of the EAW, both when France was issuing State and when it was executing State. In particular, there are communication difficulties between States as regards information on the progress of the procedure or on the surrender decision, and certain judicial authorities are reluctant to fully accept the principle of mutual recognition, as detailed and/or indicated a number of times in this report.

Throughout the evaluation, the group of experts noted that, in the application of the EAW, there is a certain divergence between the defence and the judicial authorities, which could basically be due to the absence of specific training for lawyers, which particularly affects public defence counsel. Another question raised at defence level concerns the difficulty of access to information relating to the EAW in sufficient time to prepare the hearing or the grounds for the appeal, either at the stage proceeding the appearance before the examining chamber or after the surrender decision.

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

7.2.1. Questions

7.2.1.1 – Sentence threshold for the issue of an EAW

The experts welcomed the fact that the departmental circular of 11 March 2004 recommends the systematic issuing of an EAW for sentences above a specific threshold, i.e. entailing over one year's imprisonment, which is in line with the principle of proportionality which should be a guiding principle for measures entailing the arrest of persons. In practice, however, it was observed that French courts were inconsistent in evaluating the sentence threshold for the issue of an EAW, with some of them keeping to one year, and others opting for 18 months. In the experts' opinion, such practices could give rise to a disparity in the treatment of comparable criminal situations, by depriving sentences of effect.

7.2.1.2 – Completing the EAW form

The departmental circular of 11 March 2004 is a very effective tool for the French issuing authorities, as it gives precise and detailed guidelines on completing the form (see annex). An annotated copy of the form is available on the Ministry of Justice's intranet site, to which all French magistrates have access; it contains detailed instructions, heading by heading, on making out an EAW.

It should, however, be stressed that the instructions in the circular are only guidelines, with the judicial authority retaining the right to make its own choice. In practice, given the decentralised processing of EAWs, the experts noted that although magistrates make considerable use of the circular and the support tools, there are differences in the manner in which the form is completed, particularly as regards the description of the circumstances, the degree of participation, and the definitions of the offences that can be included in the categories provided for in Article 2 of the Framework Decision.

The standard EAW form has proved inadequate to deal with the specific features of UK law. In order to resolve this problem, France considered it necessary to prepare a specific EAW form for the United Kingdom. With the collaboration of the Crown Prosecution Service and the liaison magistrates, the form was amended and brought into line with the requirements of UK law.

However, the experts noted that this form, which is not in accordance with the Framework Decision, is now partly out of date following legislative changes in the United Kingdom. The experts consider that the drafting of "made-to-measure" forms seriously undermines the principle of mutual recognition and they regret that the French authorities have been obliged to resort to such practices.

7.2.1.3 - European Judicial Network Atlas

The experts noted that problems had arisen owing to the failure to update the lists contained in the European Judicial Network Atlas, thereby preventing the issuing judicial authorities from identifying with certainty the competent foreign authority.

7.2.1.4 - Communication with the executing Member State

The experts shared the view of the judicial authorities met and regretted the existence, despite several years of application of the EAW, of the bad practice of not communicating information on the progress of the procedure (legal remedies, surrender decision) to the issuing State. In this respect, they noted that the issue was not only the application of Article 22 of the Framework Decision; it would also be advisable to introduce as customary practice regular contacts between issuing and executing authorities.

7.2.2. Good practice

7.2.2.1 - Departmental circular, Intranet and support tools

The experts warmly welcomed the initiatives taken by France to facilitate the application of the EAW.

They acknowledged in particular the usefulness of the departmental circular of 11 March 2004, which provided detailed guidelines on the processing of EAWs. The experts noted that, although not binding, it was, with the law transposing the EAW and case-law from the Supreme Court of Appeal, the main source of guidance for practitioners. In general, the experts observed that, whenever a problem was identified, a circular was produced; however, the circular of 11 March 2004 had not been updated since first issued, to take account, in particular, of the body of case-law from the Supreme Court of Appeal and, more generally, changes in practices regarding implementation of the European arrest warrant.

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Experts also appreciated the exhaustive nature of the information on the BEPI intranet site, particularly that relating to the law, legal theory and case-law, which is easily accessible to all French judicial authorities, and includes an online discussion forum, standard forms, circulars and messages from the BEPI. Experts stressed the importance of keeping this considerable and informative resource up-to-date, and of enriching it with the case-law of the Court of Justice of the European Union in the framework of Title VI of the Treaty on European Union.

7.2.2.2 - Monitoring group

The team appreciated the Ministry of Justice's initiative to set up a working group with representatives from the French judicial authorities (issuing and executing authorities), the Supreme Court of Appeal and the defence side, to discuss questions connected with the application of the EAW. Working on the basis of agendas drawn up by the Ministry of Justice and by practitioners, this group has in recent years developed useful and effective solutions to facilitate the application of the EAW. The experts felt that the initiative was very positive and encouraged practitioners to continue the practice and to exploit to the maximum the possibilities it offered to spread information widely amongst magistrates.

With this same idea of working alongside practitioners, the practice established by the DACQ of holding meetings every three months with the 35 principal public prosecutors to discuss questions of international assistance in criminal matters, including the EAW, is commendable.

However, experts noted a failure to distribute the records of the meetings of the monitoring group, and the fact that it had not met since June 2006.

7.2.2.3 - Statistics

The system for collecting and processing statistical data organised by the BEPI is efficient, particularly because of the systematic forwarding of all EAWs and Schengen alerts transmitted or received by the Justice Task Force, and information on surrenders transmitted by the SAP. Experts noted some discrepancies in relation to EAWs handled directly by the judicial authorities, which did not seem to be regularly forwarded to the Ministry of Justice despite the attached obligation laid down in Article 695-17 of the Code of Criminal Procedure.

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7.3 Conclusions on France's activities as executing Member State

7.3.1 Questions

7.3.1.1 – EJA Atlas

During the evaluation, experts noted that the EJA Atlas contained a reference to the central authority (Ministry of Justice) as the reception point for EAWs, which caused problems for issuing States in identifying the French judicial authorities competent to handle EAWs¹.

7.3.1.2 - Language accepted for EAWs

French law stipulates that the EAW must be drafted in French alone and produced within a strict time-limit. Although the Framework Decision does give Member States the choice of indicating in what language(s) they will accept an EAW, a more flexible approach would in the opinion of the evaluators nevertheless be desirable.

7.3.1.3 - Receipt of the EAW and delays in receipt

Experts noted divergent interpretations by the French judicial authorities of the law transposing the EAW, which had resulted in EAWs being rejected. The team noted in particular that, despite the flexibility of the case-law of the Supreme Court of Appeal and the Framework Decision, some courts insisted on having the original or a certified copy of the EAW, otherwise surrender was refused.

Experts also noted a restrictive interpretation of the six-day deadline for receipt of the EAW, which led some courts to release the wanted person if that deadline was overshot. Experts consider that the person should not be released, if account is taken of the case-law of the Supreme Court of Appeal, whereby failure to meet the deadline does not entail annulment.

¹ After the evaluation visit, experts were informed that the EJA site had been amended, which should make it possible to correctly identify the French judicial authority competent to handle an EAW.

7.3.1.4 – Examination of the substance of the EAW

Experts noted that there was a risk that the principle of mutual recognition would be jeopardised because of the practice of some French courts of examining an EAW as to substance, particularly as regards evaluation of the degree of participation of the wanted person. This practice could lead to requests for additional information requiring the production of information which the issuing judicial authority is sometimes unable to provide.

7.3.1.5 – Additional information

Experts noted that in practice, when executing EAWs, all the authorities involved (the Sirene Bureau, Interpol, the Justice Task Force, the principal public prosecutor), as well as the examining chamber, request additional information from the issuing authority. Although they appreciate the aim of improving the quality of an EAW before the hearing by the examining court, the expert team noted that this practice risks making the procedure more cumbersome for the issuing authority, which could receive up to five requests for information.

During the evaluation it was noted that, despite perfect coordination between the Sirene Bureau and the Justice Task Force, the Interpol office sometimes acted autonomously in asking additional questions. Experts feel that since Interpol is not an executing judicial authority, any request for information should be sent to the issuing authority in consultation with the magistrates of the Justice Task Force or with the executing judicial authority, as is the practice of the Sirene Bureau.

7.3.1.6 – Appropriate use, and quality of the drafting of EAWs

Experts shared the French authorities' criticism of the practice of some foreign issuing authorities using the EAW for purposes other than those laid down in the Framework Decision (for example issuing an EAW for minor offences for a person who has not complied with a summons in the issuing State).

The experts deplored this lack of care, which has led to a multiplication of requests for additional information, and is thus gradually degrading the principle of mutual recognition.

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The evaluation revealed that the quality of drafting and translation of EAWs has gradually deteriorated, in some countries in particular (Spain, Italy and Poland). The experts deplored this lack of care, which has led to a multiplication of requests for additional information, and is thus gradually degrading the principle of mutual recognition.

7.3.1.7 – Powers of the principal public prosecutor

The experts noted the legislative anomaly pointed out by practitioners, namely that the principal public prosecutor decides whether or not the wanted person should be held in custody but cannot order any judicial supervision. If there is a suspicion that the person might evade justice, the principal public prosecutor is inclined to order detention in custody.

7.3.1.8 – Postponement of surrender

The experts noted that the decision to postpone surrender for serious humanitarian reasons, which under Article 695-38 of the Code of Criminal Procedure may be taken only by the examining chamber, was in one case taken by the principal public prosecutor (see section 4.7). In their view the respective competences of the principal public prosecutor and the examining chamber need to be clarified.

7.3.1.9 – Grounds for mandatory non-execution. Statute-barring and discrimination

Regarding statute-barring (the fourth paragraph of Article 695-22 of the Code of Criminal Procedure), two comments were made by the experts.

The first was that statute-barring, as applicable to offences which could be prosecuted and judged in France, could have the indirect effect of benefiting French nationals.

As regards an offence committed abroad by a foreigner, the French criminal courts are not in principle competent, since French social order is not disturbed even if that foreigner is resident in France. However, French law does recognise several circumstances in which a foreigner may be prosecuted for an offence committed outside France.

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Firstly, this is the case where an international convention so provides (Article 689 and following of the Code of Criminal Procedure). Secondly, French law gives French courts jurisdiction to prosecute any crime where the victim is a French national. This is also the case for offences where there is a complaint by the victim or by an official denunciation by the authority of the country where the crime was committed.

The second was that discrimination (paragraph 5 of Article 695-22) had been transposed into French law as a ground for non-execution.

7.3.1.10 – Notification of deadlines in Article 17(7) of the Framework Decision

The team noted a discrepancy in the transposition of Article 17(7) of the Framework Decision, which provides that if the deadlines provided for in that Article (10, 60 or 90 days) are not complied with, Eurojust must be informed, while the French provision lays down that Eurojust must be notified only if the 90-day deadline is missed.

7.3.1.11 – Legal regime applicable to the return of nationals

The experts noted that France followed other EU Member States in considering the Convention of 21 March 1983 on the transfer of sentenced persons to be applicable, owing to the lack of a provision on transfer of persons in the Framework Decision. However, in practice, the judicial authorities have habitually regarded the Framework Decision as giving a sufficient legal basis to enable the executing judicial authorities to give the guarantees required by the issuing State (without the involvement of the Ministry of Justice).

The experts stressed the case for a homogenous approach in the European Union.

7.3.1.12 – Speciality

The team noted problems in applying the speciality rule (see section 4.11 above). They noted the French authorities' intention to amend the law in this area.

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7.3.1.13 – Extension of the terms of surrender

The experts noted that practice varied between French courts as to the practice for extending the terms of surrender. Some courts refused extensions of surrender, which then had to be treated as extensions of traditional extradition, whereas others granted them easily. Harmonisation is needed, and an amendment to Article 695-46 of the Code of Criminal Procedure is therefore desirable.

7.3.1.14 – Ancillary surrender

The experts noted that the French authorities had pointed out a gap in the Framework Decision of 13 June 2002, in that it failed to provide for ancillary surrender in the case of multiple offences, some of which did not fall within the scope of the Framework Decision.

7.3.1.15 – Temporary surrender

The experts noted that French practitioners are not currently using temporary surrender on account of problems in identifying the grounds for detention valid during the period of temporary surrender.

7.3.1.16 – Coercive powers of the examining chamber

The experts noted that no coercive powers had been provided for to guarantee surrender in cases where the person had been left free during the proceedings.

7.3.1.17 – The defence

The experts noted that there was a discrepancy between the degree of specialisation of the magistrates and the defence, particularly the legal-aid lawyers, and suggested to the bar representatives they met that they should consider specific training on the EAW.

The experts also had the impression that the practice of some courts was such as to limit the opportunity for lawyers to have access to the dossier in good time to prepare their appeal arguments properly.

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7.3.2 Good practice

7.3.2.1 - Justice Task Force

Locating a unit of magistrates within the Sirene/Interpol Bureau seems to the experts to be a good initiative, which means that the expertise of the judicial authority on any legal question linked with the issue or execution of an EAW in accordance with the Framework Decision is immediately available.

7.3.2.2 - Criminal record

The experts very much appreciated the practice of the SAP, when surrendering a person, of at the same time providing the issuing authority with the criminal record indicating periods already spent in detention, and a copy of the examining chamber's decision authorising surrender.

7.3.2.3 - Systematic checking in the wanted persons register (FPR)

The experts noted that systematic verification of all Article 95 alerts received in the European zone, and not only those targeted in France, was carried out in the FPR.

8. RECOMMENDATIONS

8.1 RECOMMENDATIONS TO FRANCE

8.1.1 As an issuing Member State

Recommendation 1 - Consider the possibility - while respecting freedom to assess individual situations - of pursuing a policy on the execution of sentences which is reasonably homogenous, so as to ensure uniformity of treatment (see 7.2.1.1).

Recommendation 2 - As soon as possible, abide by the provisions in the Framework Decision relating to the standard form, and avoid introducing practices which condone the particular legal requirements of certain States, but which are not laid down in the Framework Decision and which go beyond the principle of mutual recognition (see 7.2.1.2)

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Recommendation 3 - Exploit to the maximum the potential of the support tools available to magistrates to facilitate the application of the EAW, particularly by carefully updating the departmental circular, distributing a consolidated version of that circular, and updating BEPI's intranet site in the light of the development of case-law in this area. Create a section on the intranet site including the case-law of the Court of Justice of the European Union. Encourage regular meetings of the monitoring group and distribute the results of its discussions to all national courts and to interested bar associations (see 7.2.2.1 and 7.2.2.2).

Recommendation 4: Improve the system for compiling information at the Ministry of Justice on EAWs dealt with directly by the French judicial authorities (see 7.2.2.3).

8.1.2. As an executing Member State

Recommendation 5: Consider a more flexible approach involving agreeing to surrender the wanted person on the basis of an EAW drawn up in a language other than French, in line with some Member States' practice (see 7.3.1.2).

Recommendation 6: Consider the possibility of amending or clarifying the Code of Criminal Procedure as regards the arrangements (acceptance of an EAW in a form other than the original or a certified copy of the original) and time limit (six-day rule) for receipt of an EAW, as allowed under the case-law of the Supreme Court of Appeal (Cour de cassation) (see 7.3.1.3).

Recommendation 7: Keep to the information supplied by the issuing judicial authority in the EAW form and as far as possible avoid making any requests concerning the substance of the case, which are liable to interfere with criminal proceedings pending in the issuing State, with the possible result of refusal to surrender the wanted person to the requesting authorities (see 7.3.1.4).

Recommendation 8: Encourage coordination between the French authorities involved in the process of executing an EAW, so as to limit the number and extent of requests to the issuing authority for additional information (see 7.3.1.5).

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Recommendation 9: Consider amending the Code of Criminal Procedure as regards execution of an EAW, so as to enable the principal public prosecutor also to place a person under judicial supervision (see 7.3.1.7).

Recommendation 10: Clarify and delineate precisely the powers of the principal public prosecutor and of the examining chamber as regards a stay of surrender, for serious humanitarian reasons see 7.3.1.8).

Recommendation 11: Consider the possibility of amending the Code of Criminal Procedure with regard to discrimination as a ground for non-execution (see 7.3.1.9).

Recommendation 12: Consider the possibility of reviewing the domestic implementing legislation as regards the time-limits in Article 17(7) of the Framework Decision (see 7.3.1.10).

Recommendation 13: Go ahead with the planned amendment of Article 695-46 of the Code of Criminal Procedure as regards speciality (see 7.3.1.12).

Recommendation 14: Standardise practice on extension of the terms of surrender, by amending Article 695-46 of the Code of Criminal Procedure (see 7.3.1.13).

Recommendation 15: Clarify the domestic provision governing temporary surrender (see 7.3.1.15).

Recommendation 16: Amend the Code of Criminal Procedure to introduce coercive powers ensuring that the wanted person is actually surrendered to the requesting authorities (see 7.3.1.16).

Recommendation 17: Take the necessary measures to guarantee, in practice, that lawyers have access to information concerning an EAW in time to ensure that they are best able to put up an effective defence for their client (see 7.3.1.17).

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8.2. RECOMMENDATIONS TO OTHER MEMBER STATES

Recommendation 18: Wherever possible, follow the rules in the Framework Decision as regards the standard form and refrain from introducing practices to confirm fulfilment of some States' special legal requirements for which there is no provision in the Framework Decision and which run counter to the principle of mutual recognition (see 7.2.1.2).

Recommendation 19: Endeavour to keep in regular contact with issuing judicial authorities, in order to brief them on progress in the execution process. Notify the issuing judicial authority straight away of the decision on the action to be taken on an EAW, in accordance with Article 22 of the Framework Decision (see 7.2.1.4).

Consider the possibility of supplying a form showing any periods already spent in custody in the executing country, along the lines of the French prison record form (see 7.3.2.2).

Recommendation 20: Take steps, in ways compatible with the country's own system, to facilitate application of the EAW by the judicial authorities (draw up explanatory circulars, establish an intranet site to disseminate relevant information and set up a monitoring group) (see 7.2.2.1 and 7.2.2.2).

Recommendation 21: Consider the possibility of positioning magistrates alongside the Sirene/Interpol Bureau, so as to have the judicial authorities' expertise instantly available for any legal issues involved in issuing or executing an EAW (see 7.3.2.1).

Recommendation 22: Take the utmost care in completing the EAW form, so as to ensure that the information required in it is of the highest standard, particularly as regards the degree of participation. Check the quality of translations (see 7.3.1.6).

Recommendation 23: Observe the principle of proportionality in issuing an EAW and refrain from using one for minor offences or for inappropriate purposes (see 7.3.1.6).

8.3. RECOMMENDATIONS TO THE EUROPEAN UNION

Recommendation 24: Take steps to have the lists of judicial authorities empowered to issue EAWs, as given in the EJA Atlas, kept up to date (see 7.2.1.3 and 7.3.1.1).

Recommendation 25: Consider the legal consequences of divergent transposition by the Member States of the optional and mandatory grounds for non-execution laid down in the Framework Decision and consider the possibility of harmonising transposition (see 7.3.1.9).

Recommendation 26: Consider the possibility of introducing a common procedure for the return of a country's own nationals (see 7.3.1.11).

Recommendation 27: Consider the possibility of plugging the loophole concerning surrender for ancillary offences, should some of a number of offences not come within the scope of the Framework Decision (see 7.3.1.14).

Recommendation 28: Consider the possibility of introducing a standard prison record form for all Member States of the European Union (see 7.3.2.2).

Recommendation 29: Consider the possibility of determining a limited number of vehicular languages in which EAWs may be issued (see 7.3.1.2.).

Procedure for executing a European Arrest Warrant

Legal framework	European arrest warrant (Articles 695-11 to 695-51 of the Code of Criminal Procedure)	
	With consent	Without consent
Arrest	Arrested by the police or gendarmerie Notified of the warrant	
Principal public prosecutor's office	Presented to the principal public prosecutor within 48 hours of arrest, for checking of identity and notification of the contents of the warrant (Articles 695-27 and 28 of the Code of Criminal Procedure)	
Place of custody	Remand centre for the location of the court of appeal (Article 695-28 of the Code of Criminal Procedure)	
Appearance before the examining chamber	Brought before the examining chamber within five working days after being presented to the principal public prosecutor (Article 695-29 of the Code of Criminal Procedure)	
Decision by the examining chamber	Consent placed on record within seven days (Article 695-39 of the Code of Criminal Procedure)	Decision given within 20 days (Article 695-31 of the Code of Criminal Procedure)
	It is at this stage that guarantees may be sought under Article 5 of the Framework Decision.	
Appeal	No appeal (Article 695-31 of the Code of Criminal Procedure)	Appeal to the Supreme Court of Appeal (Court of cassation) within three calendar days: 40-day time limit for a ruling (Articles 695-31 and 574-2 of the Code of Criminal Procedure). If the decision is set aside and referred back, a new 20-day time limit applies.

IMPEDIMENTS TO SURRENDER

Legislative reference (Code of Criminal Procedure)	Grounds	Relevant provision of the Framework Decision
Article 695-22	Amnesty	Article 3(1)
Article 695-22	Final judgment or sentence served	Article 3(2)
Article 695-22	Age of criminal responsibility	Article 3(3)
Article 695-22 (grounds for mandatory non-execution)	Prosecution statute-barred	Article 4(4) (grounds for optional non-execution)
Article 695-22	Fundamental rights enshrined in Article 6 of the Treaty on European Union	Article 1(3)
Article 695-23	Act does not constitute an offence under French law	Article 2(4)
Article 695-24	Decision not to prosecute	Article 4(3)
Article 695-22	Double jeopardy	Article 4(5)
Article 695-24	French national	Article 4(6) and Article 5(3)
Article 695-24	Offences committed in whole or in part within French territory, or committed outside the issuing State and French law does not allow prosecution for the offence when committed outside French territory	Article 4(7)(a) and (b)

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ANNEX C

SUMMARY OF EAWs RECORDED BY BEPI 2004 → 2007

27/02/2007

COUNTRY	2004			2005			2006			2007			2004 → 2007
	Active	Passive	Total	Active	Passive	Total	Active	Passive	Total	Active	Passive	Total	
Germany*	21	27	48	15	60	75	14	34	48	7	6	13	184
Austria	6	6	12	8	5	13	4	13	17	2	0	2	44
Belgium	39	72	111	72	122	194	84	108	192	9	6	15	512
Cyprus			0	1	2	3	0	0	0	0	1	1	4
Denmark			0	3	2	5	1	0	1	0	0	0	6
Spain	103	66	169	128	78	206	133	66	199	11	10	21	595
Finland	0	2	2	0	2	2	0	3	3	0	0	0	7
Greece			0	8	1	9	5	2	7	0	0	0	16
Hungary	0	1	1	5	7	12	10	4	14	0	0	0	27
Ireland	1	0	1			0			0			0	1
Italy			0	13	28	41	25	46	71	3	3	6	118
Lithuania	0	4	4	2	0	2	2	4	6	0	1	1	13
Luxembourg	0	5	5	1	4	5	3	12	15	1	0	1	26
Netherlands	12	9	21	43	16	59	50	24	74	3	3	6	160
Poland	2	2	4	2	18	20	5	47	52	0	16	16	92
Portugal	9	14	23	24	22	46	12	22	34	2	1	3	106
United Kingdom	2	3	5	16	10	26	18	10	28	0	0	0	59
Czech Republic							3	1	4	0	0	0	4
Slovakia	0	0	0	2	0	2	1	1	2	0	0	0	4
Slovenia	0	1	1			0	1	1	2	0	0	0	3
Sweden	0	1	1	0	4	4	2	3	5	1	0	1	11
TOTAL	195	213	408	343	381	724	373	401	774	39	47	86	1 992

*(except 18/07/05 to 01/08/06)

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EAW OFFENCES 2004 → 2007

27/02/2007

INFRACTIONS	2004	2005	2006	2007	TOTAL
Narcotic drugs	118	178	219	20	535
Organised robbery	69	127	164	22	382
Swindling	38	99	90	12	239
Murder, grievous bodily injury	44	74	62	4	184
Other (maintenance, violence, desertion, etc.)	29	59	31	4	123
Terrorism	36	33	19	5	93
Rape	15	28	39	1	83
Fraud affecting the financial interests, etc.	10	26	29	4	69
Forgery of documents	8	20	27	4	59
Kidnapping and illegal restraint	12	18	19		49
Trafficking in human beings	12	18	13	2	45
Forgery of means of payment	3	9	11	1	24
Trafficking in stolen vehicles	1	8	9	2	20
Extortion	3	7	5	1	16
Laundering of the proceeds of crime	3	2	10	1	16
Facilitation of unauthorised entry and residence		7	7	2	16
Sexual exploitation of children	1	3	8		12
Arson	3	2	2		7
Counterfeiting and piracy		1	4		5
Computer-related crime	0	1	3		4
Counterfeiting currency	1	2	1		4
Arms trafficking	1	2			3
Counterfeiting currency, including the euro			1		1
Illicit trafficking in cultural goods	1				1
Corruption			1	1	2
TOTAL	408	724	774	86	1 992

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SURRENDERS ON THE BASIS OF A EUROPEAN ARREST WARRANT 2004 → 2007

Estimate to date (Source: Public Prosecutor's Office/Justice Task force/direct transmission/ transfer → record of surrender)

	ACTIVE		Total	PASSIVE		Total	27/02/2007 TOTAL
	Surrendered by	Nationals		Surrendered to	French nationals		
Germany	25	5	30	70	23	93	123
Austria	15	0	15	14	2	16	31
Belgium	85	52	137	101	112	213	350
Cyprus	0	0	0	2	0	2	2
Denmark	3	1	4	2	0	2	6
Spain	203	59	262	49	28	77	339
Finland	0	0	0	4	0	4	4
Greece	8	1	9	1	1	2	11
Hungary	12	2	14	9	0	9	23
Ireland	1	0	1	0	0	0	1
Italy	8	7	15	45	6	51	66
Lithuania	2	1	3	5	0	5	8
Luxembourg	3	0	3	2	12	14	17
Netherlands	44	17	61	30	7	37	98
Poland	6	1	7	32	0	32	39
Portugal	15	14	29	23	9	32	61
United Kingdom	13	8	21	10	8	18	39
Czech Republic	1	0	1	1	0	1	2
Slovakia	1	1	2	1	0	1	3
Slovenia	1	0	1	0	1	1	2
Sweden	2	0	2	8	0	8	10
	448	169	617	409	209	618	1 235

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ANNEX D

PROGRAMME DES VISITES

Lundi 22 janvier 2006

- 14.00-18.30 Ministère de la Justice
1. Présentation de l'organisation des travaux
 2. La procédure française applicable au mandat d'arrêt européen ;
 - l'émission du mandat d'arrêt européen et sa diffusion ; le site du bepi.
 - pause-
 - l'exécution du mandat d'arrêt européen et la procédure de remise ;
 3. le recueil des statistiques (présentation de la méthode et des résultats)

Mardi 23 janvier 2006

- 09.30-10.00 Palais de justice de Paris, accueil par M. le Premier président et M. le Procureur Général de la cour d'appel de Paris
- 10.00- 11 30 M. Gurtner, président de la Chambre de l'instruction, Mmes Petit-Leclair , Slama, MM. Lecompte, Cazals, substituts généraux
- 11.30 – 13.00 Rencontre avec des magistrats du tribunal de grande instance de Paris, M. Cordier, procureur adjoint, Mmes Chaponneaux et Blondet, vice-procureures
- 13.00-14.00 Déjeuner à la cour d'appel de Paris
- 14.00 -15.15 Rencontre avec les membres du barreau de Paris
- 15.30 Départ pour Aix-en-Provence

Mercredi 24 janvier 2006

- 09.15-10.00 Cour d'appel d'Aix-en-Provence, Réception par M. le Premier président et M. le Procureur Général (ou leurs représentants)
- 10.00-11.00 Rencontre avec des magistrats « émetteurs » de mandat d'arrêt européen, (M. Choquet, vice-président chargé de l'instruction ; Mme Poinot, vice procureur)
- 11.00-12.30 Rencontre avec M. le président et MM. les conseillers de la Chambre de l'instruction ; en présence de M. Charpentier, avocat général en charge de l'entraide internationale
- 12.30–14.00 Déjeuner à la cour d'Aix-en-Provence
- 14.00-15.30 Rencontre avec des représentants du barreau
- 16.00 Départ pour Paris

Jeudi 25 janvier 2006

- 09.15-09.45 Cour d'appel de Versailles, Réception par M. Lathoud, Procureur Général,
- 09.45-11.00 Rencontre avec des représentants du parquet général près la cour d'appel et du parquet près le tribunal de grande instance de Versailles (M. Junillon, Mme Chapelle et M. de Lafforest)
- 11.00-12.30 Rencontre avec M. le président de la Chambre de l'instruction : MM. Guérin et Riquin et M. le doyen des juges d'instruction du tribunal de grande instance de Nanterre (M. Philibeau)
- 13.00–14.30 Déjeuner à la cour de Versailles
- 14.30-16.00 Rencontre avec des représentants du barreau

RESTREINT UE

Vendredi 26 janvier 2006

09.30-12.30	Ministère de la Justice, Bureau de l'entraide pénale internationale, Mission justice/DCPJ. Présentation de la « mission justice » et de la SCOPOL (les systèmes de diffusion des mandats d'arrêt européens)
12.30-14.15	Déjeuner de clôture offert par M. Huet, directeur des affaires criminelles et des grâces.
14.15-15.00	Réponse aux questions de l'équipe d'évaluation
15.00-16.00	Visite Service de transfèrement de l'administration Pénitentiaire
17.00	Clôture des travaux

DECLASSIFIE
DECLASSIFIED

LISTE DES PERSONNES INTERROGÉES

Ministère de la Justice, direction des affaires criminelles et des grâces

M. Jean-Marie Huet , directeur
M. Alain Saffar, sous directeur de la justice pénale spécialisée
M. Eric Ruelle, chargé de mission auprès du directeur des affaires criminelles et des grâces, responsable du pôle négociation transposition.
M. Samuel Lainé, chef du bureau de l'entraide pénale internationale
M. Loïc Guérin, adjoint au chef du bureau de l'entraide pénale internationale
M. Hocine Boudjémia, secrétaire administratif.

Cour d'appel de Paris

M. Renaud Chazal de Maurias, Premier président
M. Norbert Gurtner, président de la Chambre de l'instruction
M. François Feltz, avocat général
Mme Rine Slama, avocat général
Mme Sylvie Petit-Leclair, substitut général
M. Jean-Charles Lecompte, substitut général
M. Jacques Cazals, substitut général
M. Ronan Leclerc, greffier en chef

M. Cordier François, procureur adjoint près le tribunal de grande instance de Paris
Mme Blondet, vice-procureur chargée près le tribunal de grande instance de Paris de l'exécution des peines
Maîtres Lagrave et Getsch, avocats, membres du conseil de l'ordre

Cour d'appel d'Aix-en-Provence

M. Jean-Pierre Atthenont, Premier président
M. Gabriel Bestard, Procureur Général
M. Yves Le Bourdon, président de la Chambre de l'instruction
M. Bertrand Charpentier, avocat général
M. Jean-Michel Cailliau, avocat général
M. Dominique Voglimacci, vice-président chargé de l'instruction au tribunal de grande instance de Marseille
Mme Isabelle Poinso, vice-procureur près le tribunal de grande instance de Marseille

M. le Bâtonnier Marc Bollet, barreau de Marseille
Me Christian Méjean, avocat au barreau de Marseille

Maîtres Bruno Rebstock et Luc Febraro, avocats au barreau d'Aix-en-Provence

RESTREINT UE

Cour d'appel de Versailles

M. Vincent Lamanda, Premier président
M. Jean-Amédée Lathoud, Procureur Général

M. Pierre Riquin, président de la Chambre de l'instruction
M. Alain Junillon, avocat général,
Mme Marie-Anne Chapelle, substitut général

M. Yves de Lafforest, vice procureur au tribunal de grande instance de Versailles, en charge de l'exécution des peines

M. le Bâtonnier Philippe Billon, barreau de Versailles
Me Raphaël Pacouret, président de la commission pénale du barreau de Versailles

Mission justice

Mme Dhont et Donnadiou, greffière
M. Basquin, attaché d'administration centrale

M. Bernard Petit, chef de la division relations internationales de la direction centrale de police judiciaire
M. Jean-Marc Souvira, adjoint
Mme Carine Vialatte, chef de la section centrale de coopération opérationnelle policière à la direction centrale de la police judiciaire

Administration pénitentiaire

Mme Catherine Christophe, en charge des transfèvements

LISTE DES ABRÉVIATIONS/GLOSSAIRE DES TERMES

ACRONYMES ABRÉVIATIONS TERMES	EXPLICATIONS EN FRANCAIS
BEPI	Bureau de l'Entraide Pénale Internationale
DACG	Direction des Affaires Criminelles et des Grâces
ENM	Ecole Nationale de la Magistrature
FPR	Fichier des Personnes Recherchées
GMD	Groupe multidisciplinaire 'Criminalité organisée'
MAE	Mandat d'arrêt européen
REFJ	Réseau Européen des Formations Judiciaires
RJE	Réseau Judiciaire Européen
SAP	Service de Transfèrement de l'Administration Pénitentiaire
SCCOPOL	Section centrale de Coopération Opérationnelle de Police
SIS	Système d'Information Schengen

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