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EUROPEAN ARREST WARRANT AND CORRESPONDING  
SURRENDER PROCEDURES BETWEEN MEMBER STATES"  
- REPORT ON LATVIA

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

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

**REPORT ON LATVIA**

# **RESTREINT UE**

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## 1. INTRODUCTION

- 1.1. Following the adoption of the Joint Action of 5 December 1997, a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime was established.
- 1.2. Following the discussion of a proposal introduced by the Luxembourg Presidency concerning the topic of the fourth round of mutual evaluations<sup>1</sup>, the MDG of 11 July 2005 adopted the topic as proposed, namely "the practical application of the European Arrest Warrant and corresponding surrender procedures between Member States". It was also agreed at the MDG of 11 July that the evaluation questionnaire was to be prepared by the UK Presidency.
- 1.3. Experts with substantial practical knowledge of the European Arrest Warrant were nominated by Member States pursuant to a written request to delegations made by the Chairman of the MDG on 9 September 2005<sup>2</sup>.
- 1.4. At its meeting on 28 October 2005 the MDG approved the evaluation questionnaire for the fourth round of mutual evaluations. The objectives of the evaluation exercise and the questionnaire itself are set out in ST 14272/05 CRIMORG 131 COPEN 175 EJM 57 EUROJUST 77.
- 1.5. Also at its meeting on 28 October 2005 the MDG discussed and approved 13824/05, the revised sequence for the mutual evaluation visits. Latvia is the twenty-first Member State to be evaluated during the fourth round of evaluations.
- 1.6. The experts charged with undertaking this evaluation were: Mr Olavi Kavalid (Head of the International legal Aid Division, Criminal Intelligence Department, Criminal Police, Estonia), Mrs Ana Duarte (Central Department for International Cooperation, Criminal Police, Portugal) and Mrs Ioana-Cristina Morar (Judge, Court of Appeal of Cluj, Romania). Two observers were also present: Mr Filippo Spiezia (Eurojust) and Mr Peter Kortenhorst (European Commission), together with the General Secretariat of the Council.

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

<sup>2</sup> Document 6206/1/06 REV 1 - Timetable for 2006 and designation of experts.

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- 1.7. This report was prepared by the expert team with the assistance of the Council Secretariat, based on their findings arising from the evaluation visit of 20-22 May 2008, and the detailed and helpful responses of Latvia to the evaluation questionnaire.
- 1.8. The report refers to differing processes in respect of arrest and prosecution cases only insofar as there is a divergence of practice between the two procedures.
- 1.9. The expert team's overarching purpose was to evaluate the distinct practical processes operated and encountered by Latvia in its role both as issuing and as executing Member State and to assess relevant training provisions and the views of the defence, before moving on to conclude and to make such recommendations as the team felt were appropriate to enhance the means by which the EAW and its corresponding surrender provisions may be further streamlined and improved.

## 2. THE AUTHORITIES AND THE LEGAL BASIS

### 2.1. THE AUTHORITIES

Latvian courts dealing with criminal offences are organised in a three-tier system: district (city) courts, regional courts and the Supreme Court. District (city) courts are established in accordance with the administrative territorial divisions of Latvia. There are five regional courts (Riga, Kurzeme, Latgale, Zemgale and Vidzeme)<sup>1</sup>, each of them covering a number of district courts. The Supreme Court is the highest level within the judiciary and its judgments are final. The Supreme Court is comprised of a senate and two chambers, civil and criminal. The chambers of the Supreme Court are the appellate courts for matters that have been adjudicated by regional courts as the courts of first instance. The senate of the Supreme Court is the court of last instance for all matters that have been adjudicated by district and regional courts.

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<sup>1</sup> There is another regional court with nationwide jurisdiction on administrative cases.

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The Prosecutor's Office is an institution of the judiciary and as such is independent of the executive power. The Prosecutor's Office consists of the Prosecutor General's Office (hereinafter referred to as "the PGO"), the regional court prosecutor's offices (hereinafter referred to as "the POJR(s)") and the district (city) prosecutor's offices (hereinafter referred to as "the D(C)PO(s)"). The PGO may establish specialized prosecution offices (hereinafter referred to as "the SPOs"), which may have the status of either a district or a regional prosecution office.

Latvian prosecutors supervise the operational work of investigative institutions<sup>1</sup>, organise, direct and perform pre-trial investigation, initiate and conduct criminal prosecutions, prosecute on behalf of the State, and supervise the execution of penalties. In Latvia the prosecution system is governed by the principle of mandatory prosecution. However, the prosecutor has the right to terminate the investigation and to refuse initiating prosecution; such decisions must be motivated.

The D(C)OPs and the POJRs have been established according to the territorial division of the judiciary. Each POJR supervises the operation of the D(C)OPs located in its territory.

The Prosecutor General is the head of the Prosecutor's Office. He is appointed (and may be dismissed on specific grounds) by the Saeima (Parliament) for five years, on the proposal of the chairperson of the Supreme Court. The Prosecutor General controls the operation of all prosecutor's offices, determines their internal structure and staff in accordance with the funding allocated from the national budget, and directly conducts the activities of the prosecutors of the PGO. He is entitled to issue instructions that are mandatory for all prosecutors and to perform prosecutor's functions in all Latvian courts. He also has the right to lodge an appeal in the general interest of law against judgments that have become final in both civil and criminal cases.

The PGO consists of (3) Departments and (8) Divisions. The International Cooperation Division, within the Department of Analysis and Management, deals with EAW-related matters.

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<sup>1</sup> Pre-trial investigation is divided into two phases: investigation inquiry and criminal prosecution. See chapter 3.1 below.

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The International Cooperation Department, within the Central Criminal Police Department, is responsible for international law enforcement cooperation, and includes 5 units: SIRENE, International judicial and operational cooperation unit, Interpol NCB, Europol and Liaison Officers. All these units operate under a single front desk.

## 2.2. THE LEGAL BASIS

Specific provisions on the EAW<sup>1</sup> are included in chapters 65 - "Extradition of a person to Latvia" and 66 - "Extradition of a person to a foreign State", within division fourteen - "Extradition", part C - "International Cooperation in criminal matters" of the Criminal Procedure Law (hereinafter referred to as "the CPL"), namely Sections 691-695 (concerning cases in which Latvia acts as issuing State) and 714-722 (concerning cases in which Latvia acts as executing State).

According to the information provided, amendments to Sections 692 and 717 (in connection with Article 41 of the Convention implementing the Schengen Agreement), 695 (in connection with Article 28(2) of the Framework Decision), 715 (in connection with Article 20 of the Framework Decision) and 721 (in connection with Article 24 of the Framework Decision) of the CPL were being discussed in the Parliament at the time of the evaluation visit.

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

Latvia issued 65 EAWs in 2006 and 97 in 2007, of which 14 and 16 respectively resulted in the effective surrender of the requested person<sup>2</sup>.

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<sup>1</sup> The Framework Decision was transposed into Latvian law by the "Law on Amendments to the Latvian Code of Criminal Procedure" of 16 June 2004 (it came into force on 30 June 2004). The Code of Criminal Procedure was replaced by the CPL on 1 October 2005. On 7 October 2004 a law concerning "Amendments to the Constitution of the Republic of Latvia" was promulgated (entering into force on 21 October 2004), which included amendments to Article 98 of the Constitution to enable Latvia to execute EAWs in respect of Latvian citizens.

<sup>2</sup> Documents 11371/5/07 and 10330/08 - Replies to the questionnaire on quantitative information on the practical application of the European arrest warrant - Years 2006 and 2007.

## 3.1. THE DECISION TO ISSUE

The judicial authority competent to issue EAWs<sup>1</sup> during the pre-trial investigation is the investigating judge who is competent for the underlying proceedings<sup>2</sup>. At the trial stage, EAWs may be issued only by the court which is trying the case.

There is no specific reference in the CPL as to the authority competent to issue EAWs in conviction cases. It is understood, however, that in such instances EAWs must be issued by the court which passed the sentence, in line with the general principle that the court which passes the sentence also supervises its execution.

In pre-trial proceedings, EAWs may be issued only at the written request of the investigator or the public prosecutor directing the proceedings<sup>3</sup>. It must be noted, however, that, according to the information provided, requests by investigators are rare<sup>4</sup>.

Pursuant to the CPL, the issuing of an EAW may be requested if there are grounds for believing that the suspect or accused is located in another Member State, provided that a domestic arrest warrant has been issued and the seriousness or nature of the offence matches the expenses associated with the surrender procedure<sup>5</sup>.

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<sup>1</sup> Document 10784/04 - Council Framework Decision of 13 June 2002 on the European arrest warrant and surrender procedures between Member States - Notifications by Latvia reads: *"Article 6(3) of the Framework Decision. Judicial authorities competent to issue a warrant (Article 6(1)): District (City) Courts are competent to issue a European arrest warrant in order to request extradition of persons for the purposes of prosecution or of execution of a penalty involving deprivation of liberty"*.

<sup>2</sup> Section 40 of the CPL reads: *"Investigating judge. An investigating judge shall be the judge to whom the chairperson of the district (city) court has assigned, for a specific term in the cases and in accordance with the procedure specified by Law, the control of the observance of human rights in criminal proceedings"*.

<sup>3</sup> In the Latvian system the pre-trial investigation is divided into two phases: investigation and criminal prosecution. In the first phase the proceedings are directed by an investigator whereas in the second phase it is a public prosecutor who directs the proceedings. See chapter 2.1 above.

<sup>4</sup> Allegedly the main reason is that, pursuant to Section 687(3) of the CPL, if a person is surrendered during the investigation phase, the public prosecutor must initiate prosecution against him within 72 hours of the conveyance. See chapter 3.10 below.

<sup>5</sup> Sections 692(1) and 682(3) of the CPL.



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The decision on whether or not an EAW is issued lies within the discretion of the issuing judicial authority. According to the information provided during the interviews, in taking such a decision consideration is given to the circumstances of the case, and in particular the harm to the individual, the estimated costs that may follow, the nature and seriousness of the crime and the personality of the offender. In this respect, the investigating judges interviewed at the District Court of Riga indicated that they had issued an EAW in all cases where it had been requested by the public prosecutor, most of them falling under the offences listed in Article 2(2) of the Framework Decision<sup>1</sup>.

## 3.2. VERIFYING THE POSSIBLE EXISTENCE OF MULTIPLE REQUESTS

In Latvia outgoing EAWs are channelled through the PGO. When they receive a new EAW, prosecutors at the PGO search through the PGO's records in order to check for the existence of earlier EAWs concerning the same person. Should an outstanding EAW issued for the same person be found, there is no means of merging it with the new one in a single unified EAW. In such cases the authorities involved will be contacted by the PGO for further coordination.

In that connection, the Latvian authorities noted that, as from the beginning of 2008, direct access to SIS and national search databases had been established at the level of PGO, POJRs and SPOs, thereby enabling them to verify from their workstations whether an alert for a specific person has been entered<sup>2</sup>.

## 3.3. COMPLETION OF THE FORM

Completion of the EAW form is the sole responsibility of the competent court. There are no written guidelines to assist the issuing authority in completing the EAW form, nor a catalogue of standard interpretations agreed at national or regional level in respect of prescribed elements of it.

The Latvian authorities explained that in drafting the EAW the courts often seek the advice of the PGO. It was noted, however, that the PGO is not authorised either to give binding directions to courts or to amend an EAW on its own or refuse to transmit it<sup>3</sup> if a deficiency is found.

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<sup>1</sup> None of these judges had ever dealt with an application to issue an EAW submitted by an investigator.

<sup>2</sup> However, the prosecutors from the Specialized Prosecution Office for Organized Crime interviewed could not confirm this.

<sup>3</sup> See chapter 3.4 below.

As for recurrent issues in relation to the EAW form or any field of it in particular, difficulties were reported in relation to box "d", since in Latvian the term "decision" covers not only judgments but also any decision by the court concerning security measures, and it is therefore not uncommon for Latvian judges to fill in this box without any judgment having been delivered. Difficulties concerning the existence of two parts in box "e" of the form where a description of the facts is required when the offence is not covered by the list included therein were also reported. As for the particular offences included in the list, the prosecutors at the PGO who were interviewed noted that difficulties arise from time to time in relation to "fraud" and "swindling", since in Latvian criminal law these offences fall under a single category.

### 3.4. TRANSMISSION OF THE EAW

The transmission of EAWs to the competent foreign authorities is the responsibility of the PGO<sup>1</sup>. The PGO is also responsible for the translation of EAWs issued by Latvian authorities into the language requested by the executing Member State. PGO staff are available 24/7.

If the requested person's whereabouts are known, the PGO proceeds to translate the EAW into the relevant language and communicates it directly to the competent authority in the executing State, together with the translation. In cases where the competent receiving authority is not known, the EJN Atlas is used to identify it. In these cases a search via SIRENE and/or via INTERPOL is not launched.

If the whereabouts of the requested person are unknown, the PGO forwards the EAW to the SIRENE office, which, after checking whether identification material is available and gathering other relevant information (e.g. concerning the requested person's possible location or contacts), issues an SIS alert and, where appropriate, an Interpol diffusion. According to the information provided, entering an alert in the system takes an average of 3 days from receipt of the EAW by the SIRENE office. In these cases, the PGO proceeds to translate the EAW upon receipt of notification that the requested person has been arrested.

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<sup>1</sup> Latvia designated the PGO as the central authority to the effects of Article 7 of the Framework Decision. Document 10784/04 - Council Framework Decision of 13 June 2002 on the European arrest warrant and surrender procedures between Member States - Notifications by Latvia.

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The mode of transmission is determined by the executing authority. Usually a fax is sent first, followed by the original by courier. SIRENE and INTERPOL channels are used where necessary.

Latvian authorities reported difficulties in providing language-compliant EAWs within the strict time limits set by some Member States. In that connection they noted that translation into a language other than English must be outsourced to private companies. In the view of the Latvian authorities, it would be desirable for time limits for the transmission of EAWs and language requirements to be standardised (a single deadline, maximum of three languages).

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

There were reports in relation to the United Kingdom's practice of requesting the submission of a certified translation of the EAW into English as a condition for search measures to be started following an Interpol diffusion with an indication that the person sought might be in the UK. Information was given about one case with IE, in which the Latvian authorities were requested not to provide additional information but to reformulate the description of the underlying offence by issuing a new EAW. Three cases were recorded with Spain, revealing inconsistency in the information provided about the deadline for sending the corresponding EAW.

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

No instance was reported in which Latvia had been unable to comply with a request for further information from foreign authorities. However, Latvian officials reported difficulties with the timely transmission of the additional information requested (rebuttals of assertions made by the requested person and supplementary information concerning his personal data), in one case with the UK where the request was received via Interpol just one day before the court hearing on surrender.

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

The legal arrangements governing the return of the executing Member State's nationals for the service of a sentence passed by Latvian courts are to be found in the 1983 Council of Europe Convention on the Transfer of Sentenced Persons.

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Currently there are no established procedures in the CPL as to the provision of the guarantee envisaged in Article 5(3) of the Framework Decision. It is considered, however, that the PGO is responsible for giving such a guarantee and for ensuring that it will be satisfied<sup>1</sup>.

No issues were reported in connection with this matter.

## 3.8. YOUTH SURRENDERS AND CORRESPONDING GUARANTEES

Only one case involving minors was recorded at the time of the evaluation visit, in which Spain surrendered a person who committed an offence at the age of 17 on condition that he would not receive a life sentence<sup>2</sup>.

## 3.9. GENERAL COMMUNICATIONS WITH THE EXECUTING MEMBER STATE

Communications and exchange of information with foreign authorities are channelled through the PGO. In the view of the Latvian authorities this approach is consistent with the designation of the PGO as the central authority and is backed by practical reasons (e.g. experience accumulated, language skills, facilities for translation).

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

The taking over of the requested person is performed by the SIRENE office after agreement is reached with the relevant authority of the executing State as to time and place. The SIRENE office is responsible for all preliminary arrangements necessary for the physical surrender and participates itself in the surrender by air. Surrender at the land border (Estonia and Lithuania) is carried out under the instructions of the SIRENE office by the Patrol Service Platoon of the Policing Department of the Central Police Department of Riga City.

No different practices are recorded in cases of temporary or conditional surrender.

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<sup>1</sup> According to the information provided, the Ministry of Justice has drawn up amendments to the CPL affecting this matter, by adding a new provision by virtue of which the return guarantee must be issued by the PGO.

<sup>2</sup> Under Section 11 of the Criminal Law, the age of criminal responsibility in Latvia is 14 years.

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No problems concerning logistical issues were reported. The Latvian authorities stated that the 10-day time limit had been exceeded in one case involving Denmark (due to the need to decide between competing EAWs) and in another case involving Poland (in which the surrender was granted on condition that criminal proceedings instituted in Poland against the requested person were taken over by Latvia). A case involving Spain was also reported in which the surrender took place within the statutory time limit, but documents stating the offences for which the person had been surrendered were not received, thereby impeding criminal proceedings in Latvia.

Pursuant to the CPL, the PGO must be informed within 24 hours of the conveyance of the requested person<sup>1</sup>. Within 72 hours of the actual surrender, the public prosecutor must initiate criminal prosecution against the requested person, if the proceedings underlying the EAW are at the investigation phase; if the prosecution has been already initiated, the public prosecutor must inform the requested person of his right to submit requests and complains<sup>2</sup>. If the proceedings are at the trial phase, the PGO must notify the court trying the case within the same time limit<sup>3</sup>.

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

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

The expert team noted that the situation recorded in the European Commission's first report on the implementation of the Framework Decision, concerning the non-transposition of Article 29(4) thereof (on rights acquired in the property by the executing State or third parties), remains the same<sup>4</sup>.

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

At the time of the evaluation visit the Latvian authorities had received no notification of any conflicting EAW or extradition request. No experience of cases involving onward surrender was reported.

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<sup>1</sup> Section 694(4).

<sup>2</sup> Sections 694(4) and 687(2).

<sup>3</sup> Sections 694(4) and 687(3).

<sup>4</sup> In its comments on that report, Latvian authorities alleged that no provisions of Latvian law prevented Latvian competent authorities from acting in compliance with the Framework Decision, and cooperation in this area was ensured within the spirit thereof.

## 3.13. EXPENSES

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

## 3.14. MISCELLANEOUS COMMENTS

### Insertion of historical data in the SIS

According to the information provided during the visit to the SIRENE office, the process of inserting all historical data in the SIS (meaning those cases where, upon the EAW entering into force, it was considered convenient to issue an EAW or to add an EAW to a previous International arrest warrant, in the light of the information available regarding the possible whereabouts of the person sought) was completed by December 2007<sup>1</sup>.

### Accessory offences

Pursuant to the CPL, offences that do not meet the penalty thresholds may also be included in EAWs issued by the Latvian authorities<sup>2</sup>. No case was reported, however, where surrender had been requested for this kind of offences.

## 4. ORGANISATION AND PRACTICES AS EXECUTING MEMBER STATE

During the 2006 calendar year Latvia received 17 EAWs and surrendered 12 persons based on an EAW. Of the persons surrendered, 9 consented to surrender. In the same period Latvia refused to execute 3 EAWs. In 2007 Latvia received 20 EAWs, refused to execute 3 EAWs and surrendered 14 persons, 6 of whom consented to surrender<sup>3 4</sup>.

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<sup>1</sup> According to the information provided, until Latvia started to operate the SIS, an international search on the basis of an EAW had been announced with regard to 160 persons.

<sup>2</sup> Sections 682(2) and 692(1).

<sup>3</sup> Documents 11371/5/07 and 10330/08 - Replies to the questionnaire on quantitative information on the practical application of the European arrest warrant - Years 2006 and 2007 respectively.

<sup>4</sup> Detailed information on the grounds for refusal is provided in chapter 4.6 below.

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## 4.1. RECEIPT PROCEDURES

The PGO is the authority competent for the receipt of EAWs. An EAW may be sent to the Latvian authorities by any means which can be substantiated in writing and which allows the origin to be verified. This includes direct transmission by ordinary fax and by e-mail, as well as transmission through SIRENE and INTERPOL channels.

There is no certification procedure for EAWs. According to the information provided, to date no serious concerns have arisen in practice concerning the authenticity of incoming EAWs. In particular cases where questions arose in connection with this issue, they were resolved directly with the issuing authority by telephone.

Latvia accepts EAWs in Latvian or English. A language-compliant EAW must be received by the PGO within 72 hours of the arrest of the requested person.

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

All new Article 95 alerts and EAW-based search requests received via Interpol are checked, irrespective of whether there is an indication of a link with Latvia or not. Upon receipt of an SIS alert or an EAW-based Interpol diffusion, the Ministry of Interior's Integrated Information System and other available databases administered by different national agencies are checked by the Latvian SIRENE office in order to ascertain whether the requested person may be located in Latvia. Some of these databases are directly accessible<sup>1</sup> by the SIRENE office whereas others are not<sup>2</sup>. In the case of a hit, before targeted search measures are taken, the PGO is contacted for coordination of further action.

If an EAW is sent directly to the PGO, it contacts the SIRENE office to clarify whether the latter is also aware of such an EAW and whether any action is being taken to locate the requested person.

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<sup>1</sup> Namely the following: the Ministry of Interior's Integrated Information System, population register, lost/stolen/invalid documents, vehicles sought, visa and residence permit register, border guard data base on border crossing, and the electronic journal of events (it includes information on police records on any incident).

<sup>2</sup> Criminal records, AFIS, DNS (State Police Forensic Research Department), Intelligence Information.

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On 1 January 2008 the Search Unit of the Criminal Investigation Department of the Central Criminal Police Department of the State Police was established. This unit is responsible for organizing the search and arrest of the requested person in cases where, according to the information available, he is in Latvia but his exact whereabouts cannot be ascertained, and where a centralized approach in terms of coordination of searches is needed.

### 4.3. ARREST PROCEDURES/FIRST HEARING

Any police officer may arrest a person sought on the basis of an SIS alert or an EAW-based Interpol diffusion. In that connection it has to be noted that all Latvian enforcement agencies have access to the Ministry of Interior's Integrated Information System, which interfaces N.SIS and the National Search System (where Interpol diffusions are entered).

Once the whereabouts of the requested person have been established as a result of the investigations concerning his location, the arrest is carried out by officials of the SIRENE office, provided that it requires neither complex preparatory measures (e.g. long-term covert surveillance or telephone monitoring) nor the intervention of special police units, otherwise active tracing and arrest of the person sought are assigned to either the competent regional police forces or the Search Unit of the Criminal Investigation Department of the Central Criminal Police Department of the State Police.

Following apprehension, the person must be informed of his rights<sup>1</sup>.

Pursuant to the CPL, provided that there are no known circumstances excluding the possibility of surrender, an application for a detention order must be submitted to the district (city) court in the territory where the person was arrested within 72 hours of the arrest, otherwise he must be released. According to the explanation given by the Latvian authorities, the application must be submitted by the PGO or by the locally competent public prosecutor in accordance with the PGO's instructions. This issue is decided by the investigating judge in court session, with the participation of the public prosecutor, the requested person and his lawyer<sup>2</sup>. Such a decision is not subject to appeal. The CPL provides that detention with a view to surrender applies for 80 days from the date of the arrest of the requested person and that this term may exceptionally be extended one time by 30 days<sup>3</sup>.

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<sup>1</sup> See chapter 6 below.

<sup>2</sup> It has to be noted that the participation of a defence lawyer in EAW procedures is not mandatory. See chapter 6 below.

<sup>3</sup> Section 717(3).



The legal grounds for surrender detention are not clear<sup>1</sup>. In that connection the investigating judge of the District Court of Riga who was interviewed indicated that, as a general rule, a detention order is issued if there are no doubts about the identity of the requested person, there are no known circumstances which exclude the possibility of surrender and the EAW form is in order.

Detention with a view to surrender may not be replaced by any other coercive measure or waived or terminated by replacement by bail. Only if the investigating judge refuses the application for a detention order can another restraining measure be imposed on the requested person by the public prosecutor.

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

Assessment of the content of the EAW form is carried out by the PGO in the course of the process leading to a decision on surrender. Pursuant to the CPL, following the receipt of an EAW the PGO “shall organise an examination thereof” with a view to ascertaining whether prerequisites for surrender concerning penalty thresholds and double criminality are met, and whether any ground for refusal as provided for in the CPL applies<sup>2</sup>. In conducting such an examination the PGO is obliged to ask the issuing authority to provide any additional information necessary to take a decision on surrender<sup>3</sup>.

Requests for additional information are sent in Latvian, together with a translation into the language of the issuing State. For the additional information to be provided, Latvia operates the same language regime as for EAWs. A deadline for submitting the information requested must be specified by the PGO<sup>4</sup>.

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<sup>1</sup> Section 701(2), to which Section 717(3) refers, only provides: *"Having heard the public prosecutor, the person to be extradited and his or her advocate, if he or she participates, the judge shall take a reasoned decision that shall not be subject to appeal"*.

<sup>2</sup> Section 716. Paragraph (2) thereof reads: *"A public prosecutor shall conduct an examination in accordance with the procedures specified in Section 704 of this Law by ascertaining whether grounds exist for the extradition of a person and whether the reasons specified in Section 714 of this Law exist for a refusal of the extradition of the person"*.

<sup>3</sup> Section 704(2) reads: *"If a request does not have sufficient information in order to decide a matter regarding extradition, the Office of the Prosecutor General shall request from the foreign state the necessary additional information..."*.

<sup>4</sup> Section 704(2).

As for the most common grounds for these requests, the Latvian authorities explained that most frequently it is necessary to ask the issuing authority to provide a clear complete description of the offence, with a view to establishing whether it is also an offence under Latvian law, and to clarify questions concerning statute limitations. Individual cases were also reported where problems arose in relation to the German authorities' practice to classify theft in an organised group as a listed offence.

## 4.5. THE SURRENDER DECISION

The decision on the execution of an EAW falls within the competence of the PGO<sup>1</sup>. There are no specific provisions in the CPL describing the procedure leading to such a decision other than those concerning the examination of the EAW by the PGO<sup>2</sup>.

Pursuant to Section 720(1) of the CPL, the decision on surrender must be delivered within 10 days of the requested person's detention order having been given. Whether the requested person consents to surrender or not makes no difference. The question was raised by the expert team of how to deal with such a strict time limit in cases where additional information is required. The public prosecutors who were asked about this particular issue indicated that in such cases the deadline for completing the examination of the EAW would be suspended and re-started upon receipt of the information requested.

As for conditions and guarantees required for the consent to surrender to be effective, Latvian law conforms with the Framework Decision. Although there is no specific provision concerning the revocability or non-revocability of consent to surrender, the public prosecutors from the PGO interviewed were inclined to consider that consent may not be revoked, this also applying to renunciation of entitlement to speciality rule.

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<sup>1</sup> Section 720(1) of the CPL.

<sup>2</sup> See chapter 4.4. Pursuant to Section 704(5), during the examination the PGO is empowered to perform all the investigative operations provided for in domestic criminal proceedings.

# RESTREINT UE

## 4.6. REFUSAL TO SURRENDER

As already mentioned, the Latvian authorities refused execution of 3 EAWs in both the 2006 and 2007 calendar years. According to the information provided, the grounds for refusal applied were the following: non-surrender of Latvian citizens for the purpose of executing a sentence (3 cases), acts not punishable under Latvian law (1 case), existence of domestic proceedings for the same act (1 case), and the requested person had been already tried for the same offence (1 case).

The following table reflects how the grounds for optional non-execution laid down in Article 4 of the Framework Decision have been transposed into Latvian law:

FRAMEWORK DECISION	Transposed as NOT MANDATORY	Transposed as MANDATORY
Article 4.1		X
Article 4.2	X	
Article 4.3 (first)	X	
Article 4.3 (second)	X	
Article 4.3 (third)	-	-
Article 4.4	X	
Article 4.5	-	-
Article 4.6		X ("Latvian citizen")
Article 4.7.a	X	
Article 4.7.b	X	

As for the ground for non-execution laid down in Article 4(1) of the Framework Decision, the expert team noted that the CPL may be interpreted as if additional requirements have been imposed in prosecution cases compared with the Framework Decision. Namely, in the light of Sections 714(1) and 696(1) and (2) of the CPL, it seems to be required that the offence underlying the EAW be also punishable under Latvian law by a custodial sentence of a maximum period of not less than one year, which is not in line with Article 2(1) and (4) of the Framework Decision.

# RESTREINT UE

It was also noted, as regards the ground for non-execution envisaged in Article 4(6) of the Framework Decision, that there is no provision in the CPL requiring an undertaking to execute the sentence<sup>1</sup>.

For the rest, the grounds for refusal listed in the CPL are in accordance with the Framework Decision.

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

The PGO's decision to execute the EAW may be appealed against in the Supreme Court, but cases where the requested person consented to surrender are excepted.

The appeal may be lodged by the person concerned or by his defence counsel within 10 days from the receipt of the PGO's decision<sup>2</sup>. It is adjudicated by a panel of three judges, who check the lawfulness of the decision and the grounds formulated by the appellant. For this purpose examination materials are forwarded by the PGO and a court session takes place with the participation of the public prosecutor and the requested person, assisted by a defence counsel if he so wishes. If necessary, the court may ask for any additional materials or information and summon third persons for the provision of explanations<sup>3</sup>.

Pursuant to the CPL the appeal must be adjudged within 20 days of the receipt of the complaint<sup>4</sup>. In doing so, the Supreme Court may take one of the following decisions<sup>5</sup>: to leave the decision of the PGO unmodified, to revoke it and find surrender to be inadmissible, or to transfer the case back to the PGO for additional examination. In the latter case a new decision by the PGO will follow, which is also subject to appeal.

According to the information provided, in 2007 there were 2 appeal cases, both resulting in the appeal being dismissed by the Supreme Court.

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<sup>1</sup> This was already stressed by the European Commission in its first report on the implementation of the Framework Decision.

<sup>2</sup> Section 720(2) of the CPL.

<sup>3</sup> Section 706 of the CPL.

<sup>4</sup> Section 720(3).

<sup>5</sup> Section 707(1) of the CPL.

# RESTREINT UE

## 4.8. OWN NATIONALS AND YOUTH SURRENDER ISSUES

### Own nationals

Latvia has opted for regulations applying both Article 4(6) and Article 5(3) of the Framework Decision. Such provisions apply to Latvian "citizens", i.e. only those who have a Latvian passport.

Article 4(6) has been transposed as a mandatory ground for non-execution of the EAW. As already mentioned, there is a discrepancy between the CPL and the Framework Decision in that the former does not require an undertaking to execute the sentence passed in the issuing State for operating this ground for refusal. In that connection, the Latvian authorities did not provide a clear answer to the question of how they had proceeded in relation to those cases in which, according to the information provided, the surrender had been refused on this ground<sup>12</sup>.

As for prosecution cases, the enforcement of the sentence imposed in the issuing Member State is regulated by Sections 782 – 801 of the CPL, according to which the sentence will be converted in line with the procedure laid down in the 1983 Council of Europe Convention on the transfer of sentenced persons, provided that the issuing Member State submits such a request. Pursuant to the CPL the requested person may waive the right to be transferred back to Latvia to serve the sentence<sup>3</sup>.

### Youth surrenders

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

## 4.9. SPECIALITY

No difficulties arising from this issue were reported.

## 4.10. ONWARD SURRENDER/EXTRADITION

The Latvian authorities reported no experience of cases involving onward surrender or extradition.

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<sup>1</sup> See chapter 4.6 above.

<sup>2</sup> It should be noted that Latvia is party to the European Convention on the International Validity of Criminal Judgments.

<sup>3</sup> Section 715(3).

## 4.11. TEMPORARY/CONDITIONAL SURRENDER

This mechanism is not envisaged in the CPL. Such a gap was already stressed by the European Commission in its first report on the implementation of the Framework Decision. In its comments on that report, however, Latvia alleged that domestic legislation provided sufficient possibilities for mutual agreement with foreign authorities, including temporary surrender. Actually, in their replies to the questionnaire, the Latvian authorities reported that temporary surrenders had taken place without difficulty<sup>1</sup>.

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

Pursuant to Section 721(1) of the CPL, once the decision on surrender is final, the PGO must send it immediately to the Ministry of Interior for execution<sup>2</sup>. The SIRENE office is wholly responsible for organizing the surrender (the PGO has no power to supervise the process), including the transmission of information concerning the duration of the surrender detention<sup>3</sup>, and negotiations with the issuing authority on a new date in cases where the person concerned cannot be transferred within 10 days of the final decision on surrender<sup>4</sup>. Where appropriate or necessary, the SIRENE office may delegate certain specific tasks to other agencies.

According to the information provided, the 10-day time limit for surrender under Article 23(2) of the Framework Decision has always been respected. No recurrent problems concerning logistical issues were reported.

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<sup>1</sup> According to the information provided by the Latvian authorities during the preparation of the report, Section 721 of the CPL has been amended so that the PGO, based on an agreement with the competent authorities in the issuing Member State, may temporarily surrender the requested person. See chapter 2.2 above.

<sup>2</sup> Section 721(1) of the CPL.

<sup>3</sup> Sections 721(2) and 710(1) of the CPL.

<sup>4</sup> Sections 721(2) and 710(2) of the CPL.

# RESTREINT UE

## 4.13. THE SURRENDER OF REQUESTED PROPERTY

In relation to the handing over of property in cases where the EAW cannot be executed due to the death or escape of the requested person, the expert team noted that the Framework Decision has not been transposed correctly into Latvian law, inasmuch as in such cases the CPL prescribes only the handing over of property which may be required as evidence, omitting any reference to property acquired as a result of the offence<sup>1</sup>.

## 4.14. CONFLICT OF EAWs/EXTRADITION REQUESTS

There is no provision in the CPL concerning competing EAWs<sup>2</sup>. As for cases of conflict between an EAW and an extradition request presented by a third country, the CPL lays down that the examination of such requests shall be combined in a single proceeding, but does not specify which procedure and time limits apply.

## 4.15. EXPENSES

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

## 4.16. MISCELLANEOUS COMMENTS

### Accessory surrender

Accessory surrender is allowed according to Sections 714(1) and 696(4) of the CPL.

### Flagging of alerts

On receiving information (A and M forms) regarding an Article 95 alert, a check for the existence of limitations arising from national legislation is made by the SIRENE officials. This includes verification as to whether the act described constitutes a crime under Latvian law (except for offences classified as one of the categories listed in Article 2(2) of the Framework Decision). As a result of such a check, SIRENE Latvia may supplement the alert with a prohibitive validity flag, whereby Latvia specifies that the requested person will not be arrested in Latvia and that only his place of residence will be established. This action is performed by the SIRENE officers on their own initiative, seeking advice from the PGO where appropriate (e.g. when they are unable to classify the underlying offence).

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<sup>1</sup> Article 29(2) of the Framework Decision and Section 722(2) of the CPL.

<sup>2</sup> This has already been criticised by the European Commission in its first report on the implementation of the Framework Decision.

# RESTREINT UE

## Privileges and immunities

The CPL<sup>1</sup> does not match Article 20 of the Framework Decision in that the provision contained in paragraph (2) thereof is missing<sup>2</sup>.

## Transit

Divergences may be noted between the CPL<sup>3</sup> and the Framework Decision in that the former permits a refusal of transit where the person concerned is a Latvian citizen also in prosecution cases<sup>4</sup>.

## **5. TRAINING PROVISION**

### Training for judges

The Latvian Judicial Training Centre<sup>5</sup> (hereinafter referred to as "the LJTC") organizes training for judges and court staff by virtue of a collaboration agreement signed with the Courts Administration. It also receives funds from a number of foreign donors. The LJTC has been a member of the EJTN since December 2004.

According to the information provided, a 90-minute training session on the completion of the EAW form was organised in 2007 for regional court judges dealing with criminal matters, and at the beginning of 2008 for investigating judges. No training on these matters has been organised for district court judges to date. The representatives of the LJTC interviewed explained that no special training on the EAW was organised in 2005 and 2006, since training activities focused on the new procedural law that entered into force in 2005.

As for language training, the expert team was informed that training in French and German legal terminology was organised for 10 and 15 participants respectively in 2007 and 2008. Training in general English was also offered in 2007. These activities are funded by foreign donors.

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<sup>1</sup> Section 715(4).

<sup>2</sup> This has already been stressed by the European Commission in its first report on the implementation of the Framework Decision.

<sup>3</sup> Section 681(3).

<sup>4</sup> This has already been noted by the European Commission in its first report on the implementation of the Framework Decision.

<sup>5</sup> It is registered as a foundation.



# RESTREINT UE

The representatives of the LJTC explained that seminar materials are handed over to participants and on request to any judge, although it is planned to make them available on the LJTC's website.

## Training for prosecutors

Training for prosecutors is organised separately. According to the information provided, within the 9-month initial training programme for candidate prosecutors there is a 3-hour module on the topic of the EAW. Within the regular ongoing training programme organised on a yearly basis (participation in which is compulsory), one training day concentrates on international cooperation matters.

## Training for SIRENE office staff

According to the information provided, in-house training on several topics is provided regularly. SIRENE staff also participate on a regular basis in activities and training abroad.

## Training for lawyers

To date no training on EAW matters specifically addressed to lawyers has been organised by the Bar Association.

## **6. DEFENCE PERSPECTIVES**

The CPL contains specific provisions on the rights of the person in extradition procedures. These provisions apply expressly to EAW procedures<sup>1</sup>. Thus, the requested person has the following rights: to know which authority is requesting his surrender and on what basis, to use a language he understands, to provide explanations in connection with the surrender, to put forward requests, to become acquainted with all materials of the examination, and to be assisted by a legal counsel throughout the procedure.

The requested person is entitled to receive legal assistance from the moment he is arrested. In providing such assistance the defence lawyer has the right to meet with his client under conditions that ensure confidentiality, as well as to submit evidence and requests. It has to be noted, however, that the participation of a defence lawyer in the surrender procedure is not mandatory, except if the person concerned is a minor, a person lacking the capacity to act or a person with limited criminal capacity<sup>2</sup>.

<sup>1</sup> Section 715(1), which refers to Section 698.

<sup>2</sup> Section 677(2), (3) and (4) of the CPL.

## RESTREINT UE

The investigating judge or the court may, when assessing the financial situation of the person, completely or partially exempt him from payment for legal assistance. In such a case, the defence lawyer's services shall be paid for by the State. The CPL also envisages that the Latvian Council of Sworn Advocates may exempt a person from payment for legal assistance and pay for the defence lawyer's services from its own budget<sup>1</sup>.

The expert team had the opportunity to meet two representatives of the Latvian Council of Sworn Advocates who had appeared as defence counsels in EAW cases. While noting that experience accumulated is rather limited, they stated that no problematic issues have been raised in relation to the implementation of the EAW in Latvia so far. In their view procedural guarantees are fully complied with in EAW procedures<sup>2</sup>. They also gave a very positive assessment of the performance of the PGO.

During the interview details were given as to the legal and linguistic assistance regime in EAW procedures. According to the information provided, there is no special list for EAW cases. Where the requested person asks for a defence lawyer he is provided with a list which allows him to choose from both State-paid and private-paid lawyers. This list is drawn up by the Bar Association and is available at police stations, courts and public prosecutors' offices.

The lawyers interviewed explained that linguistic assistance is provided during the surrender procedure where necessary, the costs being borne by the State. They had no complaint about the quality of the interpretation services, and emphasized that, on request, the interpreter also provides assistance in the discussions between the lawyer and his client.

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<sup>1</sup> Section 677(5) of the CPL.

<sup>2</sup> They emphasized the necessity in some cases of having a defence lawyer also appointed in the issuing State to initiate the defence of the requested person in that State.

## 7. CONCLUSIONS

The evaluating team would like to thank the Latvian authorities for the professional manner in which the evaluation visit was planned and conducted. The experts were presented with a comprehensive agenda, which allowed them to meet all the relevant actors in EAW procedures. Note was also taken of the frankness, professionalism and willingness to explain the situation in practice of the authorities and the professionals who were interviewed. All this enabled the team to obtain a detailed overview of the implementation of the EAW in Latvia, although the inaccurate translation of the transposing legislation provided by the Latvian authorities sometimes led to difficulties.

Before entering into the conclusions of the visit in detail, the expert team would like to make two preliminary remarks. First, Latvia has relatively little EAW experience as either an issuing or executing State; caution has to be applied in drawing conclusions from such a small number of cases<sup>1</sup>. Secondly, there are a number of issues in which Latvia has no experience at all and therefore the question of how national provisions would operate in such cases remains open.

### 7.1. GENERAL CONCLUSIONS

#### Implementing legislation

7.1.1. Latvian implementing legislation is mostly in line with the Framework Decision. However, some divergences can be observed and a number of provisions of the Framework Decision have not been transposed.

7.1.2. Latvia has decided to transpose the Framework Decision into its national law by inserting several provisions into the Criminal Procedure Law, namely in part C - "International Cooperation in criminal matters", division fourteen - "Extradition", chapters 65 - "Extradition of a person to Latvia" and 66 - "Extradition of a person to a foreign State". As a result of this, the provisions regarding EAW procedures are mixed with the provisions on extradition procedures. Furthermore, the provisions concerning EAW procedures are in general given as an exception to the general rules on extradition, although the EAW has abolished extradition among Member States.

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<sup>1</sup> In 2006-2007 the Latvian authorities issued 162 EAWs, 30 of which resulted in the actual surrender of the requested person. In the same period Latvia received 37 EAWs and surrendered 26 persons on the basis of an EAW.

# RESTREINT UE

This legislative option does not allow a sufficient distinction to be made between the two systems (all the more so considering that the word "extradition" is used for both extradition under the classical scheme and surrender on the basis of an EAW<sup>1</sup>), makes the law difficult to read and generates ambiguity, thereby creating a risk of confusion as to the legal framework applicable to EAW procedures. In that connection, the expert team noted that the authorities which were interviewed sometimes referred erroneously to concepts inherent in traditional extradition where they meant to refer to surrender under the EAW. In the view of the expert team this situation also carries a risk that the judicial authorities may automatically fall back on extradition legislation and case-law when confronted with controversial cases, thereby hampering the development of specific solutions in the light of the Framework Decision that take into account the principle of mutual recognition.

## Procedures

7.1.3. In general the procedures put in place under Latvian law are adequate for the purposes of the Framework Decision.

7.1.4. The Prosecutor General's Office plays a major role in the Latvian EAW system. This role is exclusive as regards contacts with foreign judicial authorities. The Prosecutor General's Office appears as the only interlocutor on the Latvian side, also when Latvia acts as issuing State. Although this practice is not consistent with the choice made in the Framework Decision to promote direct contacts between the judicial authorities involved in EAW procedures and to limit the role of central authorities to practical and administrative assistance, it does not seem to give rise to any objections on the part of practitioners, in view of the practical advantages associated with such an approach in connection with the experience accumulated by the Prosecutor General's Office in dealing with international matters and resources at hand. The expert team considers, however, that this practice may hamper the development of a European judicial culture based on a direct dialogue between judicial authorities working on the case in different Member States, and that similar results could be achieved e.g. by setting up a network of experts in the judicial districts.

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<sup>1</sup> The Latvian officers interviewed made it clear that "surrender" has no legal equivalent in Latvian.

## Practice

7.1.5. The practical implementation of the EAW in Latvia seems to be simple and efficient. EAW procedures are dealt with swiftly. The short duration of EAW procedures in Latvia is to be commended<sup>1</sup>.

7.1.6. No recurrent major issue has been identified in relations with other Member States. In the view of the experts Latvia tries very hard to be a trustworthy EAW player.

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

### 7.2.1. Issues

#### 7.2.1.1. Written guidelines for issuing EAWs.

Although during the interviews recurrent difficulties in practice were acknowledged in relation to the completion of the EAW form, and in particular certain fields of that form, no written guidance has been produced to date to assist judges in doing so. Furthermore, as already mentioned, there have not been many EAW cases in Latvia, and consequently few people have any experience, and any experience acquired might then be easily lost, since there are no appropriate channels for its dissemination. In this light the expert team is of the view that Latvia should consider establishing internal "guidelines" for issuing EAWs, which could re-group existing experience and thereby provide updated and practical guidance for future cases. Appropriate dissemination of such guidelines should be ensured. As a starting point, the European Handbook, recently approved, could be used.

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<sup>1</sup> EAW procedures takes on average 5-10 days in both consented and non consented cases.

### 7.2.1.2. EAWs issued in relation to suspects.

Under Latvian law an EAW may be issued in any of the two phases into which the pre-trial investigation is divided: investigation and criminal prosecution, at the request of the investigator and the public prosecutor directing the proceedings respectively. The status of suspect corresponds to the former phase; the status of accused corresponds to the latter<sup>1</sup>. However, the relevance of the possibility of requesting the issuing of an EAW against a suspect may be questioned. The fact is that, according to the information provided by the judges interviewed, in practice such a request never or seldom seems to occur. Furthermore, without prior approval by the public prosecutor this possibility carries the risk that EAWs could be issued for cases in which, after surrender of the person concerned, the public prosecutor could decide not to initiate prosecution, with the consequence that the individual in question must be released<sup>2</sup>.

In these cases other forms of judicial cooperation might be more appropriate, e.g. an MLA request for the purposes of hearing the suspect. The same applies to the situation in which an EAW is issued solely for the mandatory hearing of the requested person by the investigating judge at the end of preliminary investigations.

### 7.2.1.3. Timely provision of language-compliant EAWs.

During the interviews the Latvian authorities reported difficulties in complying with the time limits indicated by some Member States for the transmission of language-compliant EAWs. Moreover, in Latvia this issue is associated with the need to contract private translation for languages other than English and the lack of interpreters for certain languages (the example was given that translators into Slovak had to be hired in Russia).

The expert team agrees with the Latvian authorities that further steps must be taken at European level towards a simplified common regime on this matter, e.g. by identifying a single deadline and a limited number of languages which should be accepted in all Member States.

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<sup>1</sup> See chapter 3.1 above.

<sup>2</sup> See chapter 3.10 above.

## RESTREINT UE

7.2.1.4. Failure to transpose Article 29 of the Framework Decision.

The expert team noted that the situation recorded by the European Commission in its first report concerning the non-transposition of Article 29(4) of the Framework Decision has remained unchanged.

7.2.1.5. Surrender following a hot pursuit.

During the interviews the Latvian authorities drew the experts' attention to the tight time limit (6 hours) envisaged in Article 41(6) of the Convention implementing the Schengen Agreement for the transmission of the EAW, when the person arrested following a hot pursuit is not a national of the country within whose territory the arrest took place. This was illustrated to the expert team with a recent case involving Lithuania, emphasizing that it was successful only because the perpetrators were Lithuanians and therefore the 48-hour deadline prescribed by the EAW transposing legislation applied.

In that connection, the Latvian authorities informed the experts that, within the framework of the regular meetings with their colleagues from the other Baltic States to discuss issues concerning judicial cooperation, an agreement has been reached on a more flexible application of Article 41(6) of the Convention implementing the Schengen Agreement. A guarantee that the EAW is under way and will follow will suffice.

The expert team shares the Latvian authorities' view that the time limit envisaged in the Convention implementing the Schengen Agreement is not enough in most cases for the transmission of an EAW, which carries the risk that the hot pursuit operation becomes useless if the persons pursued are e.g. nationals of the issuing State.

## 7.2.2. Good practices

### 7.2.2.1. Proportionality test.

In issuing an EAW the Latvian authorities apply a proportionality test. Pursuant to the transposing legislation an EAW may not be issued if the seriousness or nature of the criminal offence does not match the expenses of the surrender procedure. According to the information provided other circumstances are also weighed, such as the harm to the individual and the personality of the perpetrator. It has to be noted, however that there are no specific indicators or guidelines for assessing the appropriateness of issuing an EAW in the light of such criteria.

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

### 7.3.1. Issues.

#### 7.3.1.1. Refusal of surrender of Latvian citizens in conviction cases.

The provision transposing Article 4(6) of the Framework Decision does not envisage the need to enforce the sentence passed against the requested person in the issuing State. This is clearly contrary to the Framework Decision. Furthermore, the Latvian officials were not able to give a clear answer to the question of how such cases would be dealt with<sup>1</sup>.

#### 7.3.1.2. Dual criminality.

The transposition of Article 2(4) of the Framework Decision into Latvian law is questionable, since additional requirements seem to have been imposed for the execution of EAWs in prosecution cases where the underlying offence is not classified as pertaining to one of the categories listed in the Framework Decision, namely that the offence be punishable under Latvian law by a custodial sentence of at least one year. When asked, the Latvian authorities confirmed this interpretation.

The expert team recalls that the Framework Decision does not prescribe a minimum penalty under the law of the executing State for the execution of the EAW when dual criminality is requested.

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<sup>1</sup> See chapter 4.8 above.



## 7.3.1.3. Vague procedural rules.

The provisions in the Latvian law governing the procedure for the examination and decision of EAWs are rather vague. Although the defense lawyers interviewed had no complaints and practice seems to show a fair procedure, including a hearing, the provision of relevant documents and the possibility of postponing the decision on surrender for defense reasons, there is no detailed reference to these procedural safeguards in the transposing legislation other than the obligation of the public prosecutor to provide the requested person with *"the opportunity to provide explanations"* during the examination of the EAW<sup>1</sup>.

## 7.3.1.4. Flagging of alerts.

The SIRENE office adds restrictive validity alerts to incoming SIS alerts where limitations arise from national legislation. This practice also covers instances where the underlying act is considered not to constitute a crime under Latvian law, provided that it has not been classified by the issuing State as corresponding to any of the categories listed in the Framework Decision. In so doing the SIRENE office acts on its own initiative. It was explained to the expert team that advice from the Prosecutor General's Office is sought when, for instance, the SIRENE officers have doubts about the classification of the acts under domestic law.

This practice must be criticized. The expert team considers that, except for limitations based on purely objective data (e.g. age), prohibitive validity flags should be added only following an order by a judicial authority or, at least, under the supervision of a judicial authority, thereby ensuring the legality of such action.

## 7.3.1.5. Failure to transpose the provisions of the Framework Decision on the obligation to report the breach of time limits.

The situation already recorded by the European Commission in its first report concerning the non-transposition of Article 17(7) of the Framework Decision remains the same.

## 7.3.1.6. Failure to transpose the provisions of the Framework Decision on competing requests.

Article 16(1) of the Framework Decision on concurrent EAWs has not been transposed into Latvian law.

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<sup>1</sup> Section 704(4) of the CPL.

7.3.1.7. Failure to transpose the provisions of the Framework Decision on privileges and immunities.

Article 20(2) of the Framework Decision on the obligation to request the waiving of the privilege or immunity enjoyed by the requested person is missing in the transposing legislation<sup>1</sup>.

7.3.1.8. Failure to transpose the provisions of the Framework Decision on transit.

The transposing legislation does not conform to Article 25 of the Framework Decision in that refusal of transit when the person concerned is a Latvian citizen is permitted in prosecution cases also.

7.3.1.9. Failure to transpose Article 29(2) of the Framework Decision.

The transposing legislation prescribes the handover of property which may be required as evidence, but not of the property acquired as a result of the offence, in cases where the EAW cannot be executed due to the death or escape of the requested person.

7.3.1.10. Fiche Française

The expert team noted that at the time of the evaluation the "Fiche Française" on Latvia providing concise practical information on the functioning of the EAW system was not available on the Council's website.

## 7.3.2. GOOD PRACTICES

7.3.2.1. Flexible language regime.

Latvia accepts EAWs in Latvian and in English. The same regime applies to the information requested from the issuing authority in the course of the proceedings. Requests for additional information are forwarded by the Latvian authorities also in the language of the addressee authority. The expert team considers that these practices are to be commended.

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<sup>1</sup> According to the information provided by the Latvian authorities during the preparation of the report, Section 715 of the CPL has been amended to put it in line with the Framework Decision. See chapter 2.2 above.

# RESTREINT UE

7.3.2.2. Cooperation between the Prosecutor General's Office and the SIRENE office.

The close, informal and systematic collaboration of the Prosecutor General's Office and the SIRENE office with a positive impact on the expediency of the process was in evidence repeatedly during the visit.

## 8. RECOMMENDATIONS

### 8.1. RECOMMENDATIONS TO THE MEMBER STATE EVALUATED GENERAL

Recommendation 1.- Consider regrouping in different sections or chapters the provisions concerning extradition and those governing surrender on the basis of an EAW (see 7.1.2).

Recommendation 2.- Take the necessary measures to promote direct contacts between the issuing judicial authorities in Latvia and their foreign counterparts (see 7.1.4).

Recommendation 3.- Improve current training programmes to ensure that adequate training on EAWs and on basic foreign legal language is provided to all judicial authorities involved in the issuing process, and adopt measures to promote the training of defence lawyers on EAW-related matters (see chapter 5).

#### AS ISSUING MEMBER STATE

Recommendation 4.- Produce written guidelines with the involvement of practitioners providing updated and practical guidance to assist judicial authorities in completing the EAW form, and take the necessary measures for their appropriate dissemination (see 7.2.1.1).

Recommendation 5.- Take the necessary measures to ensure that during the pre-trial investigation EAWs are requested only following approval by the public prosecutor (see 7.2.1.2).

Recommendation 6.- Amend the implementing law to fill the current gap as regards the transposition of Article 29(4) of the Framework Decision (see 7.2.1.4).

# RESTREINT UE

Recommendation 7.- Identify indicators to facilitate the decision on issuing an EAW in terms of proportionality (see 7.2.2.1).

## AS EXECUTING MEMBER STATE

Recommendation 8.- Amend the implementing law to bring it into line with Article 4(6) of the Framework Decision as regards the undertaking to execute the sentence passed in the issuing State in accordance with domestic law (see 7.3.1.1).

Recommendation 9.- Re-examine transposition into national law with regard to Article 2(4) of the Framework Decision (see 7.3.1.2).

Recommendation 10.- Consider introducing in the transposing legislation more detailed provisions on the procedure for the examination of the EAW and the adoption of the corresponding decision on surrender (see 7.3.1.3).

Recommendation 11.- Reconsider the current practice of adding restrictive validity flags to SIS-alerts without prior consultation of the Prosecutor General's Office (see 7.3.1.4).

Recommendation 12.- Supplement the implementing law to fill the current gap as regards the transposition of Article 17(7) of the Framework Decision (see 7.3.1.5).

Recommendation 13.- Supplement the implementing law to fill the current gap as regards the transposition of Article 16(1) of the Framework Decision (see 7.3.1.6).

Recommendation 14.- Supplement the implementing law to fill the current gap as regards the transposition of Article 20(2) of the Framework Decision (see 7.3.1.7)<sup>1</sup>.

Recommendation 15.- Re-examine the transposition of Article 25 of the Framework Decision into national law as regards the transit of Latvian nationals in prosecution cases (see 7.3.1.8).

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<sup>1</sup> According to the information provided by the Latvian authorities, action already taken. See chapter 2.2 and footnote in chapter 7.3.1.7 above.

# RESTREINT UE

Recommendation 16.- Re-examine the transposition of Article 29(2) of the Framework Decision into national law as regards the handover of property acquired as a result of the offence (see 7.3.1.9).

Recommendation 17.- Produce the "Fiche Française" on Latvia and forward it for publication on the Council's website (see 7.3.1.10).

## 8.2. RECOMMENDATIONS TO OTHER MEMBER STATES

Recommendation 18.- Follow Latvia's practice of applying a proportionality test when issuing an EAW (see 7.2.2.1).

Recommendation 19.- Follow Latvia's practice of forwarding requests for additional information in the language of the issuing State as well (see 7.3.2.1).

Recommendation 20.- Adopt a more flexible approach to language requirements, so that EAWs and additional information in languages other than the own official language are accepted (see 7.3.2.1).

## 8.3. RECOMMENDATIONS TO THE EUROPEAN UNION

Recommendation 21.- Discuss at the appropriate level the benefits of setting up a simplified common regime on time limits for transmission of the EAW and linguistic requirements, e.g. by identifying a single deadline and a limited number of languages, among the most commonly used, which should be accepted by all Member States (see 7.2.1.3).

Recommendation 22.- Discuss at the appropriate level the possibility of reconsidering the practicalities of the hot pursuit provisions in Article 41 of the Convention implementing the Schengen Agreement as regards the time limit for the receipt of the EAW (see 7.2.1.5).

Recommendation 23.- Discuss at the appropriate level the benefits of instituting a proportionality test when issuing a EAW, including the identification of standard common criteria (see 7.2.2.1).

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## PROGRAMME OF VISITS

### Tuesday 20 May

09.00 - 10.45 Reception at the Ministry of Justice - General presentation

11.00 -13.45 Meeting at the Prosecutor-General's Office

14.00 – 15.30 Lunch (arranged by the Prosecutor-General's Office)

16.00 – 17.00 Meeting at the Specialized Prosecution Office for Organized Crime and Other Spheres

### Wednesday 21 May

9:15 transport to the Court House

9:30 – 11.00 Meeting at the District Court

11.15 – 12.15 Meeting at the High Court

12.30 – 14.00 Lunch (arranged by the Ministry of Justice)

14.20 –17.00 Meeting with representatives of State Police, SIRENE bureau and Information Centre

### Thursday 22 May

10.00 – 11.00 Meeting with advocates

11.15 – 12.00 Meeting with representatives of the Latvian Judicial Training Centre

12.15 – 13.30 Ministry of Justice – round-table

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## LIST OF PERSONS MET

### **Ministry of Justice**

Inese Nikuļceva, State Deputy in Legislative Questions  
Inga Melnace, Deputy Director Criminal Law Department  
Gundega Kuške, Legal Adviser of Judiciary Policy Department  
Julijs Muraru-Kļučica, Legal Adviser of Judiciary Policy Department, International Cooperation Division

### **Prosecutor-General's Office**

Rudīte Āboliņa, Head Prosecutor of Department of Analysis and Management  
Una Brenča, Head Prosecutor of International Cooperation Division  
Dagmāra Fokina, Prosecutor of International Cooperation Division  
Mārcis Viļums, Prosecutor of International Cooperation Division  
Solvita Pētersone, Prosecutor of International Cooperation Division  
Māris Strads - Prosecutor of International Cooperation Division

### **Specialized prosecution office for organized crime and other spheres**

Aivars Bergmanis, Prosecutor  
Aleksandrs Stepanovs, Prosecutor  
Antra Zvirbule, Prosecutor

### **District Court**

Irēna Krastiņa, Judge  
Irēna Millere, Judge  
Rinalds Silakalns, Judge

### **Supreme Court**

Pēteris Opincāns, Judge  
Ervīns Kušķis, Judge

### **SIRENE bureau**

Edgars Strautmanis, Deputy Director  
Sanda Brīnuma, Head Inspector

### **Lawyers**

Saulvedis Vārpiņš, Defence Lawyer, Member of the Board of Latvian Council of Sworn Advocates  
Dace Rītiņa, Defence Lawyer

### **Latvian Judicial training centre**

Marina Borkoveca, Program Officer  
Lina Galgatavičute, Program Officer

**LIST OF ABBREVIATIONS/GLOSSARY OF TERMS**

<b>ACRONYM ABBREVIATION TERM</b>	<b>ENGLISH EXPLANATION</b>
CPL	Criminal Procedure Law
D(C)POs	District (City) Prosecutor's Offices
EAW	European arrest warrant
LJTC	Latvian Judicial Training Centre
PGO	Prosecutor General's Office
POJRs	Prosecutor's Offices of Judicial Regions
SIS	Schengen Information System
SPOs	Specialized Prosecution Offices

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