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# RESTREINT UE



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

**REPORT ON POLAND**

# RESTREINT UE

## TABLE OF CONTENT

1.	INTRODUCTION .....	3
2.	AGENCIES AND LEGAL BASIS .....	4
3.	ORGANISATION AND PRACTICES - ISSUING MEMBER STATE ROLE .....	11
4.	ORGANISATION AND PRACTICES - EXECUTING MEMBER STATE ROLE .....	16
5.	TRAINING PROVISION.....	26
6.	DEFENCE PERSPECTIVES .....	26
7.	CONCLUSIONS .....	28
8.	RECOMMENDATIONS .....	61

## ANNEXES

ANNEX A: STATISTICS PROVIDED PURSUANT TO THE EVALUATION EXERCISE .....	67
ANNEX B: PROGRAMME OF VISITS .....	68
ANNEX C: LIST OF PERSONS INTERVIEWED .....	69
ANNEX D: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS .....	72

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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 document ST 14272/05 CRIMORG 131 COPEN 175 EJN 57 EUROJUST 77.
- 1.5. Also at its meeting on 28 October 2005 the MDG discussed and approved document 13824/05, the revised sequence for the mutual evaluation visits. Poland is the eleventh Member State to be evaluated during the fourth round of evaluation.
- 1.6. The experts charged with undertaking this evaluation were: Mrs Rozita POZARSKIENE (Prosecutor, Lithuania), Mrs Marjeta SVAB-SIROK (Judge, Slovenia) and Mr Reinhard R. WETH (Ministry of Justice, Land of Thuringia, Germany). Three observers were also present: Mrs Isabelle PERIGNON (European Commission), Mr Angel GALGO (European Judicial Network) and Mr Joakim ZANDER (Eurojust), together with the General Secretariat of the Council.

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

<sup>2</sup> Document 6206/1/06 REV1 - Timetable for 2006 and designation of experts.

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- 1.7. This report was prepared by the expert team, with the assistance of the Council Secretariat, based upon their findings arising from the evaluation visit of 29 May - 1 June 2007, and upon Poland's detailed and helpful responses to the evaluation questionnaire and a written request for further information.
- 1.8. The expert team's overarching purpose was to evaluate the distinct practical processes operated and encountered by Poland in its roles as both issuing and executing Member State, to assess relevant training provisions and the views of the defence, before moving on to conclude and to make such recommendations as they felt were appropriate to enhance the means by which the EAW and its corresponding surrender provisions may be further streamlined and improved.

## 2. THE AUTHORITIES AND THE LEGAL BASIS

### 2.1 THE AUTHORITIES

Introductory remark : one of the key features of the Polish system regarding the EAW is the differentiation between three stages of the criminal proceedings :

- pre-trial stage = the investigation
- trial stage = proceedings taking place before the court
- post-trial stage = includes the enforcement of the sentence.

The role of the various players differs depending on whether the proceedings relate to the pre-trial stage or to one of the other two stages (trial and post-trial stage).

- Courts
- Supreme Court

The Supreme Court may intervene in EAW procedures, either as a Supreme Court or by way of preliminary rulings submitted by a Circuit Court or an Appellate Court.

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## - Appellate Court

There are 11 Appellate Courts in Poland. An appeal may be brought by the Appellate Prosecutor, on the request of a Circuit Prosecutor, against the decision of the Circuit Court not to issue an EAW. Both the defendant and the prosecutor may appeal against the decision of the Circuit Court on the execution of the EAW.

## - Circuit Courts

There are 43 Circuit Courts in Poland. Each Circuit Court comprises a Criminal Division. The main part of EAW procedures takes place at circuit level. In EAW procedures, the Circuit Court acts in the form of a panel of 3 Judges from the criminal division of the Court.

The Circuit Courts are competent for the issuing and the execution of an EAW.

In procedures aiming at the issuing of the EAW during the pre-trial stage, the Circuit Court will act on the basis of a motion submitted by the Circuit Prosecutor.

In procedures aiming at the issuance of the EAW during the trial and post-trial stages, the entire initiative is left to the Circuit Court. However, if the Circuit Court is of the opinion that an EAW must be issued, it must formally ask the Circuit Prosecutor to motion the Court to issue the EAW. This is due to a gap in the legislation (see after).

The rest of the procedure, including transmission of the EAW and the replies to requests for additional information, is left to the CC.

In cases where the location of the person is known, the Circuit Court will send the EAW to the competent executing authority, irrespective of the stage of the procedure (pre-trial, trial and post-trial stage). If the location of the person is not known, and in trial and post-trial stage, the CC will ask the NCB in Warsaw to issue an Interpol Red Notice or Interpol diffusion.

When a judicial authority of a Member State requires the execution of an EAW in Poland, the Circuit Court will in most cases intervene after the provisional arrest of the person and will have to decide on the temporary detention and on the execution of the EAW.

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When Poland is an issuing authority a copy of an EAW must be sent by the Court to the MOJ.

- Prosecutors
- the National Prosecutor

The National Prosecutor is the Deputy Attorney General. The Attorney General is the supreme prosecutorial organ and the function of Attorney General is performed by the Minister for Justice. The National Prosecutor is a direct superior of the prosecutors of the National Prosecutor's Office; the National Prosecutor also performs supervisory tasks regarding all local prosecutors.

EAW issues are dealt with by the Bureau for International Cooperation of the National Prosecutor's Office. Most of the prosecutors who are part of this Bureau are also Contact Points of the European Judicial Network (EJN).

The National Prosecutor may be contacted by Circuit Prosecutors for assistance in EAW procedures. The National Prosecutor has drafted guidelines for all prosecutors on EAW procedures.

When Poland is the issuing State and when the EAW is issued at the pre-trial stage, a copy of the EAW must be sent by the competent Circuit Prosecutor to the National Prosecutor. The motions for an Interpol Red Notice or Interpol diffusion must also be transmitted by the Circuit Prosecutor to the National Prosecutor, who will transmit it to the NCB in Warsaw.

When Poland is the executing State, the National Prosecutor may receive the EAW. It is not, however, the normal procedure and the National Prosecutor will, in that case, immediately forward the EAW to the competent Circuit Prosecutor.

Circuit and Appellate Prosecutors are requested to notify the National Prosecutor of breaches of time limits in the execution of an EAW.

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- the Appellate Prosecutor

The Appellate Prosecutor will play a role during the appeal procedure, where he will take over the file prepared by the Circuit Prosecutor. He has at that stage the same obligations as the Circuit Prosecutor (notification to the National Prosecutor, ...). Appellate Prosecutors, within the framework of criminal proceedings conducted by them, may also motion the Circuit court to issue an EAW as is the case of the Circuit Prosecutors (see below).

- the Circuit Prosecutor

The Circuit Prosecutor is the main player, on the side of the prosecution, in EAW procedures. Some Circuit Prosecutor's Offices have a special division for international co-operation. Each Circuit Prosecutor's Office must at least have one contact point for these matters. Moreover, some Circuit Prosecutors' Offices include an EJP contact point.

In procedures aiming at the issuance of the EAW during the pre-trial stage, the issue of an EAW depends on a motion brought by the Circuit Prosecutor to the CC.

When a judicial authority of a Member State requires the execution of an EAW in Poland, the Circuit Prosecutor is the first judicial authority involved in the proceedings. In case of direct transmission of the EAW (when the whereabouts of the person are known), the EAW must be sent to the competent CP. In case of a person arrested in Poland on the basis of an Interpol Red Notice or Interpol diffusion and, in the future, on the basis of an SIS alert, the arrest of the person must be immediately notified to the competent Circuit Prosecutor, who will initiate the procedure for the execution of the EAW.

- the District Prosecutor

The District Prosecutor is not involved in EAW procedures as such. However, the motion of the Circuit Prosecutor for the issue of an EAW may be based on a request for a domestic arrest warrant originating from the District Prosecutor.



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- Ministry of Justice

The Ministry of Justice has a limited role in EAW procedures.

Regarding the general organisation of the procedures, and as the Minister for Justice performs the duties of the Attorney General, it may issue regulations to the prosecutors. The Minister for Justice may also issue guidelines to the Courts but they may only deal with practical aspects.

The Ministry of Justice does not take part in the decision making process in individual cases. It is however informed of all EAWs issued by the Courts at pre-trial, trial and post-trial stages. The Ministry of Justice keeps a register of the EAWs.

- Police

Several components of the police are involved in EAW procedures :

- Police Headquarters in Warsaw

Two departments at Police Headquarters in Warsaw play a key role in EAW procedures: the Criminal Intelligence Bureau and the Prevention and Road Traffic Bureau.

The Criminal Intelligence Bureau hosts the Interpol National Central Bureau (NCB) and the Sirene Bureau. It also manages the National Police System.

- The NCB may be requested by the National Prosecutor or by a Circuit Court to apply for a Red Notice or Interpol diffusion. The NCB is also in charge of the insertion in the National Police System of persons for whom a Red Notice or Interpol diffusion was issued by another Member State.
- The Sirene Bureau is already in place but the working methods are still under preparation.
- The National Police System is the main database used by the police and contains data on searched persons.

The Prevention and Road Traffic Bureau coordinates and implements surrender of wanted persons from abroad and coordinates convoys through the country.

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- At Voivodship (and Metropolitan) level

The main administrative division relevant for EAW procedures as far as the police is concerned is the "voivodship". There are 16 voivodships in Poland, each with a specific police division and with the special case of the Metropolitan Police of Warsaw.

The Crime Departments of the Voivodship Police Divisions are responsible for search efforts in the field as well as for the actual surrender of the person.

- Border Guards

The main role of the Border Guards regarding EAW procedures is to ensure the arrest of the searched person if he is found at the border. Every time a new person is inserted in the Police database of searched person, this entry is notified to the Border Guards who will update their own system.

The border guards also play a minor role in the physical surrender of the person.

## 2.2 THE LEGAL BASIS

- The Constitution

In its original version, Article 55 of the Constitution prohibited the extradition of Polish nationals. The constitutionality of the provisions of the CCP related to the surrender of Polish nationals as a result of an EAW was questioned in an individual case by the Circuit Court of Gdansk which submitted a preliminary question (or request for a preliminary ruling) to the Constitutional Court.

On 27 April 2005, the Constitutional Court declared that the provisions of the CCP were incompatible with Article 55 of the Constitution in so far as they provide for the unconditional surrender of Polish nationals. It also decided that these provisions would remain in force during a period of 18 months. The Tribunal indicated that this time should be used by the legislator to bring the procedural rules into line with the Constitution. The Court indicated that a change of the Constitution may be necessary in order to comply with the legal requirements stemming from the membership of the Union.

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An amendment to Article 55 of the Constitution was submitted on 12 May 2006 by the President of the Republic of Poland to the Parliament. This amendment aimed at ensuring conformity with the Framework Decision on the EAW. The final vote of the Parliament took place on 26 October 2006 and the modification entered into force on 7 November 2006. The amendment makes it clear that the surrender of Polish nationals is possible. However, some new restrictions were added during the legislative process; they will be discussed in depth below.

- The Code of Criminal Procedures

Most of the legislative provisions related to EAW procedures are contained in the Code of Criminal Procedures (CCP).

The CCP was amended by the Act of 18 March 2004 which, among other amendments, inserts two new chapters. Chapter 65a (Articles 607a to 607j) contains the rules on the issue of an EAW by Polish Courts while Chapter 65b (Articles 607k to 607zc) is related to the execution in Poland of an EAW. Article 607w was amended further to the amendments to Article 55 of the Constitution and the amendment entered into force on 26 December 2006. Article 607p was amended by the Act of 27 October 2006 as part of the follow up to the decision of the Constitutional Court of 27 April 2005 so as to reflect the amendments to Article 55 of the Constitution. Amendment to Article 607p and 607w entered into force only on 26 December 2006, a few weeks after the deadline set by the Constitutional Court (6 November 2006). However, the amendments to the Constitution itself, which are directly applicable even without the modification of the CCP, had already entered into force.

Significant changes to Chapter 65a and 65b are expected in the near future as draft legislation has been proposed in May 2007 to the Parliament. These changes proposed will be detailed below.

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- Non legislative rules

Non legislative rules on EAW procedures in Poland include :

- the Regulation of the Minister for Justice of 20 April 2004 which provides the form to be used by Polish Courts when issuing an EAW ;
- the Regulation of the Minister for Justice of 11 April 1992 on the rules of functioning of public prosecutor offices (as amended) which contains a Chapter 2a detailing some guidelines related to EAW procedures and addressed to the prosecutors ;
- the Regulation of the Minister for Justice of 23 February 2007 on the rules of functioning of the common courts (as amended) which contains a Chapter 4 detailing some guidelines related to EAW procedures and addressed to the courts ;
- Guidelines of the National Prosecutor of 2005 on international legal cooperation addressed to all prosecutors which also contain guidelines on EAW procedures.
- Advice (SN 1632/07 ADD 1).

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

### 3.1. THE DECISION TO ISSUE

Article 607a CCP provides that *"in the case of suspicion that a person prosecuted for an offence committed in the territory of the Republic of Poland is in the territory of a European Union Member State, the Circuit Court having territorial jurisdiction over the case, on the request of the public prosecutor, may issue the European Arrest Warrant, hereinafter referred to as "Warrant".*"

The requirement for a suspicion that the person is in the territory of an EU Member State and the requirement of the commission of the offence in the territory of Poland will be addressed below.

The EAW is issued by the Circuit Court but always on request of or motion from the Circuit Prosecutor.

In pre-trial cases, it is up to the Circuit Prosecutor to take the initiative and submit a request to the Court. Such a request may be initiated by proceedings taking place at District level: when the District Prosecutor has obtained a national warrant from the District Court, it will ask the Circuit Prosecutor to apply for an EAW.

In trial and post-trial cases, however, this role of the Circuit Prosecutor is purely formal. In practice it is up to the Court to decide whether the EAW is appropriate but, because of the requirement provided in Article 607a CCP, the Court must then ask the prosecutor to formally motion the same Court in order to issue the EAW. Legally speaking, the prosecutor has the possibility to refuse to motion the Court. In practice, this can only be very exceptional. This happened in a case where the request from the Court was related to the enforcement of a sentence which did not meet the threshold set by Polish legislation. Generally the prosecutor can not motion the court without a request from it. It is recognised that this role conferred to the Circuit Prosecutor in trial and post-trial stages is superfluous and its abolition is proposed in draft legislation currently being discussed in Parliament.

The Prosecutor and the Court may decide to issue the EAW on the basis of the elements of the file indicating that the person may be abroad. It may happen that only a domestic warrant is issued and that the police, in the process of searching the person, indicate to the Prosecutor or to the Court that an EAW may be necessary.

The question of a proportionality test aimed at excluding the issuing of an EAW for offences which, although they meet the legal threshold set by the CCP and the Framework Decision, are too minor to justify an EAW, will be addressed in detail in the conclusions.

## 3.2. VERIFYING THE POSSIBLE EXISTENCE OF MULTIPLE REQUESTS

The Court or the Prosecutor, before issuing the EAW, may ask the police to obtain more information. They will have to do it if the whereabouts of the person are not known. In that case, the search efforts carried out by the police will include a search in the National Police System which contains a database of all searched persons. The Prosecutor or the Court will then be informed of all proceedings, domestic arrest warrants and EAWs pending against the same person. Further information on existing EAWs may be obtained from the National Prosecutor (for EAWs issued at pre-trial stage) and the Ministry of Justice (for EAWs issued at trial and post-trial stages) which manage separate registers.

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If the location of the person is known, the Prosecutor or the Court may ask the police to do this check but that is not a general practice. There is also a possibility to consult the registers of the National Prosecutor and the Ministry of Justice but this consultation is not compulsory. It seems that most Circuit Courts and Circuit Prosecutor Offices keep their own registers of EAWs issued in that Circuit, which will lead to the identification of multiple requests but only as far as that Circuit is concerned.

In case of multiple requests, it is possible, but not mandatory, for the competent Circuit Court to decide to merge these requests into one single EAW for the offences for which this Court has jurisdiction.

3.3. Legally, it is possible to include in a single EAW offences falling under the jurisdiction of different Circuit Courts. However, in practice this is usually not done as it raises important practical problems once the person is effectively surrendered to Poland.

### 3.4. THE COMPLETION OF THE FORMS/COURT PAPERS

The EAW form is completed by the Circuit Court which issues the EAW, irrespective of the stage of proceedings.

The guidelines of the National Prosecutor of 2005 contain an explanation on how to fill in the EAW. They are addressed to prosecutors and play only an informative role for Courts. For each of the 32 offences listed in the EAW form, these guidelines include a description of what is meant by each element of the list. For example, the guidelines provide that "computer-related offences mean offences against the protection of data collected, stored, processed or transmitted in a computer system".

Furthermore, the National Prosecutor has sent guidelines to the Prosecutors and to the Courts regarding specific requirements for EAW to be executed in the UK (see below).

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## 3.5. THE APPLICATION, PARTIES AND PROCESS

It is clear that there is no possibility for the person concerned to appeal the decision to issue an EAW as the EAW is not a decision on the detention of the person but a decision on his surrender. The situation was less obvious in pre-trial cases. The Supreme Court had to step in and ruled, in a decision of 20 January 2005, that such appeal is not possible either.

In trial and post-trial cases, the right to appeal would not make sense. The Court will have to decide on the basis of a motion for an EAW submitted by the prosecutor. However, as mentioned above, this motion will be based on a request from the court itself so that it is difficult to imagine that the Court would refuse the issuing of the EAW.

## 3.6. TRANSLATION OF THE EAW

The translation of the EAW is ensured, through the use of sworn translators, either by the Circuit Prosecutor (in pre-trial stage) or the Circuit Court (trial and post-trial stage).

## 3.7. TRANSMISSION OF THE EAW

If the location of the person is known, the EAW is transmitted directly by the Circuit Court to the authority competent in the executing State to receive the EAW. The identification of this competent authority may be done via a database available on the Intranet of the Ministry of Justice, the EJN Atlas, the contact points of the EJN or, in some cases, liaison officers.

If the location of the person is not known, an Interpol Red Notice or Interpol diffusion will be issued. At the pre-trial stage, the request for the Red Notice or Interpol diffusion will be sent by the Circuit Prosecutor to the National Prosecutor which will forward it to the NCB. At the trial and post-trial stage, the request for a Red Notice or Interpol diffusion will be sent by the Circuit Court to the NCB. When the EAW is issued through Interpol, the normal practice has always been to translate it into English. In one case, where the person was arrested in France, the French authorities requested a translation of the EAW into French within 24 hours. Since then, the practice is that every EAW sent via Interpol is translated into English but also into French and German.

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At the pre-trial stage, the competent Circuit Prosecutor must transmit a copy of the EAW to the National Prosecutor. At the trial and post-trial stage, that copy must be sent by the Circuit Court to the Ministry of Justice.

The channel of the National Prosecutor or the Ministry of Justice is purely administrative. The National Prosecutor and the Ministry of Justice do not check the quality of the EAW.

### 3.8. ISSUES RAISED BY OR REQUESTS FOR INFORMATION FROM THE EXECUTING MEMBER STATES AND THE COMMUNICATION CHANNELS RELIED UPON

Requests for additional information sent by the executing authority will be dealt with by the Circuit Court which issued the EAW. However, it is not unusual for the Prosecutor to be invited to help in dealing with such requests. The additional information will normally be sent by post but, in specific cases, fax and e-mail may be used. Sometimes information may also be provided via diplomatic channels.

### 3.9. THE RETURN OF NATIONALS FOR THE ENFORCEMENT OF A SENTENCE

There is no provision in the legislation or in the various regulations and guidelines regarding the guarantees which may have to be provided to the executing authority when the person searched is a national of the executing State.

A judge from a Circuit Court was of the opinion that these guarantees must be provided by the Circuit Court which issued the EAW. However, a representative of the National Prosecutor was of the opinion that a differentiation had to be made between the pre-trial stage (where the guarantees would be dealt with by the Circuit Prosecutor) and the trial and post-trial stages (the Circuit Court would issue the guarantees).

### 3.10. YOUTH SURRENDERS AND CORRESPONDING GUARANTEES

No specific problem to be mentioned.



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## 3.11. GENERAL COMMUNICATIONS WITH THE EXECUTING MEMBER STATE

There is a clear policy, both for Circuit Prosecutors (in pre-trial cases) and Circuit Courts (in trial and post-trial cases) to ensure as much as possible direct contacts with the executing authorities. The Interpol channel may be used by the executing State for further contact but that is not favoured by the competent judicial authorities in Poland, which prefer to be directly in touch with their counterparts in the executing State.

## 3.12. THE MECHANICS OF THE SURRENDER (INCLUDING TEMPORARY SURRENDER) OF REQUESTED PERSONS/PROPERTY

The Prevention and Road Traffic Bureau coordinates and implements surrender of wanted persons from abroad and coordinates convoys through the country. The surrender is supervised by a judicial authority, either the Circuit Prosecutor (in pre-trial cases) or the Circuit Court (in trial and post-trial cases).

## 3.13. CONFLICT OF EAWS/EXTRADITION REQUESTS/ONWARD SURRENDER

No specific problem when Poland is the issuing State.

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

### 4.1. RECEIPT PROCEDURES

Two situations must be differentiated.

- a) Measures taken following an Interpol Red Notice or Interpol diffusion

The Criminal Intelligence Bureau takes systematic measures when an EAW issued in another Member State gives rise to an Interpol Red Notice or Interpol diffusion.

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Upon verification of whether the request contains information indispensable to deploy search measures, the person is registered in the National Police System as a wanted person for the purpose of arresting and surrendering that person to the nearest District Prosecutor's Office. Available databases are browsed. At the same time written information about deployment of search measures is provided to the General Headquarters of Border Guard for reservation in Border Guard posts.

If the Interpol Red Notice or Interpol diffusion is issued against a Polish citizen or a person who is not Polish but has permanent residence in Poland, additional measures are taken. The request, upon verification that it contains all indispensable information, is transmitted by the NCB to the National Prosecutor. The National Prosecutor forwards the request to the competent Circuit Prosecutor who will, if it is not available yet, request the issuing authority to transmit the EAW together with a translation in Polish pending the localisation of the person. If the wanted person is not staying in the place of residence, the Circuit Prosecutor recommends deployment of a country-wide search.

In Poland a person must always have an indicated residence, even if temporary. The EAW would be forwarded to that location.

After the person is signalled in the National Police System, this person must be arrested once he is detected anywhere in Poland. Once the person is arrested, the NCB informs the NCB of the issuing State about the arrest of the person. The person is presented to the nearest Circuit Prosecutor's Office. The competent Circuit Prosecutor informs the issuing authority about the arrest of the person and requests the issuing authority to transmit the EAW together with a translation in Polish.

### b) Direct transmission/reception of the EAW

If the location of the person in Poland is known, the rule is the direct transmission of the EAW to the locally competent judicial authority; Poland has notified the General Secretariat of the Council that the authority competent to receive the EAW is the Circuit Prosecutor. In practice, however, the expert team was told that a number of EAWs are transmitted via Interpol and, in more limited cases, via the National Prosecutor.

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

The Circuit Prosecutor checks the EAW received from the issuing State.

If the person has not been arrested already (on a basis of a Red Notice or Interpol diffusion), an urgent but limited check takes place to determine whether there are grounds for refusal which are so obvious that the person should not even be arrested (see 4.4.).

In any case, the Circuit Prosecutor verifies whether additional information is obviously required. Should that be the case, the CP will request such information after the arrest of the person. Furthermore, a more substantial check is rapidly necessary because the Prosecutor must, when motioning the Court within the 48 hours after the arrest of the person, indicate if he recommends the execution of the EAW or a refusal to execute.

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

A request for further information may be sent by the Circuit Prosecutor during the first 48 hours period. However, the main analysis of the EAW will take place during the Court proceedings. The request for additional information will then come from the Circuit Court which will also ensure the follow up and the Circuit Court will take over the requests for additional information sent by Circuit Prosecutor.

It is not unusual for Polish Circuit Courts to request additional information. These requests are usually limited to clarification of parts of the EAW or to missing information. However, Polish authorities also mentioned that additional documents have been requested, for example the decision on provisional detention or the sentencing decision.

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## 4.4. ARREST PROCEDURES/FIRST HEARING

In this report, "provisional arrest" should be understood as the arrest of the person during an initial 72 hours period (48 hours + 24 hours). "Temporary detention" is the detention of the person decided by the Court after the provisional arrest.

If the person is apprehended and provisionally arrested on the basis of an Interpol Red Notice or Interpol diffusion, the competent Circuit Prosecutor will be immediately informed. If the person is not arrested yet, the competent Circuit Prosecutor will have to decide on the provisional arrest of the person as basis for action of the police to apprehend the person.

The Circuit Prosecutor may theoretically decide not to provisionally arrest the person or to release the person at that time if there are obvious grounds for a refusal to execute the EAW (for example in cases involving a minor of less than 17 years old, who, under Polish law, cannot be the subject of criminal procedures). This would be exceptional and has never happened so far, according to the authorities the expert team met during the visit.

If the Circuit Prosecutor orders the arrest of the person, the police will launch an operation. In most cases, the person can not be found at his place of residence. The details of the person are then entered into the National Police Database of searched persons with the instruction that the person be arrested and brought to the Circuit Prosecutor without delay.

Once the person is arrested, the Circuit Prosecutor must submit a motion to the Court within 48 hours. During these 48 hours, the person must be heard by the Prosecutor. During the hearing the person is informed about his/her rights and may be assisted by legal counsel (see below). The Court must sit within 24 hours after the receipt of the motion. During that hearing, the Court must decide on the temporary detention and may also decide on the execution of the EAW.

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In principle, when submitting the motion to the Court within 48 hours after the arrest of the person, the Prosecutor must also transmit the original EAW and an official translation into Polish provided by the issuing State. In their replies to the questionnaire sent for the preparation of the evaluation, the Polish authorities indicated that, presumably because of this tight 48 hours time limit, the usual practice is that the Circuit Prosecutor does not immediately order the arrest of the person. Rather, the Circuit Prosecutor will wait for the original EAW and the translation into Polish before ordering the arrest of the person. However, all judicial authorities at Circuit level (both Prosecutors and Judges) indicated that, in practice, there is quite a lot of flexibility in the interpretation of this requirement. It seems easily accepted by the Courts that the Prosecutor only submits a copy of the EAW and/or a working translation instead of a provisional one of the EAW provided by the Circuit Prosecutor's Office itself.

In that case - if the original EAW or an official translation is missing - the Circuit Court will sit within 24 hours after the submission of the motion by the Circuit Prosecutor but the Circuit Court will only decide on the temporary detention. The Court will set a new time limit for the transmission of the necessary documents and the examination of the execution of the EAW.

It is legally possible for the Court to decide not to keep the person in temporary detention. In that case, the Court may take other measures such as for example release on bail. However, the expert team was told that, in practice, it is very rare to release the person. Almost all persons found in Poland and subjected to an EAW were temporarily detained during the examination of the case in order to prevent them from absconding.

During the first hearing before the Court, the person is asked if he agrees to the surrender. In case of consent to surrender, the person is also asked if he wants to express a renunciation to the specialty rule. These two questions are asked separately. The consent and the renunciation to the specialty rules are non-revocable. The only possibility for the person concerned to annul the effects of his declaration would be to appeal the judgment of the Court deciding the execution of the EAW on the grounds that the consent or the renunciation were not freely expressed.

## 4.5. THE SURRENDER DECISION

The decision on the execution of the EAW is taken by the Circuit Court. No decision to execute the EAW, even in the case where the person consents to the surrender, can be taken without the original of the EAW and the official translation.

## 4.6. REFUSALS TO SURRENDER

Article 607p CCP provides for mandatory grounds to refuse the execution of the EAW, while Article 607r lists the optional grounds for refusal. In their initial version, these articles were, generally speaking, in line with Articles 4 and 5 of the Framework Decision on the EAW. Article 607p was amended in 2006 following the amendments of the Polish Constitution and new mandatory grounds for refusal were inserted. This will be dealt with below in the conclusions (see 7.2.1. and 7.2.2.). The issue of double criminality will also be described in more details in the conclusions (see 7.4.1.6.).

In the absence of statistics on the use of grounds for refusal, it is difficult to assess the practice in Poland in this field. There were 16 refusals to execute the EAW in 2005 and 35 in 2006.

Polish authorities indicated that the grounds for refusal most frequently used were: territoriality (offence committed in Poland) together with the fact that proceedings for an offence covered by the EAW are being conducted in Poland. There are also cases of refusal to execute an EAW on the grounds of "*ne bis in idem*".

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

Both the defendant and the Prosecutor can appeal the decision of the Circuit Court against the decision to execute the EAW. The appeal must be lodged within 7 days of the date of the announcement of the decision.

# RESTREINT UE

There is a time limit of 60 days for the court to decide on the surrender of the person. It is however not clear whether this period of 60 days relates only to the first instance procedure or whether it comprises the appeal procedure. This will be dealt with in more detail in the conclusions (see 7.4.1.10.).

The appeal is dealt with by the Appellate Court in panel of three judges. The Prosecutor and the legal counsel of the defendant may be present during the hearings but the case is mainly dealt with on the basis of the available documents and evidence. If additional information is needed from the issuing authority, the Appellate Court will contact this authority directly. The person concerned is normally not present during the proceedings before the Appellate Court.

The procedure may also involve the Constitutional Court and the Supreme Court, which may both be asked to give a preliminary ruling on questions submitted by the Circuit Court or by the Court of Appeal.

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

The constitutionality of the legislation on the EAW was challenged in 2005 on the ground of the obligation to surrender Polish nationals. The Constitution was amended so as to allow such surrender. However, new limitations were also added. This will be discussed in detail in the conclusions (see 7.2.1.).

The age of majority for criminal liability is 17 years in Poland. It is therefore not possible to surrender a person aged less than 17 at the moment of the commission of the offence. It is worth highlighting the Adam G. case, as it provides an example of appeal procedures and time limits and illustrates an interesting approach of the Supreme Court.

An EAW had been issued in Belgium against Adam G, a Polish citizen aged 17, for suspicion of murder. Adam G. was arrested in Poland on 27 April 2006. After a procedure of 33 days, the Circuit Court of Warsaw had decided to execute the EAW. The defendant brought the case to the Appellate Court which submitted two questions to the Supreme Court. The Supreme Court issued its decision on 20 July 2006 and the Appellate Court took the final decision (execution of the EAW) on 25 July 2006. Adam G. was surrendered under the condition that he will return to Poland to serve his sentence.

Two questions were submitted to the Supreme Court :

1. The first question related to the fact that the EAW had been issued in Belgium during a stage of proceedings where the case, because the defendant was not yet an adult, had not yet been considered as a penal case and was still considered as a case of so-called "protection of the youth" under Belgian law. In Belgium, when the suspected person has committed a serious offence and is aged more than 16 but less than 18 years old, the Judge of the Youth, who is normally competent, may decide to transfer the case before a criminal court. However, to take this decision, the Judge of the Youth must hear the person concerned. Because the person could not be heard, it was not possible to issue the EAW at a stage where the criminal proceedings had already been initiated. Article 607a CCP provides that *"surrender of the person prosecuted under the European Arrest Warrant (...) is made for the purpose of carrying out the criminal proceedings (...)".* The question was therefore whether the proceedings in Belgium were covered by the EAW framework. The Supreme Court took a functional approach and decided that, since the EAW was necessary in order to make it possible to transfer the proceeding before a criminal court, the EAW could be considered as being done with the view of conducting criminal proceedings against the person.

Furthermore, the Court underlined that the EAW Framework decision does not require that the criminal proceeding be already started at the time of issuing the EAW but that the legal proceedings, within the context of which the EAW was issued, may lead to the initiation of criminal proceedings. Nonetheless, the wording incorporated into Article 607k of the Polish Penal Code should be understood as strictly allowing the executing authority to establish the condition that the person is surrendered solely for the purpose of conducting criminal proceedings.

In this respect should the person not be subject to criminal proceedings after the execution of the EAW, and thus the purpose of surrender not be satisfied, the person should be returned to the executing state, which would then be responsible for carrying out the relevant proceedings in view of the crimes committed by that person.



## RESTREINT UE

2. The Appellate Court also asked whether or not the fact that an EAW was issued for a purpose not covered by Article 607k should lead to a refusal to execute the EAW. Referring in its analysis to several national and external sources, among which the judicial decisions of Polish and Irish courts were quoted, the Supreme Court concluded that the verification of the basis for issuing the EAW is permissible to courts of the executing state, however only to a limited extent. In this sense the competence of the issuing authority may be verified but not the decision in which it assesses the probability that the crime was committed by a particular person. Nonetheless, the Supreme Court underlined that such verification should be of an exceptional character and be carried out within the context of the mutual recognition principle.

### 4.9. ACCESSORY OFFENCES

Accessory offences are offences which do not meet the threshold required by Article 2.1. of the Framework Decision but which are included in the EAW because they relate to a "main" offence allowing the issuing of the EAW. There is no record of any EAW transmitted to Poland and containing such accessory offences. The Polish authorities indicated that, given the restrictions laid down in the CCP, the court would probably refuse to execute the EAW on the grounds that such offences did not fall within the material scope of EAW rules (see 7.4.1.9.).

### 4.10. AD HOC ISSUES SURROUNDING UNDERTAKINGS

The Circuit Court which decides on the execution of the EAW will require the necessary guarantees from the issuing authority, for example regarding the enforcement of the sentence in Poland if the person is a Polish citizen.

In one case, the Polish citizen was surrendered to Germany on the condition that the person be returned to Poland to serve the sentence but the person, once convicted, did not consent to be transferred back to Poland. Under German law, such transfer without the consent of the person is not allowed. The Polish Circuit Court notified the German Court that it did not raise any objection.

## 4.11. ARTICLE 32 EXPERIENCES

Cooperation with Member States which have limited the use of the EAW regime to acts committed after a certain date, in accordance with or beyond what is accepted by Article 32 of the Framework Decision on the EAW, does not seem to create difficulties in Poland.

## 4.12. TEMPORARY/CONDITIONAL SURRENDER

There is no specific provision and no practice of temporary or conditional surrender in Poland regarding the execution of an EAW.

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

The decision to execute the EAW is notified by the Circuit Court (or the Appellate Court) to the issuing authority. The surrender procedure is taken in charge by the police, assisted where appropriate by the Circuit Prosecutor or the National Prosecutor.

The Prevention and Road Traffic Bureau (Police Headquarters, Warsaw) is in charge of the organisation of the handing over of the person. The actual surrender to the law enforcement authorities of the issuing State usually takes place at Warsaw Airport, on the basis of arrangements made in advance through the Interpol channel. If the person is surrendered at a land border, the Voivodship Police Headquarters, on whose territory the control Point is located, is in charge of the proceedings which are coordinated by the Prevention and Road Traffic Bureau. If necessary (i.e. the arrested person is dangerous), the full coordination of the operation and also the escort itself are performed directly by the Prevention and Road Traffic Bureau.

The National Prosecutor has drafted a standard form to be filled in by the police and to be given, hand to hand, to the law enforcement authorities of the issuing State at the time of the surrender of the person. This form only contains basic information, such as the person's identity, the name of the issuing authority, or a reference to ID documents.

## 4.14. CONFLICT OF EAWS/EXTRADITION REQUESTS

Article 607y CCP provides rules for cases where there is a conflict between an EAW and an extradition request issued against the same person. The Minister for Justice has the last word in such a case. The Circuit Court dealing with the EAW must suspend the procedure until the Minister for Justice has taken a decision on the extradition request. Where the Minister for Justice decides to extradite the person, EAW proceedings shall be discontinued. In the event the extradition of the person is refused, the court shall resume the stayed proceedings and issue a decision on the surrender.

## 4.15. EXPENSES

Regarding the legal basis, the coverage of expenses is dealt with by Article 618 CCP which provides that "the expenses incurred by the State Treasury shall include, in particular, the costs (...) related to the execution of international agreements to which Poland is a party and the proceedings carried out on the basis of provisions contained in Chapter XIII (...)".

## 5. TRAINING PROVISION

The 2007 schedule of training activities of the National Training Centre for Employees of Courts of General Jurisdiction and Public Prosecutors (created in 2006) provides for 4 training sessions for judges (for a total of 300 persons) and 2 sessions of training for public prosecutors (for a total of 170 persons) on the subject of "Practical problems in relation to EAW rulings in the light of the European Union Framework Decision of 13 June 2002 on the surrender procedures between Member States". Furthermore, courts and prosecutor's offices throughout the country organize in-house training sessions. Such trainings are organized by the National Prosecutor's Office (Bureau of International Legal Cooperation) for prosecutors and by the Ministry of Justice for judges.

## 6. DEFENCE PERSPECTIVES

The person arrested on the basis of an EAW may be kept under provisional arrest for a maximum duration of 72 hours (48 hours before the Prosecutor motions the Court and 24 hours for the 1st Court hearing). The person must be heard by the Prosecutor during the first 48 hours.

# RESTREINT UE

The person has the same rights as any person arrested on the basis of a national arrest warrant.

The person is immediately informed of his right to a legal counsel. It seems to be the usual practice that the person is allowed to see his legal counsel during the first 72 hours and during the hearing before the prosecutor. However, there is no legal obligation for the Prosecutor to authorise this contact with the lawyer during that preliminary phase, nor to provide the person with the contact list. If not chosen by the person, the legal counsel may be designated by the Court only during Court proceedings.

Articles 78 to 85 CCP are especially relevant for EAW proceedings. The person may contact the legal counsel of his choice. It was mentioned during the visit that most of the EAW forwarded to Poland for execution are related to drug trafficking offences and that, in these cases, presumably because there is often a criminal network involved, the person arrested usually knows which legal counsel he should contact.

Furthermore, it was indicated that, if the person does not want or cannot contact a legal counsel of his choice, he is presented with a list of legal counsels (compiled by the bar). However, this was not confirmed by the Bar Association (see below).

If the person does not contact any legal counsel or has not been able to do so, there will be in most cases a designation by the Court because, under Polish law, the assistance of a defence counsel is mandatory in all proceedings where the person is deprived of his liberty and the proceedings take place before the Circuit Court (which is usually the case, as very few persons subject to an EAW are released on bail, see above). The person is entitled to legal aid if he can duly prove that he is unable to pay the defence costs without prejudice to his and his family's necessary support and maintenance (Article 78 §1 CCP).

It was also mentioned that there are cases, although it is not common, in which the police contacts the Bar association and draws to its attention the special expertise required in the case concerned.

If the person is detained, his presence and the presence of his legal counsel are mandatory during all hearings before the Circuit Court.

# RESTREINT UE

Article 72 CCP provides for the rights of the person concerned if he does not have sufficient knowledge of the Polish language. These rights include the right to an interpreter free of charge, compulsory from the provisional arrest on; the main documents will also be translated.

If the person arrested is not a Polish citizen, the police will notify without delay the arrest to the diplomatic representation of the country of nationality.

## 7. CONCLUSIONS

### 7.1. GENERAL CONCLUSIONS

7.1.1. The expert team wishes to thank the Polish authorities for the professional, open and willing manner in which the evaluation visit was planned and conducted. This programme was very helpful in order for the experts to understand the system in place in Poland. The authorities showed that they were open to suggestions and criticisms expressed by the evaluation team.

7.1.2. The EAW is widely used in Poland, although the experience is much higher in issuing than in executing procedures.

In 2005, 1448 were issued by Polish authorities (20 % of all EAWs issued in the EU <sup>1</sup>) and 112 persons were surrendered to Poland on the basis of an EAW (13 % of all persons surrendered in the EU on the basis of an EAW <sup>2</sup>). In the same period, 100 persons were arrested in Poland on the basis of an EAW issued by another EU State (which should also correspond to the number of EAWs issued by another EU State and resulting in the person being found in Poland <sup>3</sup>). 80 persons were surrendered by Poland on that basis (5 % of all persons surrendered on the basis of an EAW in the EU); in 16 cases, the procedure led to a refusal to execute the EAW.

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<sup>1</sup> According to statistics provided in 9005/5/06 COPEN 52 EJN 12 EUROJUST 21. It should be noted that the statistics related to some Member States were missing and that the percentage of EAWs issued by PL is therefore probably a bit lower.

<sup>2</sup> Idem.

<sup>3</sup> As indicated above, it seems extremely rare that the person will not be arrested during the procedure leading to the decision on the execution of the EAW.

# RESTREINT UE

Figures have significantly increased in 2006 :

- 2421 AWSs were issued by Polish authorities and 235 persons were surrendered to Poland
- 129 persons were arrested in Poland on the basis of an EAW
- 139 persons were surrendered by Polish authorities on the basis of an EAW <sup>1</sup>
- The execution of the EAW was refused by Polish authorities in 35 cases.

7.1.3. The expert team strongly welcomes the support expressed by all authorities met during the visit towards the EAW. Although several problems have been identified and will be detailed below, it is obvious that judicial authorities involved in EAW procedures are familiar with and very supportive regarding the underlying principles of the EAW such as mutual recognition, mutual trust, "judicialisation" of the procedure, ... The expert team was impressed by how frequently and adequately all judicial authorities (at circuit, appellate or national level) referred to these principles to explain how they envision EAW procedures in practice. While some further efforts may be needed to change attitudes still anchored in the old cooperation regime (see the issue of double criminality, 7.4.1.6.), the spirit among practitioners is such that the main changes advised below are related to practical issues or to the legislation.

## 7.1.4. National coordination mechanisms

The decentralisation may sometimes run the risk of a fragmentation of procedures in practice. Although the expert team has no reason to believe that serious problems have arisen so far, the visit has showed that uncertainties and diverging interpretations, highlighted in this report, may emerge. The expert team noted for example that authorities consulted during the visit were uncertain about the possibility or not to appeal against a decision of the Circuit Court not to issue an EAW in pre-trial stage (see 3.4.) Furthermore, the expert team felt that the precise division of responsibilities between prosecutors and judges on practical issues was not entirely clear.

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<sup>1</sup> Because statistics were transmitted well after the visit, it was not possible to discuss the reason behind the number of surrendered person which is higher than the number of arrested persons.

# RESTREINT UE

Some coordination measures have been taken by the National Prosecutor.

- As mentioned above, some Circuit Prosecutor's Offices have a special division for international co-operation and each Circuit Prosecutor's Office must at least have one contact point for these matters. The Division for International Cooperation of the National Prosecutor's Office has regular contacts with these contact points and a meeting is organised annually.
- The National Prosecutor has issued guidelines on the EAW for Prosecutors (although they have not been updated since 2005) and may even, as in the case of the follow up to the meeting with UK, send letters to the Courts containing recommendations.

The expert team invites the competent authorities to reflect on further means to ensure coordination, without making it too heavy and in full respect of the independence of the Courts. A solution could be for example to have an annual meeting of a platform composed of all authorities involved, with one representative of each Circuit Court, each Appellate Court, each Circuit Prosecutor's Office, each Appellate Prosecutor's Office as well as representatives from the National Prosecutor's Office, the Ministry of Justice and the police. This could be an occasion to discuss common difficulties and exchange best practices.

Furthermore, the guidelines of the National Prosecutors of 2005 should be updated on the basis of the practice of the last 2 years. The dissemination of the guidelines among judges, even though it can not be binding for them, should be ensured.

## 7.1.5. Training

The expert team has no reason to believe that there are significant gaps regarding training related to the EAW procedures. The expert team recommends for future training sessions that a special focus be laid on the following points :

- EAW form : Generally speaking, the existence of errors or missing information in EAWs is known to cause quite a lot of difficulties throughout the EU. With the decentralised feature of EAW procedures in Poland, which is a feature praised by the expert team (see below), there is no double check of quality regarding the EAW issued by a Circuit Court. It is therefore all the more important to ensure that competent authorities dealing with the issuing of EAWs have an intensive training on the EAW form.

- SIS : During the visit, Poland was only a few months away from using the SIS. The expert team had the impression that the SIS is already well known at a central level (Police Headquarters and National Prosecutor) but not at a local level. Specific training, involving police officers, judges and prosecutors should be organised to ensure that all players are aware of the consequences of the use of the SIS with regard to EAW procedures. The expert team was informed that such training was planned to be organised in the near future with a view to finalising it before the lifting of controls at internal borders (21 December 2007).

## 7.2 CONSTITUTIONAL ISSUES

### 7.2.1. Surrender of nationals

As mentioned above (See 2.2.), Article 55 of the Constitution was amended in 2006 following the decision of the Constitutional Court of 27 April 2005. The new version of Article 55 of the Constitution provides that :

1. The extradition of a Polish citizen shall be prohibited, except in cases specified in paras 2 and 3.
2. Extradition of a Polish citizen may be granted upon a request made by a foreign State or an international judicial body if such a possibility stems from an international treaty ratified by Poland or a statute implementing a legal instrument enacted by an international organisation of which the Republic of Poland is a member, provided that the act covered by a request for extradition:
  1. was committed outside the territory of the Republic of Poland, and
  2. constituted an offence under the law in force in the Republic of Poland or would have constituted an offence under the law in force in the Republic of Poland if it had been committed within the territory of the Republic of Poland, both at the time of its commitment and at the time of the making of the request.
3. Compliance with the conditions specified in para. 2 subparas 1 and 2 shall not be required if an extradition request is made by an international judicial body established under an international treaty ratified by Poland, in connection with a crime of genocide, crime against humanity, war crime or a crime of aggression, covered by the jurisdiction of that body.



4. The extradition of a person suspected of the commission of a crime for political reasons but without the use of force shall be forbidden, so as an extradition which would violate rights and freedoms of persons and citizens.
5. The courts shall adjudicate on the admissibility of extradition.

The new version of Article 55 makes it clearly possible to surrender a Polish citizen on the basis of an EAW. However, this possibility is limited at two levels.

## I - double criminality requirement

Paragraph 2.2. of Article 55 explicitly requires double criminality. This amendment is supplemented by a modification to Articles 607p and 607w CCP. With these modifications, the abolition of the control of double criminality for a list of 32 offences (Article 2.2. of the Framework Decision on the EAW) is limited to cases where the person is not a Polish citizen.

Judicial authorities met during the visit have repeatedly insisted on the fact that this double criminality requirement will not raise difficulties in practice because all listed 32 offences are also offences under national law and thus the check of double criminality will always lead to the same result and in cases of foreign nationals. The expert team has no reason to doubt that Polish judicial authorities will cooperate as much as possible with the issuing authorities.

However, the situation in practice does not alter the fact that the full double criminality requirement for Polish citizens is a clear violation of the Framework Decision. Furthermore, and even if that requirement will not result in a refusal to execute an EAW, the Polish Courts will have no choice but to carry out additional controls to ensure that all conditions set by the legislation are met. This may result in slower procedures and in additional requests having to be sent to the issuing authority. It is also clear that this full double criminality check will give more opportunities for defence counsels to oppose the execution of the EAW.

## RESTREINT UE

Finally, the full double criminality requirement for Polish citizens reinstates to some extent the discrimination which existed in the extradition regime between nationals and non nationals. One of the objectives of the Framework Decision was to abolish this discrimination. On the basis of the Framework Decision, nationals and non-nationals should be treated in the same way except for differences explicitly provided for in the instrument (see Articles 4.6. and 5.3. of the Framework Decision).

One may wonder if the Courts, should an issue of double criminality arise, would be prepared to use rules on primacy of EU law (Pupino Case Law) to remedy this situation. A change in the Constitution is called for.

### II - territoriality

Article 55 paragraph 2.1. of the Constitution, reflected in the new paragraph added to Article 607p CCP, provides that Polish citizen may only be surrendered if the offence was committed outside the territory of Poland. Before that amendment, and according to Article 607r paragraph 1.5., this ground of refusal based on territoriality was only optional. With the amendment, the ground for refusal based on the place of commission of the offence is still optional for non-Polish citizens but becomes mandatory for Polish citizens.

This modification in relation to Polish nationals constitutes a violation of Article 4 of the Framework Decision on the EAW which provides that territoriality is an optional ground for refusal. The objective of Article 4 was to allow some margin of discretion to the executing authority. Such margin is necessary because an offence may be legally considered as having been partly committed in the territory of one Member State even though the link with that Member State is significantly weaker than with another Member State. For example, a lot of offences committed through Internet may be considered as being committed in all Member States because of the worldwide diffusion of the material.

## RESTREINT UE

Furthermore, the territoriality clause provided for in Article 55 of the Constitution also creates discrimination between nationals and non-nationals<sup>1</sup>. This is contrary to general principles of Community law.

### 7.2.2. Political offence

The new version of Article 55 contains a paragraph 4 which provides that "*the extradition of a person suspected of the commission of a crime for political reasons, but without the use of force, shall be forbidden, as shall an extradition which would violate rights and freedoms of persons and citizens*".

This new paragraph is reflected in two additional mandatory grounds for refusal in Article 607p CCP.

As regards the reference to "rights and freedoms of persons and citizens", the expert team refers to a general debate about whether or not the references to human rights in Recital 12 and Article 1.3. of the Framework Decision are sufficient basis for the insertion of an explicit ground for refusal, which is not provided in Article 3 and 4 of the Framework Decision. Without entering into that debate, the expert team would like to stress that, in any case, the executing authority, when deciding on this issue in individual cases, shall always consider whether the alleged violation of human rights would not be more adequately dealt with in the issuing State.

The expert team is more concerned about the reference to an offence committed for political reasons (also known as the exception for political offences), even though it is limited to offences committed without the use of violence.

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<sup>1</sup> On the basis of the Framework Decision, nationals and non-nationals should be treated in the same way except for differences explicitly provided for in the instrument (see Articles 4.6. and 5.3. of the Framework Decision).

## RESTREINT UE

This exception for political offences is a feature of the old extradition and judicial co-operation regime. It was already abolished in the Convention relating to extradition between the Member States of the European Union of 27 September 1996 (Article 5). It was also abolished for the whole sector of mutual legal assistance by the Protocol of 16 October 2001 to the Convention on mutual legal assistance between the Member States of the European Union of 29 May 2000 (Article 9 of the Protocol) <sup>1</sup>.

It is clear that the ground of refusal based on the fact that the offence was committed for political reasons is a violation of the Framework Decision on the EAW. Such ground for refusal is not mentioned in the grounds for refusal provided for in Articles 3 and 4 of the Framework Decision and it is not mentioned because the exception for political offences is in complete opposition to the principle of mutual recognition and, more generally, to the setting up of an area of freedom, security and justice.

The exception for political offences should not be confused with the protection of a person who is prosecuted on the grounds of his or her political opinions (see recital 13 of the Preamble to the Framework Decision). The fact that a person has committed an offence for a political reason does not mean that he will be prosecuted for political reasons.

It was repeatedly stressed by Polish authorities that this ground for refusal will not be used in the case of EU countries. However, the expert team can only note that, not only does Article 55 of the Constitution have a horizontal scope, encompassing all extradition and surrender procedures, but the exception for political offences is also explicitly reflected in the legislation on the EAW, making it clear that the intention was to make it applicable to EU procedures. The expert team does not doubt that Polish judicial authorities will be very cautious in the use of the exception for political offences. However, their margin for discretion may be very limited.

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<sup>1</sup> Both instruments (the convention on extradition and the protocol on mutual legal assistance) provide for an abolition of the exception for political offence but allow the Member States to limit that abolition to offences related to terrorism.

# RESTREINT UE

For example, it must be stressed that the exception for political offences will lead to situations where the Polish judicial authorities will not be able to surrender a person prosecuted in another Member State in cases of terrorism. Indeed, and especially with the definition found in the Framework Decision of 13 June 2002 on the fight against terrorism, a terrorist offence is a political offence. Some of these terrorist offences may occur without the use of violence, such as for example financing of terrorism. In these cases, the Polish judicial authorities will be obliged to refuse the surrender of the person.

The ground for refusal based on the fact that the offence was committed for political reasons (even limited to offences committed without the use of violence), is in contradiction with the EU legal framework, both the legislation and the general objectives. When applied to terrorist offences, it becomes even more unacceptable.

## 7.3 CONCLUSIONS IN RESPECT OF POLAND'S ACTIVITIES AS AN ISSUING MEMBER STATE

### 7.3.1. Issues

#### 7.3.1.1. Possibility for the Court to issue an EAW on its own initiative

As indicated above, in trial and post-trial cases, it is up to the Court to decide whether the EAW is appropriate but, because of the requirement provided for in Article 607a CCP, the Court must then ask the prosecutor to formally motion the Court in order to issue the EAW. It is recognised that this role conferred to the Circuit Prosecutor in trial and post-trial stages is superfluous.

The expert team welcomes the fact that the possibility for the Court to issue an EAW on its own initiative is proposed in draft legislation currently being discussed in Parliament.

## 7.3.1.2. Proportionality check

The proportionality check should be understood as a check additional to the verification of whether or not the offence meets the threshold set by the Polish legislation and the Framework Decision. In other words, there is a proportionality check when, among EAWs related to offences which meet this threshold, some are not issued because it is estimated that this would violate a principle of proportionality in the context of costs/benefits analysis. The issue was discussed in depth with judicial authorities (Judges and Prosecutors).

The Prosecutors were of the opinion that, even in pre-trial cases (where the issuing of the EAW depends on their initiative) they have no possibility to decide not to file a motion for the issuing of an EAW on the basis of proportionality (if the threshold set by the Polish legislation and the Framework Decision is met). Prosecutors have an obligation to take all measures available to bring the person to justice. If an EAW can be issued, it must be used. Some Prosecutors indicated that they expected that a proportionality check would be done by the Circuit Court.

However, the Judges whom the expert team met during the visit did not consider themselves as having the right to refuse the issuing of an EAW if it complied with all the conditions set out in the legislation (which does not provide for a proportionality requirement additional to the penalties threshold). This statement was made irrespective of the stage of proceedings (pre-trial, trial or post-trial). Some of the judges indicated that the Prosecutors may have this possibility, at pre-trial stage, not to apply for an EAW.

However, in their reply to the questionnaire, the competent Polish authorities indicated that the issuing of several EAWs had been refused because *"the offence was not felt to have caused very much damage to society, for example in property offences where the value of the damage was low, failure to pay maintenance, possession of small quantities of drugs (1,5 grams of marijuana, a second case of 0,15 grams of heroin, a third case of 0,33 grams of marijuana and a fourth case of 3 ecstasy tablets), or driving a car under the influence of alcohol, where the driver was not significantly over the limit (e.g. breath alcohol reading of 0,81 mg/l)"*. Furthermore, it was mentioned during the visit that, in some cases, the Judge will decide that an EAW is not necessary and that it is more appropriate to simply notify the person and use a procedure *in absentia*.

## RESTREINT UE

Several authorities, both Prosecutors and Judges, stressed that if a person must be arrested in the course of criminal proceedings, this should happen irrespective of the fact that the person has crossed the border. For the first time, there is an European instrument allowing that and it should be used with that objective.

The expert team can only share the enthusiasm of the Polish authorities regarding the efficiency of the EAW and the solution it can bring to criminal proceedings which, in the extradition regime, would have ended too often unsatisfactorily. It should also be recalled that the Framework Decision does not provide any ground of refusal based on proportionality. A refusal to execute an EAW on that basis, as long as the threshold set by the Framework Decision is met, could be a violation of the Framework Decision. Such a refusal would lead to a questioning of the criminal policy in place in the other Member State and that would jeopardise the EAW system based on mutual recognition and mutual trust.

However, the expert team also estimates that it is not possible and not realistic to set all practical considerations aside. It is true that the objective should be that the person is treated in the same way, irrespective of his location within EU territory (within or outside Poland). It is a goal, which must always be kept in mind, but it must be accepted that it can not be entirely achieved in the immediate future. Although simplified and much more efficient than the extradition procedure, the EAW procedure still requires significant resources in the executing State.

In other words, the opinion of the expert team is that, in principle (and apart from the requirements of the Framework Decision itself), an EAW should be issued as soon as the offence (or the circumstances of the case, such as previous convictions) is considered serious enough to justify the arrest of the person at national level. However, that should be supplemented by a control of the proportionality of the practical resources required for the execution of the EAW compared to the seriousness of that offence.

Consideration should be given at EU level to the opportunity of introducing a proportionality check, in the sense described above, in the EAW legislative framework. This proportionality check would be done by the issuing authority only; this should be explicitly stated.

## 7.3.1.3. Requirement of indication that person is in one of the EU Member States

According to Article 607a CCP, an EAW may only be issued in the case of suspicion that the person is in the territory of an EU Member State. During the visit, it was indicated that the Circuit Court must be presented with elements to establish that suspicion and that this requirement sometimes led to refusals to issue an EAW.

This requirement seems to narrow excessively the possibilities for issuing an EAW. Since it is quite easy for a person located in Poland to cross an EU internal border, and even more once Poland joins the Schengen area (early 2008), it should rather be assumed that the person may always be in another EU State. Furthermore, even when the person is located in a non-EU State, one should always assume that the person may travel from that third State to EU territory.

The legislation could therefore be amended so as to provide that the EAW may be issued unless there is reliable information that the person is currently in Poland.

The expert team therefore welcomes the fact that the draft legislation which, at the time of the visit, had been recently submitted to Parliament includes such a provision.

## 7.3.1.4. Requirement of the offence having been committed in Poland

According to Article 607a CCP, an EAW may only be issued if the offence was committed in Polish territory. This excludes the issuing of an EAW in cases where a Court has jurisdiction on different grounds than the territoriality. It may for example be the case when the offence was committed outside Poland but against a Polish citizen (passive personality principle) or by a Polish citizen (active personality principle).

If the offence was not committed in Poland but in the EU State where the person is located, the executing authority will be able to refuse the execution of the EAW on the basis of the territoriality. However, at least according to the Framework Decision, this is only an optional ground for refusal and the executing authority may well decide that the Polish judicial authorities are better placed to prosecute the case because of its special circumstances (for example the offence was committed by a Polish citizen against another Polish citizen, both of them on holiday in the State concerned and legally residing in Poland).



Furthermore, it may also happen that the EAW is issued against a Polish citizen having committed an offence outside of the EU (for example sexual exploitation of a child in Thailand). In that case, the fact that an EAW cannot be issued because the offence was committed outside Poland may lead to complete impunity as the Member State where the person is located may not have any jurisdiction over the case.

Therefore, the expert team is of the opinion that the legislation should be amended so as to allow the issuing of an EAW whenever the issuing Court has jurisdiction over the case. The expert team welcomes the fact that the draft legislation which, at the time of the visit, had been recently submitted to Parliament includes such an amendment.

#### 7.3.1.5. Verification of existing proceedings and duplication of registers

As indicated above, there are three main databases in Poland regarding EAWs :

- the National Police System which contains a database of all persons searched in Poland, including all persons against whom an EAW was issued by a Polish Court.
- the EAW register of the Ministry of Justice: it includes a reference to all EAWs issued at trial or post-trial stages (as Courts are obliged to send a copy to the Ministry of Justice)
- the EAW register of the National Prosecutor : it includes a reference to all EAWs issued at pre-trial stage (as Prosecutors are obliged to send a copy to the NP).

There is no general practice regarding the consultation of these registers at the time of the issuing of an EAW. At circuit level, there seems to be a tendency to verify whether EAWs have been already issued against the same person. However, that is limited to what was issued at circuit level and does not seem to include in all cases a check on possible existing criminal proceedings against the same person which did not result in an EAW. In case of multiple requests, it is possible, but not mandatory, that the competent Circuit Court will decide to merge these requests into one single EAW for the offences for which this Court has jurisdiction. Legally it is possible to include in a single EAW offences falling under the jurisdiction of different Circuit Courts. However, in practice this is usually not done as it raises important practical problems once the person is effectively surrendered to Poland.

## RESTREINT UE

Clear guidelines or legislative change could be issued to rationalise these procedures. Courts should be strongly encouraged to take all necessary measures to ensure that the EAW includes all offences for which the person is being prosecuted and which may give rise to an EAW. If an offence is not included in the EAW, it will become difficult to ensure that person can be prosecuted for this offence after having been surrendered. Furthermore, the fact that, in practice, an EAW only contains offences for which the issuing Circuit Court has jurisdiction will raise difficulties with the SIS as it is currently not possible to include more than one EAW issued by the same State against the same person.

Furthermore, consideration should be given to merge or to create direct links between the register kept by the Ministry of Justice and that kept by the National Prosecutor. It seems that the division is based on the separation between the Courts and the Prosecutors but it is not clear why such division prevents the use of a single database.

Regarding statistics on EAW procedures, the expert team had to rely mainly upon Poland's reply to the EU questionnaire for the year 2005 (9005/5/06 COPEN 52 EJM 12 EUROJUST 21). These statistics are gathered by the National Prosecutor's Office. Despite repeated requests made before and during the visit, detailed statistics for 2006 were made available only much later, after the visit. Furthermore, it was indicated that data regarding for example the grounds used to refuse the execution of EAWs is not available. Detailed Statistics on the EAW are a necessary tool, both for the continuous improvement of the practice in Poland and for work being done at EU level. It therefore seems that improvements are needed in this sector. The duplication of registers can only complicate things further.

## 7.3.1.6. Translation of the EAW

In their reply to the questionnaire, the Polish authorities indicated that there have been difficulties in translating the EAW in time into the language accepted by the executing Member States. That has led to the release of the person concerned in some cases involving France and Spain. It also led to difficulties when a translation had to be provided in Dutch <sup>1</sup> or in Greek.

The Polish authorities indicated that such problems could be solved through an agreement between the parties concerned, *"perhaps bearing in mind the possibility of having the EAW translated by the executing authorities"*.

The expert team understands that the idea of having the EAW translated by the executing authority is related to the practical solution found in Poland, as an executing State, to meet the 48 hours deadline (see below). That solution, however, seems to be difficult to implement in all Member States as it is a reversal of the principle set in the Framework Decision. There are, however, other solutions to be further explored at EU and national level.

Firstly, the idea of bilateral agreements between Member States, as suggested by Polish authorities, on such practical issues deserves attention. Secondly, discussions should continue at EU level, possibly leading to more precise requirements in the EAW legislative framework, to avoid situations where an EAW must be translated within too limited deadlines. Furthermore, the advent of SIS may lead to a change in practice.

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<sup>1</sup> The expert team can only take note of these difficulties mentioned by Polish authorities. Nevertheless, the expert team notes that the EAW could have been translated into French or German (with regard to Belgium) or in English (with regard to the Netherlands).

## 7.3.1.7. Surrender of the person

Difficulties are experienced in the surrender phase when the EAW is executed in the UK. Polish authorities alleged that the UK often sets short surrender dates which are, moreover, conditional, given the possibility of appeal against the surrender decision. As a result, the Prevention and Transport Bureau of the General Police Headquarters is obliged to make organisational arrangements for the handover of requested persons in circumstances where the proposed handover date is not certain. Furthermore, it seems that UK courts often exercise their right to grant bail to persons whom they have already ruled should be surrendered to Poland, on condition that they report at a predetermined time and place (airport) for handover to the Polish authorities. As could be expected, many of these persons fail to report, and have to be traced all over again.

Polish authorities also reported a case where the French authorities agreed to surrender a requested person, but designated Lyon as the place for the handover. However, since there was no direct flight from Lyon to Poland, Polish officers were obliged to escort the individual back to Paris for the air transfer to Poland. Polish policemen are not allowed to use force or security measures when escorting detainees on territory under foreign jurisdiction. The French, on the other hand, were not willing to escort the individual to Paris themselves.

## 7.3.2. Good practices

### 7.3.2.1. Decentralisation and "judiciarisation"

Although the channel of a central authority is still allowed, the general movement regarding judicial cooperation at EU level is the promotion of direct contacts between locally competent judicial authorities, both in mutual legal assistance (Article 53 of the Schengen Convention and Article 6 of the MLA Convention of 29 May 2000) and in mutual recognition (as implemented by various Framework Decisions). Furthermore, the principle of mutual recognition is based on the full "judiciarisation" of the procedure materialised by the eviction of the executive or political power from the decision taken in individual cases.

# RESTREINT UE

Poland seems to be a very good example of how this decentralisation and "judiciarisation" may be implemented. While admitting that there may also be disadvantages in decentralisation, making the Circuit Court and the Circuit Prosecutors the key players of the procedures helps in getting the active support of judicial authorities to the overall objective of the creation of a European judicial area.

The option of locating the procedures at circuit level seems to be a reasonable choice, at the same time ensuring this decentralisation and avoiding the situation where EAWs procedures are dealt with by judicial authorities which do not have the opportunity to develop enough practical experience.

This decentralisation seems also to be facilitated by the attitude of the National Prosecutor's Office which voluntarily limits itself to a supervisory role, leaving the whole responsibility in the hands of the Circuit Prosecutors. It may also, sometimes and as discussed in other parts of the report, raise the risk of a fragmentation of the practice but this can be counterbalanced by appropriate coordination mechanisms.

This "judiciarisation" and decentralisation seems to be fully endorsed in practice by the Circuit Courts. All judges met during the visit stressed that they are routinely dealing themselves, with the assistance of the Prosecutor, with requests for additional information sent by the executing authority.

## 7.3.2.2. Bilateral relations

Based on its experience and difficulties with the UK, Poland, through its National Prosecutor's Office, has developed an interesting method to improve cooperation with specific other Member States.

- bilateral difficulties with the UK

A major part of EAWs issued in Poland have to be executed in the UK and significant difficulties have arisen from the very beginning of the use of the EAW by Polish authorities. These difficulties materialised in the form of the multiplication of UK requests for additional information or even in requests to reissue the EAW :

## RESTREINT UE

Requests for additional information usually related mainly to provisions of Polish law on the legal classification of offences, statutes of limitation (and how they were calculated), procedural guarantees regarding judgments in absentia or the surrender of the requested person subject to his return to the executing Member State.

- In one case, the UK authority required more evidence on the credibility of the source of information on the probable whereabouts of the requested person.
- In another case, the request concerned evidence that the offence had been committed by the requested person.
- It also happened that additional guarantees were required to certify that the EAW had been issued with a view to the arrest and surrender of the requested person (the expert team can only agree with the Polish authorities on the fact that there can be no doubt that it has been issued precisely for that purpose).
- One of the recurring requests related to whether the person had been charged or actually committed for trial (accused).

The expert team found particularly contentious the following description (provided by Polish authorities) of additional information requested by the UK :

- explaining the subject's overall role within the criminal organisation;
- explaining the role of each member of the organisation;
- details of the criminal investigation with regard to the subject and his associates;
- full details of the flights and air/sea transport routes used by couriers;
- where, when and by whom the travel tickets mentioned were purchased;
- where seizures of the drugs took place and who seized the drugs concerned;
- details of the individuals arrested and any admissions they made;
- in respect of the subject, explain in detail the actual method of smuggling for each offence and explain how these smuggling runs were identified by the Polish authorities;
- place in the body of the warrant all the information obtained from the arrested persons, intercept telephone information or human source information;
- explain how your authorities managed to identify all the smuggling attempts;
- provide details as to whether he pleaded guilty or was convicted after trial;
- when did he leave Poland, when did you find out that he was in the UK;
- did the suspect attempt to steal money from the victim (in the street or in the building);

## RESTREINT UE

- what time and in what circumstances did this crime take place;
- how much money did he attempt to steal;
- how did the victim make his escape;
- did the victim report the crime to the authorities;
- provide an explanation as to the meaning of the "Bill of indictment" and why it refers to Mr X as has having pleaded guilty;
- explain the status of the charged and accused person in the Polish system;
- whether the wanted person, after his surrender, would be allowed to be treated for his cardiological and psychological problems and what was the exact distance between the prison establishment and the nearest specialised health care institution.

It must be recalled that the framework of this mutual evaluation did not allow the expert team to discuss this with UK authorities. Based solely on the information provided by the Polish side, the expert team can only note that most of the additional requests referred to above seem to go far beyond what is allowed by the Framework Decision and are in contradiction with the principle of mutual recognition.

- the discussion with the UK

In order to find solutions to the major difficulties experienced by Circuit Courts and Circuit Prosecutors, the National Prosecutor's Office held a bilateral meeting with the Serious Organised Crime Agency (SOCA) which is acting as central authority in the UK. The meeting took place in Eurojust on 14 March 2007. According to the National Prosecutor, the meeting was very fruitful. The National Prosecutor and the SOCA did not reach an agreement on what should and what should not be requested by the executing State but the National Prosecutor came out of the meeting with a clearer view of the exact requirements of the SOCA.

Following the meeting, the National Prosecutor sent a letter to all Circuit Prosecutors and Circuit Courts describing the results of the meeting and advising them on how to fill in the EAW form in order to have greater chances of the EAW being actually executed in the UK.

## RESTREINT UE

From the discussions which took place during the visit, it seems that all Polish judicial authorities involved (National Prosecutor, Circuit Prosecutor and Circuit Courts) share the feeling that these guidelines resulting from the meeting with UK have already brought significant improvements in individual cases but also that there are still major difficulties.

- use of the same method with other countries

The National Prosecutor indicated that it intends to suggest similar meetings with France, the Netherlands and Ireland.

The expert team is of the opinion that national authorities should be encouraged to organise such bilateral meetings and also found very interesting the solution of the meeting taking place at Eurojust. It provides a neutral location, with appropriate resources and facilities, and allows the national members of Eurojust concerned to be fully involved and to bring their own knowledge and experience gathered at Eurojust.

However supportive to the general idea, the experts are concerned about the fact that, in the case of the relationship with the UK and with other Member States, the cooperation results in Polish judicial authorities applying on a general basis specific requirements which may not be at all in conformity with the Framework Decision. Although the issue could not be discussed due to the lack of time, the experts fear that, in cases where the whereabouts of the person are not known, the Polish judicial authorities will tend to systematically insert these requirements in case the person were to be found in the UK. The experts fully understand that the primary objective of the issuing authority is to ensure that the person is surrendered, even though it is required to comply with requests which are not in conformity with the Framework Decision. The experts would therefore like to draw the attention of national authorities to additional ways to find more appropriate solutions in the long term. Such solutions could include the assistance of the College of Eurojust or, in the most serious cases, a request for a discussion at the level of the Council of the EU. It must also be recalled that Article 17 paragraph 7 of the Framework Decision on the EAW provides that *"a Member State which has experienced repeated delays on the part of another Member State in the execution of European arrest warrants shall inform the Council with a view to evaluating the implementation of this Framework Decision at Member State level"*.



## 7.4 CONCLUSIONS IN RESPECT OF POLAND'S ACTIVITIES AS AN EXECUTING MEMBER STATE

### 7.4.1. ISSUES

#### 7.4.1.1. Authority competent to receive an EAW

Poland has notified that the authority competent to receive an EAW is the locally competent Circuit Prosecutor. However, in the EJA Atlas, the issuing authority is told that it may send the EAW either to the Circuit Prosecutor or to the Circuit Court. As it is up to the Circuit Prosecutor to take the very first measures related to the execution of the EAW, the transmission of the EAW to the Circuit Court may create unnecessary delay. Poland should therefore take the necessary measures to rectify the data entry in the EJA Atlas.

#### 7.4.1.2. Reception of EAWs in electronic format

The Polish authorities indicated that it is not possible to consider EAWs sent in electronic format as original EAWs.

The expert team is of the opinion that the use of electronic format should be promoted as much as possible, especially in the context of the acceleration of procedures and tight time limits. Article 10.4. of the Framework Decision on the EAW provides that "the issuing authority may forward the EAW by any secure means capable of producing written records under conditions allowing the executing MS to establish its authenticity". That may include, although there is no obligation, the transmission of the EAW through an electronic network.

Therefore, it would be useful if work could be initiated in Poland in order to allow the reception of original EAWs in electronic format. This issue will however be resolved with the advent of SIS II.

## RESTREINT UE

The expert team is also of the opinion that the EU should increase its efforts in order to find adequate solutions in terms of the format and the electronic platform to be used by judicial authorities to send warrants, certificates and rogatory letters in the context of mutual recognition and mutual legal assistance in criminal matters. Article 10.2. of the Framework Decision provides that the EAW may be forwarded through the secure telecommunications system of the EJM. This system, 5 years after the adoption of the Framework Decision, is not ready yet and will not be operational in the short term. The setting up of a such system should be a priority for the EU, as it would provide practical solutions for judicial authorities.

### 7.4.1.3. Prosecutors available 7 days a week

An EAW may be received in Poland via Interpol, via the National Prosecutor or directly by the locally competent Circuit Prosecutor. Given the strict time limits mentioned above, but also in any case in order to arrest the person on time, it is important that the EAW is transmitted immediately to the locally competent Circuit Prosecutor and that this Prosecutor may take immediately a decision on the arrest of the person and take other necessary measures.

Regarding the National Prosecutor, it requires that Prosecutors from the Division for international co-operation are available 7 days a week in order to be able to forward the EAWs which arrive to the National Prosecutor. It was indicated that it does not happen very often but it must nevertheless be recalled that the designation of the National Prosecutor as a possible channel is part of Poland's notification to the General Secretariat and that the National Prosecutor is mentioned in the EJM Atlas.

It is also necessary to have, at circuit level, prosecutors with sufficient experience in EAW procedures available 7 days a week.

## 7.4.1.4. Sirene Bureau and SIS

As indicated above, at the time of the visit, the Sirene Bureau was already in place but the implementing legislation for the SIS was still being drafted. Furthermore, discussions between the police and the Ministry of Justice were still at an early stage regarding some key EAW issues. It was indicated that solutions were under consideration to ensure that the Sirene Bureau has the appropriate assistance on EAW issues as well as on other alerts related to judicial proceedings.

The expert team particularly draws the attention of Polish authorities to the issue of flagging. In the SIS framework, a flag may be added at the request of a Sirene Bureau to the effect that the action to be taken on the basis of the alert will not be taken in its territory. This may be done when the execution of the alert would violate the international obligations or essential national interests of that Member State.

With regard to the EAW, Article 25 of the Decision on the SIS II (finalised but not yet adopted yet, see doc. 14914/06) provides that :

1. Where Framework Decision 2002/584/JHA applies, a flag preventing arrest shall only be added to an alert for arrest for surrender purposes where the competent judicial authority under national law for the execution of a European Arrest Warrant has refused its execution on the basis of a ground for non-execution and where the addition of the flag has been required.
2. However, at the behest of a competent judicial authority under national law, either on the basis of a general instruction or in a specific case, a flag may also be required to be added to an alert for arrest for surrender purposes if it is obvious that the execution of the European *Arrest Warrant will have to be refused*.

The first paragraph refers to flagging after the decision not to execute the EAW has been taken by the competent judicial authority. Only this competent judicial authority has the ability to decide that a flag is necessary. This may usefully be provided in the legislation on the EAW.

## RESTREINT UE

The second paragraph of Article 25 of the Decision on the SIS refers to a flag "a priori", i.e. at the time when the alert is inserted in the SIS. For example, since the majority for criminal liability in Poland is 17 years, it might be decided that all EAWs issued for persons who, at the moment of the commission of the offence, were younger than 17 years old shall be flagged for Poland.

Because a flag may *de facto* result in the non- execution of the EAW (because the person is not arrested), the intervention of a judicial authority is necessary and explicitly required by Article 25.

The expert team was told that the designation of the National Prosecutor for such issues was envisaged. It could take the form either of the designation of a contact point for the Sirene Bureau in the National Prosecutor's Office or of the secondment on a permanent basis of a member of the National Prosecutor's Office to the Sirene Bureau. The expert team would welcome such solutions and invites the National Prosecutor to reflect on the issue of flagging.

### 7.4.1.5. Right to a defence counsel

As indicated above, the person may be under provisional arrest during up to 72 hours (48 hours for the Circuit Prosecutor to file the motion to the Court and 24 hours for the Court to hold the first hearing). The person must be heard by the Prosecutor during the first 48 hours but will not be presented before a judge before the 1st hearing of the Circuit Court during which a decision must be taken on the temporary detention.

The person is immediately informed of his right to a legal counsel. It seems to be the usual practice that the person is allowed to see his legal counsel during the first 72 hours and during the hearing before the prosecutor. However, there is no legal obligation for the Prosecutor to authorise this contact with the lawyer during that preliminary phase; even though it was said during the visit that this is rarely the case, the Prosecutor may also refuse to allow the legal counsel to be present during the hearing of the person.

## RESTREINT UE

The expert team is concerned about the fact that there may be cases, even though that is not the usual practice, in which the person is arrested and held for 72 hours without being authorised to see a defence counsel. The provisions of the CCP on the EAW do not provide rules on this point and it is understood that the limitation on the right to see a legal counsel during the period of provisional arrest is based on general rules. The expert team has no mandate to analyse the general issue of the right to a legal counsel in Polish law. However, as far as EAW procedures are concerned, it seems difficult to justify such limitation. The expert team has some difficulty understanding in which situations it would be better to avoid such access to a defence counsel during the early stages of the procedure and, in any case, before and during the hearing before the Prosecutor.

Furthermore, it was indicated that, if the person does not want or cannot contact a legal counsel of his choice, he is presented with a list of legal counsels (compiled by the bar). However, the Bar Association indicated that no list is prepared by it in order to be presented to the arrested person. The expert team is of the opinion that this discrepancy should be clarified.

In any case, the list does not contain any indication on the field of expertise of the persons mentioned in the list. The expert team is aware of the difficulties raised by the definition of such fields of expertise. However, given the fact that each Circuit Court covers a relatively wide territory and population, it should be possible to enable the person to choose a legal counsel having at least a good experience of criminal procedures.

### 7.4.1.6. Time limit of 48 hours for presenting the original EAW and the translation

In principle, when submitting the motion to the Court within 48 hours after the arrest of the person, the Prosecutor must also transmit the original EAW and an official translation into Polish provided by the issuing State. The original EAW and the translation are needed to enable the Court, which will sit within 24 hours, to decide on the temporary decision and to start the analysis of the case in order to take a decision on the execution of the EAW.

The Framework Decision on the EAW does not provide any time limit for the transmission of the original EAW and the translation. It may be argued that it is up to each Member State to set such time limits in cases where the execution of the EAW is requested on its territory. However these time limits can not go against the objective of the Framework Decision which is to facilitate and simplify the surrender.

# RESTREINT UE

The time limit of 48 hours required in Poland will often be too limited, especially in the case where the person was arrested on the basis of an Interpol Red Notice or Interpol diffusion and where the issuing State did not anticipate that that person may be in Poland. It was repeatedly mentioned in Poland's reply to the questionnaire and during the visit that, in cases where Poland is the issuing State, tight time limits imposed by other Member States coupled with translation requirements raised important difficulties. It should therefore be easily understood that the 48 hours imposed by Poland as an executing State will cause similar problems in the issuing States.

This opinion seems to be shared by many Polish judicial authorities and that explains the flexibility in practice alleged during the visit.

Some judicial authorities, Prosecutors and Judges indicated that it is not unusual in practice to dissociate the decision of the Court on the temporary detention and the proceedings on the execution of the EAW. The decision on the temporary detention, because of its impact on the person, must be taken at a very early stage. However, that decision does not require the original version of the EAW (a copy is enough) and it does not require either an official translation (a working translation in Polish or maybe even in another language which the Court understands is sufficient).

If the original EAW and/or the official translation into Polish are not available at that time, the Court may decide to postpone the hearing for the part related to the decision on the execution of the surrender. The Court then sets a date for the new hearing and the issuing authority is informed of this deadline.

The expert team welcomes this flexibility. However, this practice may differ very much from one circuit court to another as it is not dealt with in any legislation, regulation or guideline.

Furthermore, there do not seem to be any clear criteria regarding when this procedure may be used.

# RESTREINT UE

It seems therefore necessary to amend the legislation. A solution could be to provide that the decision on the temporary detention must be taken by the Circuit Court within 24 hours of the filing of the motion by the Prosecutor and it should be possible to take this decision on the basis of a copy of the EAW. Regarding the execution of the EAW, the Circuit Court would decide on the basis of the original EAW and the official translation as soon as these materials are available and within a maximum time limit (for example 10 days) which could be extended by the Court in special circumstances.

In the meantime, the attention of Circuit Prosecutors should be drawn to this difficulty and the possible solution in practice. They should invite the Courts, in individual cases, to adopt a flexible approach.

Furthermore, consideration should be given to the possibility of accepting EAWs in languages other than Polish, and including at least, if possible, English (see Article 8.2. of the Framework Decision on the EAW). That would significantly facilitate the cooperation as English is a language for which it is easy to find official translators all over Europe and as it is already accepted in several other EU Member States. An additional solution would be to regulate the issue of languages in bilateral agreements. However, the expert team is also of the opinion that such agreements may raise issues of principle as they may introduce some sort of reciprocity.

The experts would also welcome an amendment to the Framework Decision on the EAW which would make it mandatory for all Member States to accept EAWs in English but they are also aware of the fact that it will be difficult to achieve. If Poland could already demonstrate such flexibility, it would certainly be regarded by other Member States as a significant step towards a more practical approach of the issue of languages in judicial co-operation.

## 7.4.1.7. Requirements in case of consent to surrender

No decision to execute the EAW, even in the case where the person consents to the surrender, can be taken without the original of the EAW and the official translation.

## RESTREINT UE

Consideration should be given as to whether or not the original EAW is absolutely necessary when the person consents to surrender. The expert team would see the benefit of a simplified regime for such cases in order to accelerate the procedure. However, the expert team also sees potential problems with a procedure where the surrender is not based on the original EAW; this could raise difficulties during the proceedings in the issuing State, where the defendant could, for example, contest that he consented to the surrender for all the facts or for the same facts as those mentioned in the original EAW. The expert team is of the opinion that this issue should be discussed at EU level.

### 7.4.1.8. Double criminality requirement

As indicated above, the amendments to the Constitution and to the legislation on the EAW have reintroduced a full double criminality requirement for the surrender of Polish nationals. This part of the report only deals with the surrender of non-nationals.

Article 2.2. of the Framework Decision on the EAW was implemented by Article 607w CCP which provides that *"the fact that an act is not a criminal offence according to Polish law does not prevent the European Warrant from being executed, if the Warrant concerns the act punishable in the issuing State by a penalty of at least 3 years of deprivation of liberty or the act for which another measure involving deprivation of liberty for the same period may be imposed, constituting one of the following offences: [list of offences]"*.

According to the authorities met during the visit, the double criminality requirement and its partial abolition have never raised any significant difficulty and have not yet resulted in a refusal to execute the EAW. Notwithstanding that positive situation, the expert team would like nevertheless to draw attention to possible difficulties.

During the visit, the expert team asked several judges, in cases where the issuing authority has ticked one of the boxes related to the list of offences, if and how they assess whether or not the offence concerned really corresponds to the one mentioned in the list. The judges replied that they have to check that list. When asked how they, in that case, interpret the qualification mentioned in the list, some replied that they would turn to the meaning in the national legislation. The expert team is of the opinion that this check could be considered as a form of control of double criminality.



Two elements may contribute to that.

The first element may be a difficulty, linked to the extent of the change brought by the EAW compared to traditional judicial cooperation, to draw all the conclusions which derive from the partial abolition of the double criminality requirement. The Framework Decision is very clear on the fact that, for the offences listed, there can not be any verification of the double criminality. The only way to really implement it is to limit the check made by the executing authority to the verification of whether or not the issuing authority has ticked one of the boxes referring to an offence in the EAW form. There should be only a marginal check on the link between the circumstances of the offence and the name of the offence ticked by the issuing authority. Such a check should only aim at detecting obvious material errors, contradictions or obvious abuse of the list on the part of the issuing authority. Once the executing authority intends to go further in that check, it has no other choice but to establish what is meant by the qualification of the offence ticked by the issuing authority and that leads him to look into his national legislation and compare it to the circumstances of the case, which is precisely what Article 2.2. of the Framework Decision aims to avoid.

The second element is that Article 607w does not use a wording equivalent to Article 2.2. of the Framework Decision. Article 2.2. of the Framework Decision provides that the offence mentioned in the list should give rise to the surrender "*without verification of double criminality*". Article 607w provides that "*the fact that an act is not a criminal offence according to Polish law does not prevent the European Warrant from being executed if the Warrant concerns the act constituting one of the offences (mentioned in the list)*". Article 607w can therefore be interpreted as requiring that the judge verifies that the offence concerned is the one ticked by the issuing authority.

## RESTREINT UE

This seems further demonstrated by the fact that the list provided in Article 607w does not fully correspond to the list of Article 2.2. of the Framework Decision. For some offences, the legislator seems to have tried to use words which would maybe make more sense to the Polish judge. For example, the offence named as "*computer-related crime*" in the Framework Decision is referred to in Article 607w as "*offence against the protection of data collected, stored, processed or transmitted in a computer system*". Thereby, the legislator may also have limited the scope, for issuing States, of some offences listed in Article 2.2. of the Framework Decision. While it is understandable and even advisable that issuing authorities are informed about what meaning they should give to the offences listed in the EAW form (see 3.3. for the practice in Poland), it is on the contrary not acceptable to adapt this list when acting as the executing State.

### 7.4.1.9. Accessory offences

As indicated above, it is considered that it is not possible to execute an EAW in Poland regarding accessory offences (=offences which do not meet the threshold required by Article 2.1. of the Framework Decision but which relate to a "main" offence allowing the issuing of the EAW). It should be recalled that Article 2 paragraph 2 of the Convention on extradition of 1957 explicitly provided for the possibility for the requested State to accept extradition for such offences <sup>1</sup>.

The Framework Decision on the EAW does not contain similar provisions and cannot, a fortiori, be understood to create an obligation to execute an EAW for the part related to these offences.

However, nothing seems to prevent Member States from going further than what the Framework Decision requires. As it is very difficult to see what reasoning could justify the exclusion of accessory offences, it would be useful if the Polish legislation on the EAW could explicitly provide at least the possibility and, if possible, the obligation to accept the execution of the EAW for accessory offences if the main offence meets the threshold set in the legislation.

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<sup>1</sup> "If the request for extradition includes several separate offences each of which is punishable under the laws of the requesting Party and the requested Party by deprivation of liberty or under a detention order, but of which some do not fulfil the condition with regard to the amount of punishment which may be awarded, the requested Party shall also have the right to grant extradition for the latter offences."

# RESTREINT UE

The Framework Decision should be amended in order to ensure a common application in all Member States.

## 7.4.1.10. Time limit of 60 days for the decision on the execution of the EAW

Art. 607m CCP provides :

- § 1. The court shall decide on surrender within 60 days from the date the prosecuted person was arrested. If the prosecuted person has made a statement referred to in art. 607l § 2, this time limit is 10 days and it starts from the date on which the statement has been made.*
- § 2. In particularly justified cases, where the time limits referred to in § 1 may not be complied with, the decision on surrender may be issued immediately within the next 30 days following the date on which such time limits elapsed. The authority that issued a European Warrant shall be notified of the delay and its cause.*

Some judicial authorities were of the opinion that the 60 days time limit provided in the first paragraph covers only the decision to be taken by the Circuit Court (first instance). If the legislator intended to cover the whole procedure, it would have chosen the words "final decision" in Article 607m, as it did in Article 607n. On the contrary, other authorities indicated that the 60 days time limit should be understood as applicable to the final decision, including therefore the decision of the Appeal Court if there is an appeal.

The controversy is about the meaning of Article 607m CCP. It was not contested that the 60 days time limit provided in the Framework Decision is for the final decision. It was also mentioned that, given the limited tasks of the executing authority in the new EAW regime, this time limit for the whole procedure is reasonable, with the safety net of the additional 30 days in special circumstances. In the opinion of some of the judges, the appeal procedure constitutes such special circumstances.

## RESTREINT UE

It is therefore appropriate, and should not raise difficulty, to amend the legislation and use the wording "final decision" in Article 607m paragraph 1. It would also be appropriate to indicate clearly the maximum time limit for the decision in first instance and the decision in the appeal procedure.

In the meantime, it should be recalled that it is mandatory for national judicial authorities, included in matters falling under Title VI of the Treaty on the EU, to interpret the national legislation in a way which ensures conformity with EU legislation (ECJ, Pupino case). This obligation of "conform interpretation" can not oblige the national authority to interpret the legislation *contra legem*. However, this should not raise any obstacle in this case as it is obvious that the current version of Article 607m is not entirely clear, as demonstrated by the fact that there are diverging interpretations.

### 7.4.1.11. Notification of Eurojust

Article 17 paragraph 7 of the Framework Decision on the EAW provides : "Where in exceptional circumstances a Member State cannot observe the time limits provided for in this Article, it shall inform Eurojust, giving the reasons for the delay."

This requirement seems to be well known but there is uncertainty about the way to comply with it. According to guidelines issued by the Ministry of Justice, the Prosecutor (in pre-trial case) or the Circuit Court (in trial and post-trial cases) must notify the National Prosecutor (in pre-trial case) or the Ministry of Justice (in trial and post-trial cases) <sup>1</sup>. However, the existence of these guidelines was clearly not well known among judges. Furthermore, the expert team heard diverging opinions about who should notify Eurojust. This should therefore be clarified, for example during training sessions.

In addition, the expert team would like to draw the attention on the fact that any breach of time limit, irrespective of the reasons and duration, should be notified to Eurojust.

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<sup>1</sup> See the paragraph 238 of the Regulation of the Minister for Justice of 11 April 1992 on the rules of functioning of public prosecutor offices and paragraph 329 of the Regulation of the Minister for Justice of 23 February 2007 on the rules of functioning of the common courts (as amended) which contains a Chapter 4 detailing some guidelines related to EAW procedures and addressed to the courts.

# RESTREINT UE

## 7.4.1.12. Actual surrender of the person

When the person is physically surrendered at the border, the Polish police officer in charge, using a template provided by the National Prosecutor, transmits some basic information (identity of the person, reference number of the case and ID documents) to the police officers of the issuing State. As for the decision to execute the EAW, it is sent directly by the Circuit Court to the issuing authority.

It was stressed during the visit that the information on the duration of detention is not always transmitted at the time of the surrender. The request for this information may come from Interpol afterwards and may be forwarded only at that time.

As this information is necessary for the management of the case in the issuing State, it should be systematically transmitted at the time of the surrender.

## 7.4.2. GOOD PRACTICES

### 7.4.2.1. Direct contacts between judicial authorities

What is mentioned earlier in this report regarding "judicialisation" and decentralisation of the EAW procedure in Poland acting as the issuing State is also applicable to procedures leading to the execution of an EAW in Poland. Prosecutors but also judges (from the Circuit Court and from the Appellate Court) indicated that they seek direct contacts with the issuing authority, for example when they need additional information.

### 7.4.2.2. Measures taken to locate the person in case of an Interpol Red Notice or Interpol diffusion

The expert team welcomes the fact that all Interpol Red Notices or Interpol diffusions emanating from an EU Member State resulted in the data related to the person being entered in the National Police Database which contains information on wanted persons.

The expert team also welcomes the fact that, if this person is a Polish citizen or a person having legal residence in Poland, this entry in the database will be supplemented, on the basis of an order from the Prosecutor, by concrete measures to locate the person.

## 8. RECOMMENDATIONS

The expert team draws the attention to the fact that the relatively high number of recommendations does not prejudice the positive opinion, which the experts have with regard to the efficiency of the system in place in Poland. It is rather a reflection of the level of detail with which the expert team was able to scrutinize the system during the visit.

### 8.1. RECOMMENDATIONS TO POLAND

#### 8.1.1. General recommendations

Recommendation 1 – To consider solutions, which may for example include the setting up of a national platform involving all national authorities involved in EAW procedures, to increase standardisation of procedures and the search for common good practices (see 7.1.4.).

Recommendation 2 - To update the guidelines of the National Prosecutor of 2005, based on the experience gained during the last two years, and to ensure that they are well disseminated, including among Judges (see 7.1.4.).

Recommendation 3 - During training sessions, to put specific emphasis on the use of the EAW form and on the use of the SIS (see 7.1.5.).

Recommendation 4 - To take appropriate measures to be able to provide detailed statistics on EAW procedures (see. 7.3.1.5.).

#### 8.1.2. Constitutional issues

Recommendation 5 - To amend the Constitution and the legislation regarding the surrender of Polish nationals in order to implement the partial abolition of double criminality check and to make it optional for the Courts to refuse the execution of the EAW on the basis of territoriality (see 7.2.1.)

Recommendation 6 - To amend the Constitution and the legislation in order to abolish, in EAW procedures, the exception for political offences (see 7.2.2.).

# RESTREINT UE

## 8.1.3. As issuing Member State

Recommendation 7 – To finalise as soon as possible the legislative procedure already launched (draft bill already proposed in Parliament) and to adopt particularly the amendments relating to :

- the possibility for the competent Court to issue an EAW on its own initiative in trial and post-trial cases (see 7.3.1.1.);
- the deletion of the requirement of indications that the person is on the territory of an EU State (see 7.3.1.3.);
- the extension of the possibility to issue an EAW in cases where the Court has jurisdiction over the case even though the offence was not committed in Poland (see 7.3.1.4.).

Recommendation 8 - To reflect at national level on the way to ensure that EAWs are issued only when the seriousness of the offence justifies the co-operation measures which the execution of the EAW will require (see 7.3.1.2.).

Recommendation 9 – To consider solutions to ensure, before the issuing of the EAW, a systematic verification of the existence of other EAWs or criminal proceeding against the same person (see 7.3.1.5.).

Recommendation 10 – To reflect upon the possibilities to create direct links between the two EAW registers kept by the Ministry of Justice and by the National Prosecutor's Office or to merge these registers (see 7.3.1.5.).

Recommendation 11 – To consider using the assistance of the College of Eurojust in cases where repeated difficulties are experienced with a specific Member State and where the practice in that Member State seems to be in contradiction with the Framework Decision on the EAW (see 7.3.2.2).

## 8.1.4. As executing Member State

Recommendation 12 - To rectify the EJN Atlas with regard to the designation of the authorities competent to receive an EAW (see 7.4.1.1.).

Recommendation 13 - To initiate work in order to allow the reception of original EAWs in electronic format (see 7.4.1.2.).

# RESTREINT UE

Recommendation 14 - To ensure that the National Prosecutor's Office and, at circuit level, prosecutors with adequate experience in EAW procedures are available 7 days a week (see 7.4.1.3.)

Recommendation 15 – To accelerate the preparations and internal discussions related to the use of the SIS, especially regarding the judicial control on flagging (see 7.4.1.4.).

Recommendation 16 – To consider amending the legislation to ensure that, in all cases, the person arrested on the basis of an EAW has the right to see a defence counsel during the period of provisional arrest (see 7.4.1.5.).

Recommendation 17 – To amend the legislation in order to provide explicitly that the original EAW and its official translation are not necessary for the decision of the Court on temporary detention and to set longer time limits for the production of such material for the decision on the execution of the EAW (see 7.4.1.6.).

Recommendation 18 - To consider amending the legislation in order to accept EAWs in languages other than Polish, including, if possible, English (see 7.4.1.6.).

Recommendation 19 – To consider amending the legislation and increasing the awareness among Judges regarding the partial abolition of the double criminality requirement (see 7.4.1.8.).

Recommendation 20 - To consider amending the legislation in order to make it (at least) possible to execute the EAW with regard to accessory offences (see 7.4.1.9.).

Recommendation 21 - To amend the legislation regarding the time limit for the whole procedure leading to the decision on the execution of the EAW and, in the meantime, to interpret the current legislation as providing that the 60 days time limit covers both the first instance procedure and the appeal procedure (see 7.4.1.10.).

Recommendation 22 - To ensure that all breaches of time limits are notified to Eurojust and to clarify, for example through training efforts, the division of tasks regarding this notification to Eurojust (see 7.4.1.11.).



## RESTREINT UE

Recommendation 23 - To ensure that the information provided to the executing State at the time of the physical surrender of the person includes information on the duration of the detention (see 7.4.1.12.).

### 8.2. RECOMMENDATIONS TO CERTAIN OTHER MEMBER STATES

Recommendation 24 - To set up mechanisms and rules at national level enabling a proportionality check in order to avoid the issuing of EAWs for offences which, although they fall legally speaking within the scope of Article 2 of the Framework Decision on the EAW, are not serious enough to justify the measures and the cooperation which the execution of an EAW requires (see 7.3.1.2.).

Recommendation 25 - With regard to EAW alerts in the SIS, to wait no longer to adapt, if necessary, the practice of flagging in accordance with the rules provided in the Decision on the SIS II, taking into account the fact that these rules, by ensuring judicial control on flagging, even though they are legally applicable to the SIS II only, are the best solution to ensure full compliance with the Framework Decision on the EAW (see 7.3.1.4.).

Recommendation 26 - To organise bilateral meetings, possibly with the assistance of Eurojust, with Member States with which specific and important problems arise with regard to EAW procedures or with which, for example because of the high number of EAW procedures, specific arrangements, including on languages, would be useful (see 7.3.1.6. and 7.3.2.2.).

Recommendation 27 – To consider using the assistance of the College of Eurojust in cases where repeated difficulties are experienced with a specific Member State and where the practice in that Member State seems to be in contradiction with the Framework Decision on the EAW (see 7.3.2.2.).

Recommendation 28 - As executing State, to ensure proper co-operation to hand over the person (see 7.3.1.7.).

Recommendation 29 - To establish procedures allowing sufficient time for the issuing authority to provide the translation of the EAW (see 7.3.1.6. and 7.4.1.6.).

# RESTREINT UE

Recommendation 30 - To refrain from requiring additional information from the issuing authority when this information is required to enable a control by the executing authority which goes beyond what is allowed under the Framework Decision on the EAW (see 7.3.2.2.).

Recommendation 31 - To consider amending the legislation in order to accept EAWs in languages other than the national language, including, if possible, English (see 7.4.1.6.).

Recommendation 32 - To consider amending the legislation in order to make it (at least) possible to execute the EAW with regard to accessory offences (see 7.4.1.9.).

## 8.3. RECOMMENDATIONS TO THE EUROPEAN UNION

Recommendation 33 - To consider the benefits of creating an EU practitioner guide to assist with best practice indicators for the proportionate and consistent application of this instrument, the proper completion of the EAW form, and to provide indicative examples of FD-compliant requests for further information. (see 7.1.4. and recommendation 2).

Recommendation 34 - To consider the benefit of inserting into the legal framework, in addition to the definition of the scope of application of the EAW, a proportionality requirement for the issuance of any EAW, while at the same time making it clear that this control of proportionality check should be conducted in the issuing State only (see 7.3.1.2.).

Recommendation 35 - To amend the Framework Decision on the EAW in order to give sufficient time to the issuing authority to provide the original version of the EAW and the translation (see 7.4.1.6.).

Recommendation 36 - To amend the Framework Decision on the EU in order to make it clear that the EAW may include accessory offences and that the executing judicial authority should have the possibility to execute the EAW for these offences and to consider making it compulsory (see 7.4.1.9.).

# RESTREINT UE

Recommendation 37 - To examine the setting up of a secure telecommunications system in order to allow judicial authorities to forward original EAWs in electronic format (see 7.4.1.2.).

Recommendation 38 - To examine the need for simplified requirements in cases where the person consents to surrender (see 7.4.1.7.).



## STATISTICS PROVIDED PURSUANT TO THE EVALUATION EXERCISE

Apart from statistics regarding 2005 found in 9005/5/06 (COPEN 52 EJM 12 EUROJUST 21), the following figures were provided :

### **Poland as issuing State:**

How many European arrest warrants have been issued in 2006? → 2421

How many of these arrest warrants resulted in the effective surrender of the person sought? → 235

### **Poland as executing State:**

How many European arrest warrants have been received by the judicial authorities of your Member State in 2006? → 228

How many persons have been arrested under a European arrest warrant in your country? → 129

How many have been effectively surrendered? → 139

Of those surrendered, how many consented to the surrender? → 65

Of those surrendered, how many did not consent to the surrender? → 74

In how many cases have the judicial authorities of your Member State refused the execution of a European arrest warrant? → 35

Number of decisions of Polish courts refusing the surrender of Polish nationals in the second half of 2006 and first half of 2007 → 23

## PROGRAMME OF VISITS

### Day 1 (29.05.2007)

9.00 – 9.30: Transfer from the hotel to the General Headquarters of Police  
9.30 – 11.00: Official welcome by the representatives of the Ministry of Justice, Bureau of International Legal Cooperation of the National Prosecutors Office and Ministry of Interior and Administration (+ 1st General introduction and discussion of the system in Poland )  
11.00 - 12.30: Visit to the Criminal Intelligence Bureau  
12.30 - 13.45: Lunch in the General Headquarters of Police  
14.00- 16.00 Meeting with representatives of Polish Advocates Council  
Transfer to the hotel  
19.30 Flight to Gdańsk

### Day 2 (30.05.2007)

09.00 - 09.30 Transfer from the hotel  
09.30 - 11.30 Visit to the District and Appeal Court in Gdańsk  
12.00 - 13.00 Lunch  
13.30 - 15.30 Meeting in District and Appeal Prosecutor's Offices in Gdańsk  
16.00 - 18.00 Meeting in Voivodship Police Headquarters in Gdańsk  
Transfer to the hotel  
21.00 Return flight to Warsaw

### Day 3 (31.05.2007)

09.00 - 09.30 Transfer from the hotel  
09.30 - 11.30 Meeting in District and Appeal Prosecutor's Offices in Warsaw  
12.00 - 13.15 Lunch (at the National Prosecutor's Office)  
13.30 - 16.00 Visit to the Bureau of International Legal Cooperation of the National Prosecutors Office + meeting with the expert from the Chancellery of the President (constitutional matters).  
16.30 Transfer to the hotel, time for experts

### Day 4 (1.06.2007)

09.00 – 09.30 Transfer from the hotel  
09.30– 12.30 Visit to the District and Appeal Court in Warsaw  
12.30 – 13.30 Lunch  
14.00 - 17.30 Closing meeting in the Ministry of Interior and Administration – summary of the visit, with participation of all the entities cooperating on the EAW's issues)  
Transfer to the Airport

## LIST OF PERSONS INTERVIEWED

### Ministry of Justice:

#### 1. Department of International Cooperation and European Law:

- Tomasz Ostropolski, Head of the European Law Division
- Tomasz Chalański, prosecutor
- Alicja Klamczyńska, main specialist

#### 2. Department of the Execution of Rulings and Probation:

- Irena Godlewska, judge

#### 3. Department of the National Court Register Center and Information:

- Piotr Siekierski, Director
- Anna Drożdżewska, Head of the Division for Schengen and Norwegian Financial Mechanism
- Bartłomiej Miłoś, prosecutor
- Marcin Ogłodziński, prosecutor

### Bureau of International Legal Cooperation of the National Prosecutor's Office:

- Cezary Michalczuk, prosecutor
- Katarzyna Krysiak, prosecutor

### General Police Headquarters:

- Stanisław Gutowski, Ist Deputy In Chief Commander of the Police
- Karol Grzybowski, Director of the Criminal Intelligence Bureau
- Jacek Dobiszewski, Head of the International Searches Unit in the Criminal Intelligence Bureau
- Jolanta Stalmach-Chylińska, Sirene Unit of the Criminal Intelligence Bureau
- Andrzej Zawadzki, Head of Unit in the Commander of the Police Cabinet
- Paweł Pinda, Deputy Head of the Unit of the Development of the International Cooperation
- Jędrzej Bełz, Convoys' Section in the Prevention and Traffic Bureau

### Ministry of Interior and Administration:

#### Department of the European Union and International Cooperation

- Małgorzata Kutyla, Director
- Beata Czczółka, main specialist
- Tadeusz Owczarski, specialist
- Karolina Zielińska, specialist
- Sylwia Lenart, translator

### General Border Guard Headquarters:

- Krzysztof Kępka, main specialist
- Agnieszka Bałdyga
- Wojciech Koziel
- Katarzyna Dziemieszkiewicz, translator

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## General Police Headquarters:

- Stanisław Gutowski, Ist Deputy In Chief Commander of the Police
- Karol Grzybowski, Director of the Criminal Intelligence Bureau
- Jacek Dobiszewski, Head of the International Searches Unit in the Criminal Intelligence Bureau
- Jolanta Stalmach-Chylińska, Sirene Unit of the Criminal Intelligence Bureau
- Andrzej Zawadzki, Head of the Unit of Development of International Cooperation
- Ryszard Kamiński, Convoys' Section in the Prevention and Traffic Bureau
- Roman Wojtuszek, Head of Investigations' Unit in the Criminal Bureau
- Grzegorz Prusak, Criminal Unit in the Criminal Bureau

## Polish Advocates Council

- Adv. Joanna Agacka-Indecka, Deputy Chief of the Council
- Adv. Andrzej Siemiński, Secretary of the Council
- Adv. Prof. Piotr Kruszyński

## District and Appeal Court in Gdańsk

- Judge Kazimierz Klugiewicz, Chief of the Appeal Court
- Katarzyna Jankowska-Józefiak, Judge in the Appeal Court
- Dorota Paszkiewicz, Judge
- Andrzej Czarnota, Judge in the Appeal Court
- Dariusz Malak, Judge
- Mirosław Cop, Judge in the Appeal Court
- Ryszard Milewski, Chief of the District Court
- Lidia Jedynak, Judge in the District Court
- Marlena Kasprzak, Judge in the District Court
- Magdalena Szewczyk, Judge in the District Court
- Zbigniew Zalewski, Judge in the District Court
- Włodzimierz Brazewicz, Judge in the District Court
- Zbigniew Zimny, Judge
- Ewa Koperska-Kuc, Judge

## Voivodship Police Headquarters in Gdańsk

Welcome by:

- Voivodship Commander of the Police in Gdańsk, senior commissioner Andrzej Siwek
- Ist Deputy of the Voivodship Commander of the Police, inspector Zbigniew Macczak
- Deputy of the Voivodship Commander of the Police, subinspector Dariusz Jamroz

Participants of the meeting:

- subcommissioner Wojciech Ludwiczewski – Criminal Unit
- aspirant Mariusz Elwart - Criminal Unit
- subcommissioner Katarzyna Śliwska – Investigation Unit
- senior commissioner Anna Syska – Unit of Administrative Proceedings
- sergeant Tomasz Guss - Prevention Unit
- commissioner Dariusz Wątróbski – Convoy Unit
- senior commissioner Jarosław Popławski – Criminal Investigation Unit

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## District and Appeal Prosecutor's Offices in Warsaw

- Marzena Kowalska, Appeal Prosecutor - Warsaw
- Andrzej Szeliga, Deputy Appeal Prosecutor - Warsaw
- Agnieszka Macierzyńska, District Prosecutor's Office - Warsaw (Praga)
- Małgorzata Adamajtys, District Prosecutor's Office - Warsaw (Praga)
- Lidia Mucha, District Prosecutor's Office - Warsaw
- Aldona Kott, District Prosecutor's Office - Warsaw
- Małgorzata Siemaszko, District Prosecutor's Office - Płock
- Mieczysław Petrykowski, District Prosecutor's Office - Płock
- Radosława Pasikowska, District Prosecutor's Office - Ostrołęka
- Jerzy Iwanicki, Appeal Prosecutor's Office - Warsaw

## Bureau of International Legal Cooperation of the National Prosecutors Office

- Anna Adamiak-Derendarz, Director of the Bureau of International Legal Cooperation of the National Prosecutors Office
- Józef Gemra, Deputy Director
- Cezary Michalczyk, prosecutor
- Katarzyna Krysiak, prosecutor
- Piotr Radomski, prosecutor
- Sławomir Modliński, prosecutor
- Justyna Kapusta, prosecutor
- Krzysztof Kondrat, Director of the Department of Law and Regime
- Małgorzata Krassowska, main specialist on legislation

## Appeal Court in Warsaw

- Krzysztof Karpiński, Chief of the Appeal Court
- Jerzy Leder, Head of the IIInd Chamber of the Criminal Law

## District Court in Warsaw

- Dorota Tyrała, Deputy Chief of The District Court
- Andrzej Krasnodebski, judge
- Małgorzata Lniarska, judge
- Jolanta Marek, judge
- Ireneusz Szulewicz, judge
- Grażyna Sobkowicz, judge
- Salomea Truszkowska, judge
- Aniela Zadrużna, judge



## LIST OF ABBREVIATION/GLOSSARY OF TERMS

ACRONYM ABBREVIATION TERM	ENGLISH EXPLANATION
EAW	European Arrest Warrant
CA	Central Authority
CCP	Code of Criminal Procedures
EJN	European Judicial Network
FD	Framework Decision
JA	Judicial Authorities
MS	Member State
NCB	National Central Bureau of Interpol
SIS	Schengen Information System

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