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Brussels, 28 September 2007 (02.10)
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EVALUATION REPORT ON THE
FOURTH ROUND OF MUTUAL EVALUATIONS
"PRACTICAL APPLICATION OF THE EUROPEAN ARREST WARRANT
AND CORRESPONDING SURRENDER PROCEDURES
BETWEEN MEMBER STATES"

REPORT ON LUXEMBOURG

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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 Luxembourg 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 2005 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. Luxembourg is the tenth Member State to be evaluated during the fourth round of evaluations.

1.6. The experts charged with undertaking this evaluation were: Lorna HARRIS (Prosecutor, Head of the International Cooperation Unit, Crown Office, Edinburgh), Marie-Hélène DESCAMPS (Legal Adviser, Ministry of Justice, Belgium), Sylvie PETIT-LECLAIR (Deputy Public Prosecutor, Court of Appeal, Paris), together with the General Secretariat of the Council. Two observers were also present: Sarah KEENAN (European Commission) and Catherine DEBOYSER (Eurojust).

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 6 to 8 February 2007, and upon Luxembourg'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 Luxembourg in practice in its role as both issuing and executing Member State, so as 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

As Luxembourg is small, the country's judicial system has two judicial districts (Luxembourg and Diekirch).

The law transposing the European Arrest Warrant (EAW) has produced a procedure which is perfectly integrated into Luxembourg's system.

2.1. THE AUTHORITIES

The examining magistrate (*juge d'instruction*) is the judicial authority competent to issue an EAW for the purposes of a prosecution. The Code of Criminal Procedure (CIC, Article 94-1) states that an EAW may only be issued on the basis of an international arrest warrant (IAW), which itself may only be issued on the orders of the public prosecutor's office. Moreover, when a warrant is being executed, it is the examining magistrate who decides whether or not to retain the arrested person in custody on the basis of an EAW.

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- The Chief Public Prosecutor (*procureur général d'État*) issues the EAW when the person is wanted for the enforcement of a sentence or detention order. In practice, the Chief Public Prosecutor delegates this competence to the prosecuting counsel assigned to the sentence enforcement service. The Chief Public Prosecutor may also intervene when an EAW is being executed, when he has a power of appeal against the order of the pre-trial chamber of the district court and when he acts as prosecutor in the appeal procedure initiated by the wanted person.
- The State Prosecutor (*procureur d'État*) is involved both when an EAW is issued, providing the indictment for the examining magistrate, and when an EAW is being executed, at the stage when the wanted person is apprehended, by agreeing or refusing to authorise the arrest. At the execution stage, the State Prosecutor seeks and records the consent or renunciation of the wanted person, asks the issuing authority for additional information where necessary, and may appeal against the decision of the pre-trial chamber of the district court.
- The pre-trial chamber of the district court (*chambre du conseil du tribunal d'arrondissement*) of the place of arrest is competent to decide, at the request of the State Prosecutor, on the surrender of the wanted person, within twenty days from the date of arrest.
- The Council chamber of the Appeal Court (*chambre du conseil de la Cour d'appel*) decides on an appeal made against the order of the pre-trial chamber of the district court, within twenty days. This decision is not subject to further appeal.
- The custody and protection group of the Police Custody and Mobile Reserve Unit (*Unité de Garde et de Réserve Mobile de la Police, UGRM*) is responsible for the physical surrender of wanted persons, on the instructions of the examining magistrate, the State Prosecutor or the Chief Public Prosecutor.

2.2. THE LEGAL BASIS

- The law of 17 March 2004 relating to the European Arrest Warrant and the surrender procedures between Member States of the European Union.

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By virtue of Article 37 of the law, Luxembourg has laid down that the EAW procedure is applicable in Luxembourg, as an issuing and as an executing State, for offences committed after 7 August 2002. This provision was inserted into the law by the Luxembourg Parliament during parliamentary debates.

- Article 94-1 of the Code of Criminal Procedure (CIC) which lays down the conditions necessary for the issue of an international arrest warrant prior to the issue of an EAW.
- The law of 25 April 2003 on the transfer of sentenced persons.

3. ORGANISATION AND PRACTICES – AS ISSUING MEMBER STATE

The team of experts was informed that during 2006 the Luxembourg judicial authorities issued 33 EAWs, leading to 19 surrenders. Luxembourg reported that three surrenders had been postponed.

During 2005, 42 EAWs were issued and there were 24 surrenders. In 2004, 13 EAWs were issued leading to 4 surrenders.

3.1. THE DECISION TO ISSUE

The decision to issue an EAW is, in principle, at the discretion of the competent judicial authority, in accordance with the conditions laid down in the legislation.

For prosecutions, the procedure for the issue of an EAW follows the same rules as are applied for national cases and for extraditions.

The decision-making process must take account of the conditions laid down in Article 94-1 of the Code of Criminal Procedure (CIC), namely that the wanted person must be on the run or reside outside Luxembourg, and that the offences must carry a custodial sentence of a maximum of at least 12 months (Article 2(1) of the law).

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If the person is wanted for the enforcement of a sentence, the prosecuting counsel delegated by the Chief Public Prosecutor is competent to issue the EAW. The decision to issue is made on a case-by-case basis by the prosecuting counsel, who decides whether it is appropriate to enforce the sentence which, under the terms of Article 2(2) of the law transposing the EAW, must be of at least four months.

In practice it was observed that, in the absence of any specific directives or circulars indicating any threshold for the sentence, the Luxembourg judicial authorities tend to use the EAW for cases of a certain level of seriousness. In general, prison sentences of more than 6 months are considered for enforcement and for the issue of an EAW, as lesser sentences may be converted into hours of community service.

Article 37 of the law of 17 March 2004 imposes a limit of a general nature on the issue of an EAW, by stipulating that the Luxembourg authorities must use the extradition procedure for offences committed before 8 August 2002.

Experts noted that when the EAW came into force in Luxembourg, the public prosecutors' request to replace all existing Article 95 alerts with EAWs only produced 4 EAWs for 84 alerts, since the other offences were committed before 8 August 2002.

During the evaluation, practitioners reported that it had not been possible to use EAWs for at least 15 to 20 cases (even if they involved serious offences), because the offences had been committed before 8 August 2002. One case concerning France was given as an example: the wanted person had killed his wife in Luxembourg and had been sentenced to life imprisonment, but could not be the subject of an EAW because the crime had been committed before 8 August 2002. As a French national who had fled to France, the wanted person will not be able to be extradited. Other cases involved another homicide and an armed robbery.

3.2. VERIFYING THE POSSIBLE EXISTENCE OF MULTIPLE REQUESTS

Luxembourg has developed IT tools which make it possible to check for other EAWs, international arrest warrants (IAWs), SIS alerts or any ongoing national investigations.

The JUMAR and *Chaîne Pénale* databases, and the information available to the Sirene Bureau, provide the issuing judicial authorities with a complete picture of the criminal history of the wanted person.

Although these checks are not stipulated in any provisions, they are regularly carried out in practice.

Regarding checks on national investigations, besides the existence of a joint list of persons detained in Luxembourg and the *Chaîne Pénale* database, which contains full information on ongoing criminal cases (reports, judgments etc), experts would also highlight the ease with which investigators and judicial authorities establish contacts with one another, which is of great benefit in the exchange of information. The merger of the police and the gendarmerie into a single force and the small number of police officers and judicial authorities in Luxembourg also represent an added value specific to a small country.

As the SIS allows the circulation of only one EAW per person, when the Luxembourg and Diekirch districts both want to issue European arrest warrants concerning the same person a choice is made depending on the date of issue, the seriousness of the offences, etc. When the person is apprehended the Sirene Bureau informs the judicial authority, requesting the transmission of the EAW for which no alert had been issued.

3.3. RULES FOR COMPLETING THE FORMS/COURT PAPERS

The law transposing the EAW reproduces the provisions of the Framework Decision on what information the EAW must contain faithfully and in detail, and reproduces the standard form adopted at European level.

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Luxembourg did not judge it necessary to send out a circular or guidelines on how to complete an EAW form, since it felt that the law exhaustively lists the pre-determined elements of the form.

However, practitioners have access to a very useful IT tool known as JUMAR, developed by the judicial IT service under the authority of the Chief Public Prosecutor's Office. This IT system contains standard EAW forms based on the elements required by the law transposing the Framework Decision, which may be used by the issuing judicial authorities.

In practice, EAWs are issued by groups of offences as they appear in the public prosecutor's indictment.

During the evaluation experts noted some drafting problems, when police in the Sirene Bureau had to summarise or reformulate some sections of the EAW form in the SIS alert form, which led to a risk of approximation or error. In particular, this applied to sections concerning the description of the offences, where the judicial authorities tended to use rather longer formulations, appropriate to indictments but hard to adjust to the summary headings in the SIS forms.

3.4. THE APPLICATION PARTIES/PROCEDURES

Under the law of 17 March 2004, the issue of EAWs is the responsibility of the examining magistrate if the warrant is for a prosecution, and the Chief Public Prosecutor if the warrant is for the enforcement of a sentence.

The examining magistrate takes the decision to issue an EAW on the base of an international arrest warrant which is itself issued on the basis of the prosecutor's indictments. In practice, experts noted that this procedure, which involves several authorities, does not give rise to any particular difficulties and does not render the decision-making process any more cumbersome.

In the issuing procedure, the competent Luxembourg authorities have the technical support of the IT system JUMAR, which enables them to draft EAWs on the basis of pre-established standard forms, which comply with the law transposing the Framework Decision.

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The examining magistrate or delegated prosecuting counsel then decides what would be the most appropriate means of transmission.

When the EAW is transmitted via SIS, a lawyer in the Sirene Bureau checks whether the information in the EAW is appropriate and, if in doubt, contacts the issuing judicial authority for clarification before the EAW is transmitted.

3.5. TRANSLATION OF THE EUROPEAN ARREST WARRANT

EAWs are usually issued in one of the official languages, mostly in French but also in German, and sometimes in both languages.

When the person is apprehended, the issuing judicial authority is responsible for the translation of the EAW into the language accepted by the executing Member State. To be able to meet this obligation within the very strict time limits set by some countries, it uses a list of translators who are able to provide translations within 24 hours.

The translators commonly use the EAW forms translated into all the official languages of the European Union, which are available on the European Judicial Network (EJN) website.

During the evaluation, experts noted that for EAWs going via the SIS, an informal translation of the data in the EAW into English was provided. This translation was a useful tool for the procedures. It was found that the Sirene Bureau does not make use of the experienced translators mentioned above, but uses its own non-specialist staff to translate Luxembourg EAWs.

3.6. TRANSMISSION OF THE EUROPEAN ARREST WARRANT

Article 27 of the law of 17 March 2004 lays down different ways of transmitting EAWs, leaving the issuing judicial authority to choose which method is the most appropriate.

When the whereabouts of the wanted person are known, the EAW may be addressed directly to the executing judicial authority. In practice, practitioners in Luxembourg generally use the European Judicial Network's ATLAS to identify the competent foreign authority.

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When the person's whereabouts are not known, the EAW is transmitted via the SIS or Interpol, or by any other method which provides a written record and enables the executing authority to check that it is authentic.

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

Practitioners whom the experts met during the evaluation reported that, in general, executing Member States asked for additional information on the legal classification and nature of the offences covered by the EAW. These might be very detailed questions, sometimes requiring documents from the case-file to be forwarded (rulings, judgments, police reports, etc.). For example, in one case concerning France, the Luxembourg EAW was examined in minute detail involving the whole substance of the case, particularly regarding the degree of involvement of the wanted person.

The Luxembourg authorities explained that in order to comply with the very short deadlines set by the executing authority and to accelerate the process of deciding on the surrender, they translated the documents into the language accepted by the executing country.

As most EAWs issued by the Luxembourg authorities are addressed to neighbouring Member States which are French-speaking, contact between issuing judicial authorities and executing authorities is generally direct, by fax or phone.

Eurojust or the EJM have never been called upon to resolve problems.

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

The Luxembourg authorities consider that the legal regime to be applied to the return of nationals of an executing State to that State for the enforcement of a sentence delivered by Luxembourg, where Luxembourg is the issuing State, is the Council of Europe Convention of 25 May 1983 on the transfer of sentenced persons, ratified by a law of 25 April 2003, and the Luxembourg law of 25 April 2003 on the transfer of sentenced persons.

In practice, it is for the prosecuting counsel responsible for the enforcement of sentences to provide the guarantees of return of the national to the country of origin, as requested by the executing authorities.

The Luxembourg authorities did not have any problems in this area.

3.9. SURRENDER OF MINORS AND THE ASSOCIATED GUARANTEES

The age of criminal responsibility in Luxembourg is 18.

Nonetheless, minors who are more than 16 years old when an offence is committed may be referred to an ordinary court if the Juvenile Court declines jurisdiction in the case.

However, an EAW may not be issued for minors under 18 years old, except in exceptional circumstances concerning minors who were more than 16 years old when the offence was committed and are tried by an ordinary court.

3.10. EVOLUTION OF BEST PRACTICE

The expert team noted that the size of the country allowed a significant degree of cooperation between legal practitioners, who benefited from their close proximity, and this was an added value in the practical implementation of EAWs.

Close contact between practitioners is promoted by the JUMAR and *Chaîne Pénale* IT applications, which are excellent tools enabling information to be shared on cases and facilitating the management of the EAW process.

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In the issuing phase, the fact that translators are able to produce translations of EAWs within 24 hours is a highly efficient practice.

3.11. GENERAL COMMUNICATION WITH THE EXECUTING MEMBER STATE

Given that most EAWs issued by Luxembourg concern bordering or neighbouring countries, which are either French- or German-speaking, communications between issuing authorities in Luxembourg and executing authorities are usually direct. If that is not possible, information is exchanged via Sirene or Interpol.

Regarding the quality of communications, the judicial authorities met by experts expressed dissatisfaction that the executing authorities almost never spontaneously transmit any information about the progress of the procedure.

With some exceptions, particularly Belgium and Germany, it is always necessary to ask for information about appeals or the surrender decision. Such problems have for example arisen with the French authorities who do not communicate any information about progress on the execution of an EAW except on a case-by-case basis and if specifically asked.

3.12. ARRANGEMENTS FOR SURRENDER/TEMPORARY SURRENDER

Notification of surrender decisions is generally given directly by the executing authority, or via the SIS or Interpol.

The examining magistrate takes the necessary steps to set the date for the surrender and informs the investigators responsible for the case.

The custody and protection group of the UGRM is responsible for arranging the person's transfer at the border post indicated by the executing authority. On arrival on Luxembourg territory, the person is handed to Criminal Investigation Service officers who notify him of the IAW and of the EAW, and question him in accordance with the Code of Criminal Procedure (CIC).

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The same arrangements apply for conditional or temporary surrender.

Regarding temporary surrender, one issue was raised in discussions with practitioners which had already been mentioned by other judicial authorities during another evaluation visit on the application of the EAW. It concerns the identification of the correct grounds for detaining a person during the period of temporary surrender to the State which issued the EAW. If someone is serving a sentence abroad and is surrendered temporarily on the basis of an EAW to participate in proceedings which concern him, practitioners pointed out that they needed details of the grounds for detention, and therefore of what the reaction should be to any request for release presented to the foreign authorities.

The Luxembourg judicial authorities told experts that they were having some difficulty complying with the ten-day deadline for carrying out a surrender, essentially because of two types of problem. A problem of coordination and lack of organisation arises when the executing authorities do not comply with the date set for the surrender. Moreover, when the wanted person is the subject of prosecution or an investigation by the executing authority and the surrender is postponed, considerable delays may accumulate in the dossier of the court which issued the EAW.

3.13. ARRANGEMENTS FOR THE HANDING OVER OF PROPERTY REQUESTED/DEADLINES/GUARANTEES

A request to seize and hand over property and assets is generally presented in the form of international letters rogatory, either before the EAW or at the same time. The Luxembourg authorities appear not to make use of the possibility offered by the EAW form of requesting the seizure and handing over of property by completing section v(g) of the form.

Experts were informed that in practice, coordinating the execution of international letters rogatory and of the EAW has given rise to difficulties, particularly with the French authorities, because of the cumbersome nature of the French procedure for hearing a person who is the subject of an EAW issued for the purpose of a criminal prosecution. In such cases the usual practice is to forgo the hearing so as not to delay the surrender.

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

The judicial authorities did not report any particular problems with cases which had been processed.

3.15. COSTS

The Luxembourg law transposing the Framework Decision on the EAW does not contain any provisions on costs.

Practitioners the experts met during the evaluation visit did not make any special comments on this subject.

4. ORGANISATION AND PRACTICES – AS EXECUTING MEMBER STATE

The experts' team was informed that during 2006, the Luxembourg judicial authorities received 24 EAWs, giving rise to 9 surrenders. Fifteen surrenders were refused.

In 2005, 25 EAWs were received and 13 surrenders were carried out. In 2004, 15 EAWs were received, leading to 7 surrenders.

4.1. RECEIPT PROCEDURES

The prosecutor with territorial jurisdiction for the arrest of the wanted person is the designated authority for the receipt of EAWs.

The EAW may be transmitted to the Luxembourg authorities in any of the following forms: original, certified true copy, by fax or by email with a scanned copy of the completed and signed form. The law transposing the Framework Decision does not stipulate any particular procedure for verifying or certifying the EAW.

In general, practitioners are very flexible and agree to start work on the execution of an EAW even on the basis of a fax. In practice, the direct contacts between the executing authorities in Luxembourg and the issuing authorities make it easy to establish that an EAW is authentic.

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When a person is arrested on the basis of a SIS alert by virtue of Article 95 of the Convention implementing the Schengen Agreement, the Luxembourg law transposing the Framework Decision lays down that it is regarded as the equivalent of an EAW only for the purposes of immediate arrest. To go ahead with the surrender, even if the person consents, the authority must receive the original or a certified copy of the EAW within six working days, or the person will be released.

Equally restrictive conditions apply when the person is being sought on the basis of an Interpol "red notice". In the procedure to execute the EAW, Luxembourg does not arrest the person unless the red notice is accompanied by a copy of the EAW, translated where necessary into German, French or English.

4.2. FORM OF WARRANT AND REVIEW PROCEDURES

When an EAW is transmitted via the SIS, the Sirene Bureau carries out a prior check of aspects of its form and substance, which are laid down in the law as conditions for the admissibility of an EAW. In particular, the following are checked: the date on which the offence was committed (before or after 7 August 2002), whether or not mandatory grounds for non-execution exist, whether the person is domiciled or resident in Luxembourg or is under investigation there. When in doubt, the public prosecutor's office is contacted.

A validity indicator ("flag") is always added following a decision by the public prosecutor's department.

Before deciding to make an arrest, the State prosecutor also makes a rapid check of the form and substance of the EAW, to determine whether mandatory grounds for non-execution exist. Additional information may be requested if the prosecutor feels that sufficient information is not available.

In general the checks made by the State prosecutor relate to aspects of the form and substance of the EAW such as the nature of the alleged offences, the nature of the crimes, the extent of involvement of the wanted person, judgments *in absentia*, etc.

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During the evaluation visit, the experts noted that practitioners had differing views of how detailed the examination of the substance should be. This also concerned the offences appearing on the list of 32, which in principle escape the check on dual criminality. It might seem normal for lawyers to have different views of legal provisions, but the matter should lead to a debate at European level about judicial practices.

The Luxembourg judicial authorities met by experts reported recurrent problems with the drafting quality of EAWs and the basis on which they were issued.

Firstly, they had observed a lack of precision in the drafting of EAWs by some countries, as was reflected in major gaps in the information provided to the executing authorities on fundamental points such as the description of the offences, the extent of involvement, etc. In one case involving Italy, even the name and contact details of the issuing judicial authority were not given.

Secondly, regarding the substance, the Luxembourg authorities reported the practice followed by some States of issuing EAWs for offences which were not very serious or where the information establishing someone's guilt was so slight that they were often released by the issuing authority immediately after surrender.

Regarding the form, the EAW must be drafted in French, German or English or be accompanied by a translation into one of the three.

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

When the State prosecutor who receives an EAW considers that the information it contains is not exhaustive, he urgently requests additional information, where necessary setting a deadline for its receipt.

In practice it may happen that EAWs transmitted via the SIS are the subject of requests for information made by the Sirene Bureau, although always in agreement with the public prosecutor's office responsible for execution.

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In principle, all the judicial authorities involved in the execution of an EAW carry out checks on the content and form of the EAW form, and where appropriate consider on a case-by-case basis whether they need to request additional information.

In general, in the experience of practitioners in Luxembourg, requests for information mainly concern the nature of the offences, the extent of the wanted person's involvement, the guarantees concerning judgments *in absentia*, etc.

When the wanted person, who is either a national or a well-integrated resident, is able to serve his sentence in Luxembourg, the executing authorities also ask for additional documents, i.e. the certified true copy of the final conviction.

As already mentioned in section 4.2 above, at the time of the evaluation the judicial authorities had not encountered any case giving rise to particular problems in relation to the list of the 32 categories of offence. However, experts raised some theoretical cases with the judicial authorities.

4.4. ENQUIRIES AS TO THE WHEREABOUTS OF THE WANTED PERSON

On receipt of an EAW, checks are carried out to determine whether the person might be in Luxembourg. The Sirene Bureau or the competent police force check in the files of the National Register of Persons and Information (*Répertoire National des Personnes et Informations – RPNI*) to see whether the person is an official resident, and in the *Chaîne Pénale* to establish whether the person is the subject of national criminal proceedings or is remanded in custody.

During the evaluation, experts were informed that the police have access to all the national administrative databases, except for the social security and tax administration databases. Officers said that access to those two databases would be very useful in locating wanted persons but that, despite repeated requests over the years, it was not possible to obtain authorisation.

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If it is thought that a person's whereabouts have been identified, careful checks are made on the ground by the police with territorial jurisdiction before an arrest is made.

4.5. DISTRIBUTION PROCEDURES

The Luxembourg law transposing the EAW Framework Decision does not designate a central authority for the receipt or transmission of European arrest warrants, except for transit requests.

When an EAW is transmitted through Schengen or Interpol channels or when it is received by a judicial authority it is forwarded to the State prosecutor with territorial jurisdiction for execution.

4.6. PROCEDURES RELATING TO THE ARREST/FIRST HEARING

A flow chart showing how an EAW is executed in Luxembourg is attached to this report (ANNEX B).

Arrest

When a person who is wanted on the basis of an SIS alert by virtue of Article 95 or of an EAW is apprehended in Luxembourg, he may be arrested at the request of the State prosecutor with territorial jurisdiction after a rapid check of the data and of any mandatory grounds for non-execution.

All officers of the Criminal Investigation Service (OPJ) may execute such an arrest order and where appropriate, if the person is believed to be dangerous, the intervention group of the Special Police Units (*Unités Spéciales de la Police*) (USP) may intervene.

When the person is found during a roadside check, the criminal investigation police call the Sirene Bureau to check whether there are valid grounds for arrest (SIS alert, EAW).

Once the person has been arrested, the procedure to be followed is described in a detailed note available to all police officers on the Intranet. This note, drawn up by the head of the Legal Service of the Sirene Bureau in cooperation with the Chief Public Prosecutor's Office when the law on the EAW came into force, contains general information on the functioning of the EAW and detailed procedural instructions.

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The note also contains a draft report setting out all the steps which the police have to take in the 24 hours preceding presentation to the examining magistrate.

The wanted person is informed of the EAW or SIS alert and is made aware:

- of the fact that he may be assisted by a lawyer of their choice, or by an officially appointed lawyer;
- of the fact that he may consent to surrender, and of the legal consequences of consent;
- of the fact that he may renounce the speciality rule, and of the legal consequences of renunciation.

If the person does not understand French or German, he is assisted by an interpreter chosen from the Ministry of Justice's official list.

If the person asks for the assistance of an officially appointed lawyer, the police call the duty lawyer, but in practice he rarely comes. Under Luxembourg procedure the lawyer may not speak to his client until the appearance before the examining magistrate. In practice the lawyer may examine the documents provided to the wanted person, either the EAW or the Schengen form.

A report is drawn up of any act: arrest, notification, information provided, statements made (in accordance with the standard model available to the police); it is signed by the arrested person and where applicable by the interpreter.

The report is submitted to the State prosecutor within 24 hours of arrest.

Presentation to the examining magistrate

The wanted person is brought before the examining magistrate within 24 hours of arrest; the examining magistrate confirms his identity and collects any statements on the offences on which the EAW is based.

The examining magistrate also decides whether or not to hold the wanted person in custody, taking account of the circumstances described in the EAW or stated by the person. The person may seek release by the pre-trial chamber of the district court at any time; the chamber applies the rules and procedures laid down by the Code of Criminal Procedure (CIC) for provisional release at national level.

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The magistrates met by the experts during the evaluation said that, in their view, the new law of 6 March 2006 on release under judicial supervision was probably applicable by the various examining courts; they explained that the law could come to be applied in particular to Luxembourg nationals or well-integrated residents. Given the silence of the law on this subject and the fact that there have in practice been no actual cases, views amongst magistrates differed as to whether it was applicable in the case of EAWs.

If the wanted person is released, the issuing State is informed at once.

4.7. DECISION ON SURRENDER

Summary procedure

The law transposing the Framework Decision provides that at any time following arrest the wanted person may consent to surrender, which equates to a decision to execute the EAW without any other formality. He may also renounce the speciality rule.

When consent is given or the speciality rule is renounced in a formal statement to the competent State prosecutor, it is irrevocable. The State prosecutor draws up a report recording:

- the information given to the person about the legal consequences of consent;
- the information given to the person about the legal consequences of renouncing the speciality rule;
- confirmation that the person has been told that he may be assisted by a lawyer, and the person's response.

This report, signed by the arrested person, by his lawyer, if any, by the public prosecutor and by the interpreter, if any, concludes the procedure for a decision on surrender.

By way of derogation from the procedure described here, Article 10(4) of the law of 17 March 2004 provides that Article 19 of the Benelux Treaty of 27 June 1962 on extradition and mutual assistance in criminal matters is applicable to relations with Belgium and the Netherlands. As a result, if a person consents to his surrender, such consent is equivalent to renunciation of the speciality rule.

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The judicial authorities reported some problems in applying this procedure, since the Netherlands had stipulated that the Benelux Treaty was not applicable in their law transposing the EAW, and Belgian law was silent on this subject.

As a result, the applicability of this provision is regarded differently by different magistrates. Some have decided not to apply it, regarding it as obsolete, whereas others continue to apply it.

Ordinary procedure

When the arrested person does not consent to his surrender, the pre-trial chamber of the district court with territorial jurisdiction makes the decision on surrender, at the request of the State prosecutor, within 20 days of the date of arrest.

During the hearing, which is held in public, the wanted person, his lawyer and the public prosecutor are heard.

If no appeal is made against the decision of the pre-trial chamber, the decision is served on the wanted person and is sent by post to the issuing authority.

If the wanted person is at liberty when the decision on surrender is taken by the pre-trial chamber of the district court, he is re-arrested.

4.8. REFUSAL OF SURRENDER

Articles 4 and 5 of the law of 17 March 2004 set out the grounds for mandatory and optional non-execution (see ANNEX A).

The pre-trial chamber of the district court determines whether the formal and substantive conditions for the EAW to be executed have been met, checking whether there are any grounds for non-execution.

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When there is a mandatory ground for non-execution, the public prosecutor or the examining magistrate may – at the preliminary stage of the procedure – refuse to agree to the arrest or detention of the wanted person.

In any event, the pre-trial chamber of the district court decides on any optional grounds for non-execution.

On the basis of the statistical data collected during the evaluation, the experts were able to see the effect of the grounds for refusal on the execution of the EAWs received.

Of the 24 EAWs received in 2006, 8 were refused because of: the inapplicability of the German law (2 EAWs), the impossibility of using the EAW procedure for cases concerning offences committed before 8 August 2002 (3 EAWs), the application of the *ne bis in idem* principle (1 EAW), and the condition providing for the sentence to be served in Luxembourg (2 EAWs). Six EAWs could not be executed because of the impossibility of apprehending the wanted person in Luxembourg . One EAW was withdrawn by the issuing country.

For 2004 and 2005, experts noted that the inapplicability of the EAW for offences committed before 8 August 2002 was the ground for non-execution in 50 % of the cases which ended in a refusal. In certain cases, it has been possible to use the traditional extradition procedure instead of the EAW procedure.

4.9. APPEALS PROCEDURES AND THEIR EFFECTS ON DEADLINES

When the wanted person does not consent to surrender, an appeal against the decision of the pre-trial chamber of the district court may be made to the Council chamber of the Appeal Court.

The person concerned and the State prosecutor have three days in which to appeal, starting from the date of service of the ruling. The Chief Public Prosecutor may lodge an appeal within ten days from the date of the ruling.

The ruling by the Council chamber of the Appeal Court must be issued within 20 days after the appeal has been lodged and is definitive, since the law transposing the Framework Decision does not provide for any further appeal.

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The Luxembourg legislator has opted for a restricted right of appeal, identical to that adopted for international judicial assistance, to prevent the deadlines for those procedures being missed.

The judicial authorities met by experts said that they had never encountered a case where the deadlines laid down in the Framework Decision were missed.

Experts noted that the law of 17 March 2004 has not transposed Article 17(7) of the Framework Decision, and that there was therefore no provision for reporting missed deadlines to Eurojust.

4.10. ARREST AND SURRENDER OF OWN NATIONALS AND OF MINORS

Under Luxembourg law, the status of national or of well-integrated resident has two particular effects in the context of the execution of an EAW.

When an EAW is issued for the enforcement of a sentence or a detention order, that status may be an optional ground to refuse surrender.

In that case, the Chief Public Prosecutor or the person to whom he has delegated his powers as regards the enforcement of sentences may undertake to have the sentence or detention order enforced in Luxembourg.

The enforcement of a sentence, and especially the arrangements for it (sentences of not more than one year served in instalments, day release, prison leave, conditional release) will then be governed by Luxembourg law.

When the person who is the subject of an EAW for the purposes of prosecution is of Luxembourg nationality or is a well-integrated resident, surrender may be subject to the condition that after the person has been heard he should be returned to Luxembourg to serve the sentence or detention order delivered in the issuing State in Luxembourg.

The legal regime applicable to the return of nationals to Luxembourg for the enforcement of a sentence is the law of 25 April 2003 on the transfer of sentenced persons.

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After obtaining the agreement of the authorities to the transfer and the consent of the person concerned to his surrender, "and if the wanted person is not already in detention", the Chief Public Prosecutor has the wanted person arrested immediately. The original or the certified true copy of the final judgment, stating the sentence, accompanied if necessary by an official translation, must be sent by the judicial authority which issued the EAW, and on the basis of this detention document the Chief Public Prosecutor orders the sentenced person to be detained.

In view of national rules in this area, the law transposing the EAW provides for two grounds for non-execution connected with the age of the wanted person.

By virtue of Article 4(3) of the law, the EAW is refused if it concerns a minor who was less than sixteen years old when the offence was committed.

If the subject of the EAW is a minor who was 16 years old or more when the offence was committed, the EAW may be refused if the conditions which would enable the Juvenile Court to decline jurisdiction and hand the case over to the ordinary courts are not met.

At the time of the evaluation, the practitioners met by the experts had not encountered any cases involving minors.

4.11. SPECIALITY

As already mentioned in section 4.7 above, Article 10(4) of the law transposing the EAW provides for the application of Article 19 of the Benelux Treaty to surrender procedures with Belgium and the Netherlands in cases where the wanted person consents to his surrender. The summary procedure, by which consent to surrender entails renunciation of the speciality rule, therefore applies.

Experts noted that this provision is interpreted differently by different judicial authorities in Luxembourg, as its applicability has been questioned on account of the differing views of the Benelux States on this issue.

4.12. SURRENDER/EXTRADITION

The Luxembourg authorities did not report any problems with the issue of subsequent extradition of a wanted person to a third State.

4.13. AD HOC QUESTIONS ON COMMITMENTS

Experts heard that to date no cases had arisen concerning requests for guarantees addressed to the issuing State.

4.14. EXPERIENCES IN RELATION TO ARTICLE 32

Article 37 of the law transposing the EAW opted for the possibility which the Framework Decision of 13 June 2002 offered to the Member States acting as executing States, namely to continue to deal with requests relating to acts committed before 8 August 2002 in accordance with the traditional extradition system.

However, when the Framework Decision was adopted, the Luxembourg Government failed to make the statement required by Article 32 of that Decision. This has led to a blockage with certain Member States, for example Belgium, which were not able to allow for this situation in their national legislation, as they had done for Italy, Austria and France, which did make the statement provided for in Article 32.

Practitioners the experts met during the evaluation reported that there had also been problems with those Member States which were no longer prepared to have surrender based on any one of the extradition conventions. In practice, cases of impunity had arisen where Luxembourg could not execute an EAW because of the date on which the offences were committed and of the fact that the other State no longer accepted extradition in its relations with a country of the European Union.

When questioned on this, the judicial authorities reported that during the three years that the EAW has applied, 17 cases had been refused because of the 7 August 2002 cut-off, which is a significant volume of cases for Luxembourg.

During the evaluation, the question of Article 37 of the law of 17 March 2004 was addressed by experts during a visit to the Legal Affairs Committee of the Chamber of Deputies.

Experts emphasised the problems associated with this provision and noted the supplementary opinion of the Council of State¹ during the procedure to approve the law. According to the Council of State, *"it would certainly have been more prudent and more in accordance with the Framework Decision for Luxembourg to have made a statement as laid down in Article 32 of the Framework Decision, at the time it was adopted, which was (...) not the case. A problem of reciprocity with the other Member States could result"*.

There was an interesting discussion between the experts and the members of the Legal Affairs Committee, particularly on the principle of a faithful transposition of the Framework Decision and of the negative legal and practical consequences of the application of Article 37. The members of parliament said that they were ready to analyse any data sent to them by the judicial authorities with a view to possible revision of the legislation.

4.15. TEMPORARY/CONDITIONAL SURRENDER

The law of 17 March 2004 allows the possibility of postponed and temporary surrender.

It is for the public prosecutor's office to decide to postpone the surrender of a person who is wanted for a prosecution or for the enforcement of a sentence in Luxembourg, or to surrender the person temporarily to the issuing State.

For temporary surrender, no express request is required from the issuing authority. Surrender takes place under conditions (date, place, length of surrender) which are determined by mutual agreement with the issuing authority.

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

If consent to surrender has been obtained, or if the decision on surrender has become final, the public prosecutor's office immediately informs the issuing authority, so that a date for the surrender can be agreed. In practice, the public prosecutor's office informs the issuing authority by post of the arrest, the surrender and the number of days spent in detention.

¹ Supplementary opinion of 10 February 2004, No 46.153.

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Surrender must take place within 10 days of the surrender decision.

The physical surrender of the person is carried out by the custody and protection group, acting on the basis of an order from the State prosecutor or Chief Public Prosecutor and the information on the date and place of surrender which it contains.

In practice, the person is surrendered at the border with neighbouring countries, or at the airport.

Members of the custody and protection group whom experts met during the evaluation did not report any particular problems with meeting the short 10-day deadline.

In cases of *force majeure* or if there are serious humanitarian reasons which prevent the surrender of the person, the public prosecutor's office agrees a new date with the issuing State.

4.17. ARRANGEMENTS FOR THE HANDING OVER OF REQUESTED OBJECTS/DEADLINES/GUARANTEES

The seizure of objects which might be used as evidence, or which were obtained by means of the offence, may be ordered by the examining magistrate at the request of the issuing authority or of the State prosecutor, in accordance with national legislation in this area.

Objects are handed over in accordance with the provisions applicable to international judicial assistance in criminal matters.

The Luxembourg authorities did not report any particular problems in this respect.

4.18. CONFLICTS BETWEEN EUROPEAN ARREST WARRANTS/EXTRADITION REQUESTS

Conflicts between European arrest warrants issued for the same person

Article 23 of the law transposing the EAW empowers the pre-trial chamber of the district court to choose between EAWs on the basis of certain listed criteria.

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In particular, the seriousness of the offences and the date on which they were committed, the respective dates of issue of the EAWs, and whether the warrant was issued for prosecution or for the execution of a sentence, are all elements to be taken into consideration.

Experts noted that the law has not transposed the possibility laid down in Article 16(2) of the Framework Decision of seeking the advice of Eurojust in the case of multiple EAWs.

Conflict between a European arrest warrant and an extradition request

Under Article 24(2) of the law transposing the Framework Decision, the Minister for Justice may decide whether priority should be given to the EAW or to the extradition request, taking account of the same criteria as are listed in Article 23, as well as the conditions mentioned in the Convention applicable.

In practice, no cases had arisen at the time of the evaluation.

4.19. COSTS

The Luxembourg law does not lay down any specific provisions on the payment of costs relating to the surrender of wanted persons.

In practice, the Luxembourg authorities did not report any problems of a practical or legal nature concerning the payment of costs relating to the execution of an EAW.

5. TRAINING

When the law on the EAW came into force, a meeting of all magistrates was held to explain the new procedure for the surrender of wanted persons. On that occasion, a chart showing the procedure for processing an EAW was distributed to all the magistrates.

Training on the ground is provided by the public prosecutors responsible for EAWs.

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No other basic or continuing training activity for magistrates has been planned on this subject.

Magistrates reported that they had taken part in seminars and international conferences specifically on the EAW.

In general, practitioners felt that the information (case-law, legislation, etc.) available on the Intranet site, which was accessible to all magistrates, and the meetings organised every week by the Public Prosecutor's Office, were an adequate source of information.

At police level, a departmental note explaining the new EAW procedure and a draft arrest report were distributed to all police officers and were available on the Intranet site. They also form part of the in-service training given at all levels.

No language training was given to magistrates or police, given the trilingualism in Luxembourg's schools.

6. VIEWS OF THE DEFENCE

Lawyer's representatives whom the experts met during the evaluation visit generally expressed satisfaction with the way the EAW was working in Luxembourg. In particular, they emphasised that the good cooperation existing between lawyers and magistrates was an advantage and that the rights of the defence were respected.

In principle the lawyers were positive towards the law of 17 March 2004, although they pointed out that its application had revealed some procedural aspects which could be improved.

In particular, they noted that the defence only has access to the case-file when the wanted person appears before the examining magistrate, and that until then the lawyer could not communicate with his client. This procedure is not just a feature of the EAW but also applies to national proceedings.

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Lawyers stressed the effective nature of the EAW and the need to have magistrates and defence representatives specialising in the EAW in all the Member States. They said that in some cases the information provided by foreign authorities about their national procedures and about the rights of the wanted person had not been satisfactory. This was especially the case with judgments *in absentia*.

They asked that the time needed for the execution of EAW be used by investigators in the issuing State to continue their investigations.

As regards training, lawyers said that no specific training session – basic or continuing – was planned, but a proposal on this subject was apparently under consideration.

7. CONCLUSIONS

7.1. GENERAL CONCLUSIONS

The experts appreciated the receptiveness of the authorities they met and their openness during meetings, which gave a full picture of how the EAW functions in Luxembourg.

The law is well drafted and very precise concerning the procedures for issuing and executing EAWs, so that practitioners do not seem to need any additional tools or guidelines.

Nonetheless it is flexible enough to be easy to apply. If it were not for the provision containing the cut-off date of 7 August 2002 for the issue or execution of EAWs, the law would certainly be one of the best in Europe.

The experts' team had a clear feeling that because of the small size of the country, the application of the EAW benefited from the proximity of practitioners, who are few in number and cooperate closely with one another.

In the experts' view, these features are an added value which make application of the EAW easier, both at the issuing stage and at the execution stage, allowing fairly homogenous implementation of the instrument.

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In terms of practical experience, the small size of the country has had an impact on the number of EAWs processed since the law came into force. Despite the limited number of actual cases and of legal issues raised, the experts were able to draw positive conclusions about the operation of the EAW in Luxembourg.

Judging by the statistics for the three years in which the law has been applied, the procedure for executing EAWs is very rapid. To date, Luxembourg has not missed any deadlines when acting as executing State.

Experts agreed with the view of the lawyers they met that magistrates and lawyers dealing with EAW cases needed a high level of specialist knowledge. In this respect, experts regretted that no specific training for lawyers was planned, and especially that defence counsel appointed by the court often had insufficient knowledge in this area.

The bilingual regime (German, French) and the flexibility which allowed EAWs to be accepted in English were regarded by experts as very positive for the handling of EAW cases, where the short deadlines required quick reactions.

The experts' main criticism was the legislative provision setting the 7 August 2002 cut-off date, which was clearly contrary to the Framework Decision. The opinion of the Council of State¹ should already have made the Luxembourg parliament take pause for thought, given that this is European legislation binding not only on the judicial authorities (see the PUPINO case) but also on parliaments.

Moreover, the Luxembourg parliament is the only one in Europe to have decided that the EAW legislation would be inapplicable before 8 August 2002, not only for the execution of EAWs but also for their issue. As a result, the legislation has had a very negative impact on EAW issue and execution procedures, sometimes in very serious cases (for example one involving homicide).

¹ See the opinion of the Council of State cited in section 4.14.

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

7.2.1. Questions

7.2.1.1 – Reservation about the application of EAWs as regards the date on which the offences were committed

As mentioned earlier, experts noted that neither the substance nor the form of Article 37 of the law of 17 March 2004 complies with Article 32 of the Framework Decision, which allows the Member States to derogate from the application of the EAW for acts committed before 8 August 2002 only when they are acting as executing Member States. In both form and substance the provision in the Luxembourg law is thus contrary to the Framework Decision, since it came late (after the adoption of the Framework Decision) and no statement on it was made.

The experts feel that this provision leads to a lack of legal certainty in relations with the other Member States, amounting to a clear distortion of European Union law, and may allow serious crimes to go unpunished. In this respect the information provided by the judicial authorities about the cases which could not be handled using an EAW (see section 3.1) is very significant.

7.2.1.2 – Drafting of SIS forms by the Sirene Bureau

The experts noted the current practice of the Sirene Bureau of summarising the information contained in the EAWs drafted by the judicial authorities in order to complete the SIS forms. In particular, they noted that police officers in the Sirene Bureau, supervised by a lawyer, regarded themselves as having some autonomy in their drafting, even in cases of doubt. In the experts' view this practice may lead to a lack of precision, particularly as regards the legal classification or description of the offences, and may thus have negative effects on the execution of the EAW.

7.2.1.3 – Additional information

The experts noted the comments made by the judicial authorities in Luxembourg about the large number and detailed nature of requests for information from certain foreign judicial authorities, who may even ask for documents from the files to be sent. The experts regretted this bad practice which was still far too common amongst executing Member States, and felt it to be against the principle of mutual recognition.

7.2.1.4 – Communication with the executing State

The experts noted that the Luxembourg authorities were dissatisfied with the lack of communication with executing States. Experience has shown that information on the state of progress of the execution procedure (appeals, surrender decisions) is very sporadic and rarely provided spontaneously. The experts noted that for countries in which a significant number of EAWs are executed it is more difficult to communicate details of every stage of the procedure. However, the authorities in executing countries must at least respect Article 22 of the Framework Decision by informing the requesting authorities of the final decision.

7.2.1.5 – Temporary surrender

The experts felt that clarification was needed to remove the doubts expressed by practitioners met during the evaluation visit about how to identify the valid grounds for detention during a period of temporary surrender.

7.2.1.6 – Coordination with the executing state during the surrender phase

The experts noted the difficulties experienced by the Luxembourg authorities as issuing authorities, when executing authorities did not comply with surrender deadlines because of a lack of coordination and organisation.

7.2.1.7 – Seizure of property

The expert team noted that the Luxembourg judicial authorities used international letters rogatory to ask for the seizure and handing over of property relating to a person sought on the basis of an EAW.

Given the problems which often arose when coordinating the execution of the EAW and that of the letters rogatory, experts felt that the use of heading (g) of the EAW form would be desirable, as would its acceptance by the judicial authorities.

7.2.2 Good practice

7.2.2.1 – JUMAR, *Chaîne Pénale*

The JUMAR and *Chaîne Pénale* computer applications make a significant contribution to the management of EAW cases. The two databases, which are accessible to all magistrates, contain all the information available about the criminal history of the wanted person. JUMAR in particular enables EAWs to be managed effectively, and statistics to be processed. It could be a model for other Member States.

7.2.2.2 – Translation of EAWs

The fact that a pool of translators is able to carry out translations within 24 hours makes it possible to comply with the short deadlines imposed by some foreign authorities for the receipt of translated EAWs.

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

7.3.1. Questions

7.3.1.1. – Reservation about the application of EAWs as regards the date on which the offences were committed

The experts would repeat the observations in section 7.2.1.1 above, and stress them once again. They have already noted that a number of foreign cases could not be successfully concluded because of the date of the offences.

7.3.1.2. – Arrest on the basis of a SIS alert

The experts noted a degree of rigidity in the law of 17 March 2004 which stipulates that the original or the certified true copy of the EAW must be received within six working days of arrest on the basis of a SIS alert, or the person may be released. Given that the law (and the Framework Decision) consider that a SIS alert is equivalent to an EAW, the experts believe that a more flexible approach would be desirable.

7.3.1.3. – Examination of the substance of an EAW

Discussions during the evaluation visit showed that some legal questions relating to the application of the EAW had not been addressed or discussed in practice by the Luxembourg judicial authorities, because of the small number of cases which had been dealt with, and the limited number of cases submitted to the Appeal Court. Some discussions during the evaluation were therefore abstract and theoretical rather than based on actual cases.

One instance was the discussion on the depth of examination of the substance of the offences referred to in an EAW, or the degree of involvement of person or the seriousness of the offences in the context of the crimes appearing on the list of 32. The experts noted that the judicial authorities questioned on this point took different approaches, ranging from a simple request for additional information to an examination of the substance of the case. Although too much importance should not be attached to these discussions, the experts nevertheless draw the conclusion that at judicial level, as at the level of legislators and practitioners, there is a need for a broad debate on the principles and reality of mutual recognition.

7.3.1.4. – Drafting quality of EAWs

The experts agreed with the Luxembourg authorities' criticism of the lack of care which some issuing authorities show in the processing of EAWs (for example, leaving out the contact details of the issuing authority!), thus increasing the number of requests for information and delaying the execution of EAWs.

7.3.1.5. – Appropriate use of EAWs

The experts agreed with the Luxembourg authorities in deploring some Member States' practice of issuing EAWs for offences which are not very serious, or where the evidence is so slight that the person is released immediately after surrender.

7.3.1.6. – Judicial supervision

The experts noted that practitioners felt some uncertainty about the applicability of the provisions on judicial supervision to the procedure for executing an EAW (see section 4.6 above). They felt that this issue should be clarified.

7.3.1.7. – Applicability of the Benelux Treaty

The experts noted that Article 10(4) of the law of 17 March 2004 raises two types of problem.

They deplored the lack of consultation with the other States concerned by the Treaty about whether or not it remained in force, and noted that, given the differing choices made by the three States, there was a lack of legal certainty in relations with

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Belgium and the Netherlands. Secondly, the Benelux Treaty provision which Luxembourg has revived is questionable insofar as, in the case of the summary procedure, consent to surrender is equivalent to renunciation of the speciality rule, whereas in Article 13 of the Framework Decision the two are not linked.

7.3.1.8. – Notification to Eurojust when deadlines are missed

The experts noted that the law of 17 March 2004 has not transposed Article 17(7) of the Framework Decision and that there is therefore no provision for informing Eurojust of all missed deadlines.

7.3.1.9. – Conflict of EAWs issued for the same person

The experts noted that the Luxembourg legislator had not provided for the possibility of seeking the advice of Eurojust when choosing between multiple EAWs, as provided in Article 16(2) of the Framework Decision.

7.3.1.10. – Training

The experts noted the lack of specific training on the EAW, for magistrates and police as well as for lawyers. Although the size of the country means that judicial activity involves a large number of cases with an international dimension, the experts felt that targeted courses on the subject (abroad especially, with exchanges of magistrates between the Member States) could enhance practitioners' knowledge.

7.3.1.11. – Access to the social security database

The experts noted the comments made by police officers during the evaluation visit, about their lack of access to the social security database and the tax administration database. The police stressed that such access could be useful in finding a wanted person.

7.3.2. Good practice

7.3.2.1. – Languages accepted

The experts noted that Luxembourg accepts EAWs in French, German and English, which is a great advantage in the EAW processing procedure. They also noted the flexibility of the language regime in Luxembourg which enables practitioners to work in several languages.

7.3.2.2. – Organisation of police services

The experts were informed of the merger of the police and gendarmerie in 2000. The officers empowered to make arrests on the basis of an EAW therefore belong to a single body. The experts consider that this unified organisation facilitates the procedures for executing EAWs.

7.3.2.3. – Arrest reports

The experts welcomed the joint drafting in 2004 by the police and the Chief Public Prosecutor's Office of a model report form used by the criminal investigation police when arresting persons wanted on the basis of an EAW.

8. RECOMMENDATIONS

8.1. RECOMMENDATIONS TO LUXEMBOURG

8.1.1. As an issuing member state

Recommendation No 1 – Amend Article 37 of the law of 17 March 2004 to comply with Article 32 of the Framework Decision as an issuing State (see 7.2.1.1).

Recommendation No 2 – Ensure coordination and regular contacts between the Sirene Bureau and the issuing judicial authorities in Luxembourg, to harmonise drafting methods for SIS forms relating to EAWs issued in Luxembourg (see 7.2.1.2).

Recommendation No 3 – At national level, clarify the provision on temporary surrender, particularly as regards the valid grounds for detention during temporary surrender (see 7.2.1.5).

Recommendation No 4 – Make use of the possibility offered by the EAW form (heading (g)) as regards the seizure and handing over of property held by the wanted person (see 7.2.1.7).

8.1.2. As an executing Member State

Recommendation No 5 – Amend Article 37 of the law of 17 March 2004 to comply with Article 32 of the Framework Decision as an executing State (see 7.3.1.1).

Recommendation No 6 – Consider a legislative amendment concerning arrangements for the receipt of EAWs (acceptance of the EAW in forms other than the original or a certified true copy of the original) when arrest is carried out on the basis of a SIS alert (see 7.3.1.2).

Recommendation No 7 – Look in depth at the issue of extending the principle of mutual recognition as regards the limits which the executing authority should respect when examining an EAW. Specific training on this subject could be planned (see 7.3.1.3).

Recommendation No 8 – Make clear whether the law on judicial supervision is applicable in EAW cases (see 7.3.1.6).

Recommendation No 9 – Consider amending Article 10(4) of the law of 17 March 2004 and organise prior consultation on this subject with the two other Benelux States (see 7.3.1.7).

Recommendation No 10 – Consider amending the law of 17 March 2004 as regards the transposition of Article 17(7) of the Framework Decision (see 7.3.1.8).

Recommendation No 11 – Consider the possibility of transposing Article 16(2) of the Framework Decision (see 7.3.1.9).

Recommendation No 12 – Consider the possibility of organising training sessions on the EAW for all practitioners (see 7.3.1.10).

Recommendation No 13 – Consider the possibility of allowing the police to have access to the social security database and the tax administration database (see 7.3.1.11).

8.2. RECOMMENDATIONS TO OTHER MEMBER STATES

Recommendation No 14 – Take the greatest possible care in completing EAW forms, to ensure that the quality of the information provided is as high as possible (see 7.3.1.4).

Recommendation No 15 – In accordance with the principle of mutual recognition, as far as possible work on the basis of the information provided by the issuing judicial authority on the EAW form, avoiding requests which relate to the substance of the case or requests for documents from the case-file (see 7.2.1.3).

Recommendation No 16 – Make an effort to maintain regular contacts with the issuing authorities, so as to inform them of the outcome of an EAW, particularly the apprehension of the wanted person and the contents of the final decision, in accordance with Article 22 of the Framework Decision (see 7.2.1.4).

Recommendation No 17 – Take the necessary steps to coordinate arrangements for the surrender of the wanted person with the issuing State, and to comply with the deadlines (see 7.2.1.6).

Recommendation No 18 – Consider the advantages of an IT application such as JUMAR in the fight against organised crime (see 7.2.2.1).

Recommendation No 19 – Take account of the principle of proportionality when issuing an EAW, and avoid using EAWs for minor offences (see 7.3.1.5).

Recommendation No 20 – Consider the possibility of arranging language training to facilitate communication between issuing and executing authorities (see 7.3.2.1).

Recommendation No 21 – Consider a more flexible approach to accepting EAWs in a language other than your national language(s), following the practice of some Member States (see 7.3.2.1).

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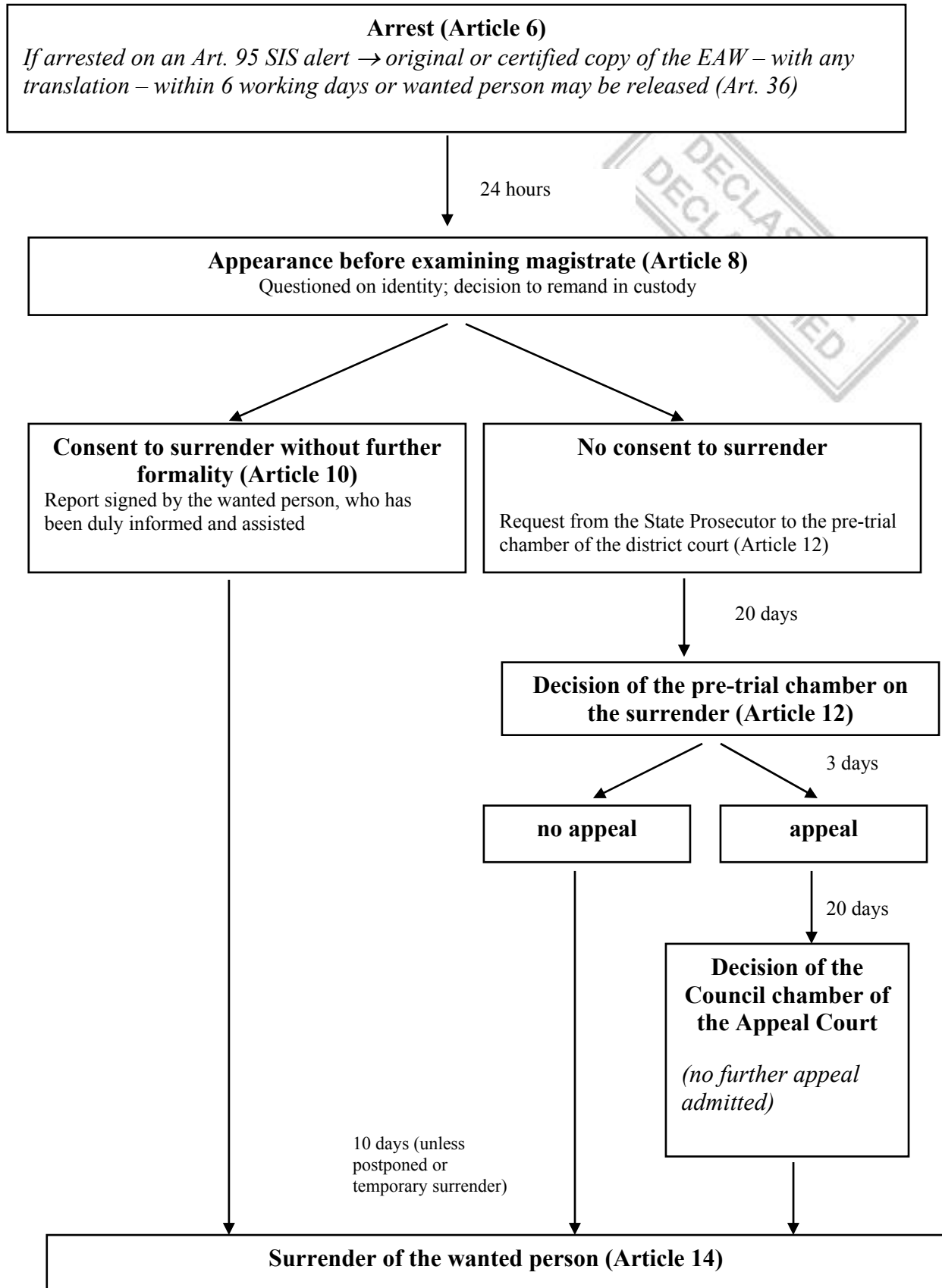
Recommendation No 22 – Consider the possibility of drafting a model arrest report confirming that all the necessary formalities were completed when the wanted person was arrested, or provide police officers with a detailed handbook (see 7.3.2.3).



GROUND FOR REFUSAL TO SURRENDER

Legislative reference (Law of 17 March 2004)	Grounds	Relevant provision of the Framework Decision
Article 4(1)	Amnesty	Article 3(1)
Article 4(2)	Final judgment or sentence already served	Article 3(2)
Article 4(3) (grounds for mandatory non-execution)	Age of criminal responsibility (minor less than 16 years old when the offences were committed)	Article 3(3) (grounds for mandatory non-execution)
Article 5(8) (grounds for optional non-execution)	Age of criminal responsibility (minor 16 years old or more when the offences were committed)	Article 3(3) (grounds for mandatory non-execution)
Article 5(3)	Statute-barred in the case of Luxembourg's territorial jurisdiction	Article 4(4)
Article 3(1)	The act is not an offence under Luxembourg law	Article 2(4) Article 4(1)
Article 5(1)	Case pending in the State	Article 4(2)
Article 5(2)	Decision not to prosecute or to halt proceedings	Article 4(3)
Article 5(4)	Prosecution for the same offence	Article 4(5)
Article 5(5) and (6)	National of or resident in Luxembourg	Article 4(6), and Article 5(3)
Article 5(7)	Offences committed on Luxembourg territory or outside the territory of the issuing State	Article 4(7)(a) and (b)

FLOW CHART (2.B.1.EXECUTION OF AN EAW IN LUXEMBOURG)



Statistics for EAWs received in 2004 – 2006

EAW STATISTICS 2004-2006

2004

EAWs received	15
validated	7
refused	8
including:	
refused on the grounds that the offences were committed prior to 8/8/2002	7
summary procedure	6
long procedure	1
Belgium	7
validated	2
refused	5
Portugal	2
validated	0
refused	2
France	2
validated	1
refused	1
FRG	4
validated	4
refused	0



RESTREINT UE

2005 (Luxembourg)

EAWs received	22
validated:	12
long procedure:	7
summary procedure:	5
refusal:	
- invalid German law:	3
- offences prior to 8/8/2002 :	5
residence not identified:	1
withdrawn:	1
Germany:	8
Denmark:	2
Belgium:	2
Portugal:	2
France:	4
Austria:	2
Lithuania:	2



2005 (Diekirch)

EAWs received:	3
summary procedure:	1
residence not identified:	1
refusal: offences prior to 8/8/2002 :	1
Netherlands:	1
Portugal:	1
Belgium:	1

RESTREINT UE

2006 (Luxembourg)

EAWs received:	18
validated:	6
summary procedure:	2
long procedure:	4
refusal:	
- inapplicable German law:	2
- offences prior to 8/8/2002:	2
- non bis in idem:	1
- sentence to be executed in Luxembourg:	2
residence not identified:	4
withdrawn:	1
Germany:	5
France:	5
Belgium:	5
Portugal:	1
Great Britain:	1
Italy:	1



2006 (Diekirch)

EAW received:	6
validated:	3
summary procedure:	1
long procedure:	2
refusal: offences prior to 8/8/2002:	1
residence not identified:	2
Germany:	4
Belgium:	2

RESTREINT UE

ANNEX D

PROGRAMME DES VISITES

6 février 2007 :

14h30 – 17h00 : Session d'introduction au Ministère de la Justice en présence de tous les experts luxembourgeois.
Explication du système luxembourgeois et présentation du système informatique.

7 février 2007 :

9h00-10h00 : entrevue avec des membres de la Commission juridique de la Chambre des Députés
10.30-12h00 : entrevue avec des membres des barreaux de Luxembourg
14h30 – 17h00 : entrevue avec les autorités judiciaires (Parquet Général, Parquet auprès du Tribunal d'arrondissement de Luxembourg, Parquet auprès du Tribunal d'arrondissement de Diekirch, Cabinet d'Instruction, Chambre du Conseil)

8 février 2007 :

9h30 – 12h00 : Visite du bureau Sirène – Interpol
14h00-16h00 : session de clôture au Ministère de la Justice en présence des représentants des autorités judiciaires.

LISTE DES PERSONNES INTERROGÉES

Entrevue avec les autorités judiciaires :

Parquet Général :

M. Jean-Pierre KLOPP, Procureur général d'Etat
Mme Martine SOLOVIEFF, premier avocat général
M. Jérôme WALLENDORF, premier avocat général
M. Jeannot NIES, avocat général

Parquet Luxembourg :

M. Jean-Paul FRISING, Procureur d'Etat adjoint
M. Robert WELTER, Substitut principal

Parquet Diekirch :

M. Jean BOUR, Procureur d'Etat,

Cabinet d'instruction de Luxembourg :

Mme Doris WOLTZ, Juge d'instruction directeur

Cabinet d'Instruction de Diekirch :

M. Jean-Claude KUREK, Juge d'instruction

Bureau Sirène Interpol :

M. René LINDENLAUB, Directeur de l'information
M. Célestin LOMMEL, juriste

Chambre du conseil de la Cour d'Appel:

M. Aloyse WEIRICH, Conseiller à la Cour d'Appel

Ministère de la Justice :

Mme Claudine KONSBRUCK, Conseiller de direction première classe

Entrevue avec le barreau des avocats :

Me Guy ARENDT, bâtonnier
Me Rosario GRASSO, avocat à la Cour
Me André LUTGEN, avocat à la Cour
Me Roland MICHEL, avocat à la Cour
Me Andrea SABATINI, secrétaire du Conseil de l'Ordre

Entrevue avec la Commission Juridique :

M. Patrick SANTER Président de la Commission juridique
M. Xavier BETTEL, député
M. Alex BODRY, député
M. Félix BRAZ, député
M. Fernand DIEDERICH, député
Mme Christine DOERNER, député
Mme Colette FLESCH, député
M. Paul-Henri MEYERS, député
M. Laurent MOSAR, député



LISTE DES ABRÉVIATIONS/GLOSSAIRE DES TERMES

ACRONYMES ABRÉVIATIONS TERMES	EXPLICATIONS EN FRANCAIS
CIC	Code d'Instruction Criminelle
CRI	Commission rogatoire internationale
GMD	Groupe multidisciplinaire "Criminalité Organisée"
MAE	Mandat d'arrêt européen
MAI	Mandat d'arrêt international
OPJ	Officier de police judiciaire
RJE	Réseau judiciaire européen
RPNI	Répertoire National des Personnes et Informations
SIS	Système d'information Schengen
UGRM	Unité de Garde et de Réserve Mobile de la Police
