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

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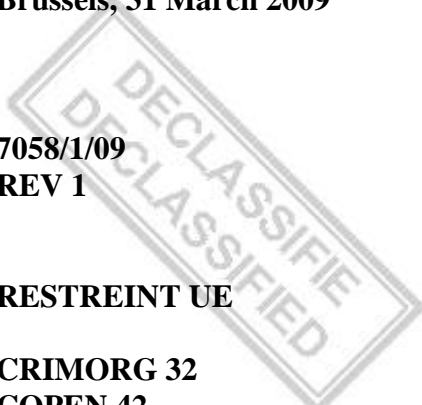
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REPORT ON GERMANY

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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 evaluations¹, 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 2005².
- 1.4. At its meeting on 28 October 2005 the MDG approved the evaluation questionnaire for the fourth round of mutual evaluations. The objectives of the evaluation exercise and the questionnaire itself are set out in 14272/05 CRIMORG 131 COPEN 175 EJM 57 EUROJUST 77.
- 1.5. Also at its meeting on 28 October 2005 the MDG discussed and approved 13824/05, the revised sequence for the mutual evaluation visits. Germany is the twenty-fourth Member State to be evaluated during the fourth round of evaluations.

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

² 6206/1/06 REV 1 - Timetable for 2006 and designation of experts.

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- 1.6. The experts charged with undertaking this evaluation were: Ms Joana Gomes Ferreira (Prosecutor, Head of the Gabinete de Documentação e Direito Comparado, General Prosecutor's Office, Portugal), Mr Carsten Egeberg Christensen (Chief Prosecutor, Copenhagen Police, Denmark) and Mr Alessandro di Taranto (Magistrate, Direzione Generale della Giustizia Penale, Ministry of Justice, Italy). Two observers were also present: Mr Phil Hicks (Eurojust) and Mr Peter Kortenhorst (European Commission), together with the General Secretariat of the Council.
- 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 8 to 12 September 2008, and upon the detailed and helpful responses of Germany to the evaluation questionnaire.
- 1.8. The report makes reference to differing processes in respect of prosecution and conviction cases only insofar as there is a divergence of practice between the two procedures.
- 1.9. The expert team's overarching purpose was to evaluate the distinct practical processes operated and encountered by Germany in its role both as issuing and as executing Member State and to assess relevant training provisions and the views of the defence, before moving on to conclude and to make such recommendations as the team felt were appropriate to enhance the means by which the EAW and its corresponding surrender provisions may be further streamlined and improved.

2. THE AUTHORITIES AND THE LEGAL BASIS

2.1 THE AUTHORITIES

The Prosecution Service in Germany is mainly organised at Land level. At Federal level, the Federal Prosecution Office (Bundesanwaltschaft) represents the State before the Federal Court of Justice¹; it is also charged with investigating certain serious offences against the state (in particular terrorism, espionage), which are tried in first instance by the Higher Regional Court of the corresponding Land.

¹ Although it is the corresponding Land's prosecutor's office who files the appeal with the Federal Court of Justice and supports it by a legal brief.

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At Land level, there is a prosecutor's office attached to each Regional Court (Staatsanwaltschaft bei dem Landgericht, hereinafter referred to as "the StA") and to the Higher Regional Court (Staatsanwaltschaft beim Oberlandesgericht or Generalstaatsanwaltschaft, hereinafter referred to as "the StAOLG").

At both Federal and Land levels, prosecution services are organised hierarchically. The Federal Prosecution Office is headed by the Federal Chief Prosecutor (Generalbundesanwalt); at Land level the highest prosecuting officers are the chiefs of the StAOLG. By virtue of the principle of hierarchical subordination, public prosecutors are obliged to follow the instructions of their superiors. This rule extends to the Federal Minister of Justice/Minister of Justice of the Land, who stands at the top of the hierarchy and therefore has the power to give binding orders to the prosecution service both of a general nature and in respect of a particular case. In parallel, the Minister of Justice can be questioned in the Federal Parliament/Parliament of the Land both on prosecution policy and on particular cases.

German courts dealing with criminal matters are organised in a four-layer system: local courts (Amtsgericht, hereinafter referred to as "AG"), regional courts (Landgericht), higher regional courts (Oberlandesgericht, hereinafter referred to as "OLG"¹), and the Federal Court of Justice (Bundesgerichtshof - BGH).

As regards EAW-related matters, whereas courts are not involved in the process leading to the issue of EAWs (but are competent for issuing the underlying national arrest warrant), AGs and OLGs intervene in the proceedings for the execution of the incoming ones². Pursuant to the implementing law, the Federal Court of Justice may be requested by the OLGs to give a ruling for the clarification of points of law in these matters³.

In the field of international cooperation in criminal matters, the Federal Ministry of Justice is responsible for the negotiation and legal scrutiny of proposed legal instruments under public international law or the law of the European Union. It also takes a drafting role and carries out scrutiny in respect of legislation to incorporate such instruments into domestic law.

¹ In the state of Berlin, the OLG is called „Kammergericht“.

² See chapters 4.3 and 4.5 below.

³ Sections 42 and 78(1) of the IRG.

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According to German law, the power to decide on foreign requests for legal assistance and to request foreign states for this kind of assistance is vested initially in the Federal Ministry of Justice¹, which may delegate it, by way of an agreement, to the Ministries of the different Länder, which in turn may further delegate their powers. Correspondingly, the Federal Ministry of Justice has transferred the competence to submit EAWs and to grant surrender on the basis of an EAW to the Governments of the Länder, which in turn have delegated such powers, as a rule, to the StAOLG.

The Federal Office of Justice is part of the subordinate area of the Federal Ministry of Justice. This unit is the central authority in extradition matters, mutual legal assistance and transfer of prisoners. Since powers to decide on EAW matters have been transferred to the Länder, the role of the Federal Office of Justice in this field is limited to collecting statistical data, and gathering and spreading any relevant information.

Within the Federal Criminal Police Office (Bundeskriminalamt, hereinafter referred to as "the BKA"), international mutual assistance in criminal matters is assigned to Division ZD, which incorporates the SIRENE Office and the Interpol NCB. These two units share 24/7 and language services. Interpol NCB is responsible for all international searches except SIS alerts (i.e. it also deals with EAW-based alerts concerning Member States not participating in the SIS).

2.2 THE LEGAL BASIS

Specific provisions on EAW procedures are to be found in Part VIII - "Assistance to Member States of the European Union in extradition and transit matters" - of the Law on International Assistance in Criminal Matters (Gesetz über die internationale Rechtshilfe in Strafsachen, hereinafter referred to as "the IRG"). This part of the IRG was redrafted in its entirety by Law of 20 July 2006² further to the Judgment of the Federal Constitutional Court of 18 July 2005³. It has to be noted that, pursuant to Section 78(1) of the IRG, *"to the extent that this part (Part VIII) does not contain any special provisions, the remaining provisions of this Act shall apply to extradition and transit matters among the Member States of the European Union"*.

¹ Pursuant to Section 74(1) of the IRG, the Federal Ministry of Justice shall act with the consent of the Federal Foreign Office.

² Federal Law Gazette Year 2006 Part I page 1721.

³ The Framework Decision on the EAW was originally transposed into German Law by Act of 21 July 2004. This Act was declared unconstitutional by the Judgement of 18 July 2005.

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The following are also of relevance:

- Declaration made by the Federal Republic of Germany concerning the incorporation of the Framework Decision on the EAW into domestic law, specifically regarding Article 31(2), subparagraph 4 thereof, in 12509/06, according to which *"the multilateral agreements and conventions referred to in Article 31(1) remain alternatively applicable provided that they offer the possibility of going beyond the aims of the European arrest warrant, that they contribute towards simplification or streamlining of the procedures and that the Member State in question also continues to apply them. The same applies to bilateral agreements which the Federal Republic of Germany has entered into with individual Member States"*.
- Guidelines for Criminal Proceedings and Proceedings to Impose a Regulatory Fine (hereunder referred to as "RiStBV") and Guidelines on International Communications in Criminal Matters (hereinafter referred to as "RiVAsT"), which are binding on public prosecutors.

3. ORGANISATION AND PRACTICES - AS ISSUING MEMBER STATE

In 2007 Germany issued 1785 EAWs. In 2007 and 2008 (until 31 August), 901 persons were surrendered to Germany on the basis of an EAW.

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3.1. THE DECISION TO ISSUE

The authority competent to issue an EAW, in both prosecution and conviction cases, is the Public Prosecutor at the Regional Court (the "StA") competent for the underlying criminal proceedings. In a limited number of cases where either the Public Prosecutor at the Higher Regional Court (the "StAOLG") or the Federal Prosecutor General (Generalbundesanwalt) are responsible for the prosecution or for the execution of a custodial sentence, they may issue an European Arrest Warrant¹. In cases of enforcement of a judgment on a juvenile, the EAW must be issued by the court².

There is no special procedure whereby the decision to issue an EAW is taken. Provided that penalty thresholds as laid down in the Framework Decision are reached and that a domestic arrest warrant has been issued, the StA decides on a case-by-case basis whether to issue an EAW or not, with adherence to the principle of proportionality. In that connection, during the interviews it was noted that a proportionality test is already applied when issuing a domestic arrest warrant.

It was explained to the expert team that, in practice, if statutory penalty thresholds are met, a person that is alerted for arrest in Germany is at the same time alerted for arrest in all Member States, Iceland, Liechtenstein, Norway and Switzerland, unless there are reasons to believe that he is in Germany. In such cases, if the decision is taken not to issue an international search for the purpose of arrest, an alert for the purpose of communicating the residence or domicile of the individual is entered in the SIS³.

¹ 12509/06 - Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States of the European Union (2002/584/JI), specifically: Notification under Article 34(2) of the Framework Decision concerning incorporation into domestic law reads: "... *Re Article 6(3) of the Framework Decision: Under Article 6 the competent judicial authorities are the Ministries of Justice of the Federal Republic and of the Länder. As a rule, these have transferred the execution of the powers resulting from the Framework Decision for the submission of outgoing requests (Article 6(1)) to the public prosecutor's offices of the Länder and to the regional courts ...*".

² According to the information provided by the German authorities, this case had not occurred yet.

³ Art. 98 of the Schengen Implementation Agreement. According to the information provided, this standing practice will be integrated into and expressly formulated in a new version of the RiStBV.

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3.2 VERIFYING THE POSSIBLE EXISTENCE OF MULTIPLE REQUESTS

Every public prosecutor has access to a central register of criminal proceedings for prosecutors (Zentrales Staatsanwaltschaftliches Verfahrensregister), in which every ongoing investigation is registered.

Information on the EAWs concerning a given individual distributed via Interpol and/or SIS may be provided by the BKA. In this connection it was noted that the BKA files all EAWs issued by the German authorities against the same person. Pursuant to international arrangements, only the EAW-based alert that was entered first in the SIS¹ remains active. In the case of multiple requests via Interpol, all the alerts pertaining to the same person are processed individually and independently of each other.

3.3 THE COMPLETION OF THE FORMS/COURT PAPERS

An EAW may be issued by using the form provided for as standard form no. 40 in the RiVSt. The completion of the EAW form is the sole responsibility of the competent public prosecutor.

It was explained to the evaluation team that most public prosecutors in Germany are of the opinion that there is no need for producing any additional guidance on the completion of the EAW form, since the latter is deemed to be self-explanatory and easy to fill in. In this regard, it has to be noted that no recurrent issues were reported during the interviews. According to the information provided, however, a few Länder have produced such additional guidance, which has been circulated via the German EJM contact points².

There is no catalogue of standard interpretations agreed at national or regional level in respect of prescribed elements of the EAW form.

¹ Although access to SIS is granted to all public prosecutors, direct access is not possible yet for technical reasons, and information on whether an alert for a specific person has been entered in the system may be obtained only via the SIRENE bureau.

² Furthermore, according to the information provided, instructions on this issue will be also integrated into a new version of the RiVSt.

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During the visit to the GenStA Koblenz, the expert team was shown a remarkable interactive software developed in cooperation with other Länder and operational in Rheinland-Pfalz since 2007, which allows to issue an EAW electronically while providing assistance during the drafting process.

3.4 TRANSLATION OF THE EAW

The translation of the EAW is a matter for the issuing StA.

EAWs are issued by the German authorities in German. Working translations into English for the needs of the SIS are ensured by the SIRENE bureau when producing the A-M forms. As to Interpol channels, in principle the information is entered in German. As a rule EAWs are translated following notification that the requested person has been arrested in another Member State. A "preventive" translation is produced only in those cases where there are indications of the whereabouts of the requested person and the decision is taken to forward the EAW directly to the executing judicial authority.

According to the information provided, the issuing authorities in Germany have private translation services at their disposal and do not face special difficulties in relation to this issue.

3.5. TRANSMISSION OF THE EAW

It is for the issuing StA to decide how the EAW is circulated. Actually EAWs are circulated mainly via SIS and Interpol; therefore the EAW itself is only transmitted to the executing authority by the StA following notification of the arrest of the requested person. However, the issuing public prosecutor may decide to transmit the EAW directly to the competent foreign authority where there is strong evidence that the requested person is located in a certain Member State.

It is the issuing public prosecutor who determines the mode of transmission, taking account of the relevant provisions in the executing State. Use is made of the EJM Atlas to identify the competent executing authority in cases where it is not known.

No persisting difficulties arising from this issue were reported other than those derived from the very short deadline set by certain Member States for transmitting a language-compliant EAW.

No instance, however, was reported in which such deadline was not met.

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

There were reports in relation to Italy concerning the requirement set by the executing authorities to provide additional extensive evidential material, and the non-execution of EAWs issued against Italian nationals, on the ground that German law does not impose strict limits on the duration of the pre-trial detention. The German authorities also referred to a number of issues that regularly arise in cases with the United Kingdom, namely that the arrest of the requested person is not possible until a language-compliant EAW duly certified by the Serious Organised Crime Agency (SOCA) is available, and the practice of requesting extremely detailed additional information and/or changes in the EAW, which in their view is not compatible with the Framework Decision on the EAW¹.

If any difficulty arises in the execution of an EAW, a solution is sought preferably by way of bilateral contacts (involving the EJM where necessary). According to the information provided, in general terms this method has proved to be appropriate to the issue. During the visit to the GenStA Berlin, the expert team was informed that a visit had been organised to Spain in order to discuss with the authorities charged with the execution of EAWs practical problems that had arisen in bilateral relations. A similar visit to Poland was planned to take place soon after the evaluation visit.

3.7. REQUESTS FOR FURTHER INFORMATION MADE BY EXECUTING MEMBER STATES.

No instance was reported in which the German authorities had been unable to comply with requests for further information received from foreign authorities, except in some cases where a picture of the requested person was requested (however, this did not have an impact on the surrender procedure).

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

The public prosecutor who issued the EAW is the authority competent to provide any necessary undertaking in this connection.

¹ The need to wait sometimes for the actual arrest of the requested person due to the fact that the Extradition Unit of the London Metropolitan Police is overcharged with work, was also noted.

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Germany considers the 1983 Council of Europe Convention on the Transfer of Sentenced Persons as the legal regime applicable for the return of a national of the executing State sentenced by a German court¹. Therefore the consent of the requested person is required for his return².

No issues were reported in this regard.

3.9. YOUTH SURRENDERS AND CORRESPONDING GUARANTEES

At the time of the evaluation visit no problems had been encountered in this respect.



¹ The expert team notes that, according to Article 25 of the Council Framework Decision 2008/909/JHA of 27 November 2008 (which must have been implemented by Member States by 5 December 2011), on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (published during the preparation of this report), *"Without prejudice to Framework Decision 2002/584/JHA, provisions of this Framework Decision shall apply, mutatis mutandis, to the extent they are compatible with provisions under that Framework Decision, to enforcement of sentences in cases where ..., acting under Article 5(3) of that Framework Decision, it (a Member State) has imposed the condition that the person has to be returned to serve the sentence in the Member State concerned, so as to avoid impunity of the person concerned"*.

Article 26 – Relationship with other agreements and arrangements, of the same Framework Decision, reads: *"1. Without prejudice to their application between Member States and third States and their transitional application according to Article 28, this Framework Decision shall, from 5 December 2011, replace the corresponding provisions of the following conventions applicable in relations between the Member States: - The European Convention on the transfer of sentenced persons of 21 March 1983 and the Additional Protocol thereto of 18 December 1997..."*.

² Pursuant to Article 6(2) of the Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (hereunder referred to as "the Council Framework Decision 2008/909/JHA"), the consent of the sentenced person shall not be required where the executing State is: (i) the Member State of nationality in which the sentenced person lives, or (ii) the Member State to which the sentenced person will be deported once he or she is released from the enforcement of the sentence on the basis of an expulsion or deportation order included in the judgment or in a judicial or administrative decision or any other measure consequential to the judgment; or (iii) the Member State to which the sentenced person has fled or otherwise returned in view of the criminal proceedings pending against him or her in the issuing State or following the conviction in that issuing State.

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3.10. GENERAL COMMUNICATIONS WITH THE EXECUTING MEMBER STATE

It emerged from the interviews that all available channels, as deemed appropriate by the issuing public prosecutor, are used for communicating and exchanging information with foreign authorities. The expert team noted the German issuing authorities' preference for establishing direct contacts with their counterparts abroad, although use is also made of SIRENE/Interpol channels, mainly where language difficulties or reasons of urgency concur, as well as of the EJN and Eurojust.

According to the replies to the questionnaire, the German authorities consider that there is room for improvement as regards the flow of information provided by other Member States' executing authorities on the progress of EAW procedures, including legal challenges, the time horizon to be expected, the surrender decision and the time spent in custody. In particular Italy and Spain were mentioned in this regard. There were also reports in relation to cases with Spain where more than one EAW had been issued against the same person, in which a timely answer to questions related to the issue of speciality had not been given.

3.11. THE MECHANICS OF THE SURRENDER (INCLUDING TEMPORARY SURRENDER) OF REQUESTED PERSONS

The public prosecutor who issued the EAW is legally responsible for the surrender process. The Land Criminal Police Office (Landeskriminalamt - LKA) is entrusted with all practical arrangements for the physical surrender. Contacts between the LKA and the respective foreign authority are established via the BKA.

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No major problems in relation to this matter were identified by the German authorities. The expert team was advised, however, that in a number of cases meeting the statutory time limits proved to be troublesome. In that connection, it was noted that the final surrender decision as well as the confirmation of the pick-up details were sometimes transmitted too late by the Spanish authorities. Information on similar cases was given in relation to Italy. Difficulties derived from particular requirements imposed by the United Kingdom were also reported; in this regard the German authorities' comments focused on the following issues: the request to book the flights within the time allowed by law for the requested person to challenge the surrender decision, so that, if such a decision does not become final, the reservation cannot be cancelled anymore and the costs incurred are wasted; the person surrendered may only be picked up at Heathrow airport, which makes it more difficult to find a suitable flight; UK airlines cannot be used for the transfer. As for the Eastern European Member States, cooperation was reported to be excellent.

3.12. THE MECHANICS OF THE SURRENDER IN RESPECT OF REQUESTED PROPERTY/TIMELIMITS/GUARANTEES

According to the information provided, at the time of the evaluation visit the number of cases of EAWs issued by the German authorities with a request to seize and hand over property was limited. No issue in connection with this matter was reported.

3.13. CONFLICT OF EAWS/EXTRADITION REQUESTS/ONWARD SURRENDER

At the time of the evaluation visit, very few cases of conflicting EAWs/extradition requests had been reported. According to the information provided, most of them had been solved satisfactorily (in some cases involving the EJM).

No problematic experience in connection with onward surrender cases was described.

3.14. EXPENSES

No issues were reported in respect of the payment of expenses associated with EAW procedures.

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3.15. MISCELLANEOUS COMMENTS

Replacement of pre-existing alerts with EAWs

According to the information provided, in the process for the extension of the SIS, all public prosecutors who had not yet adapted their alerts to EAWs were asked by the BKA - with the support of the Federal Office of Justice - to do so. Information was given that the BKA had not checked whether all public prosecutors had complied with this, although, in the view of the German authorities, practice with arrests in other Member States based on German SIS alerts showed that a very limited number of "old cases" remained.

Accessory surrender

German legislation allows adding accessory offences when issuing an EAW. However, there is no practical experience of such cases¹.

4. ORGANISATION AND PRACTICES - AS EXECUTING MEMBER STATE

In 2007 Germany surrendered 571 persons based on an EAW, 325 of whom consented to surrender and 245 did not. In the same period the German authorities refused the execution of 104 EAWs².

No information was available about the total number of EAWs received by the German judicial authorities during the 2007 calendar year. In its replies to the questionnaire on quantitative information on the practical operation of the European arrest warrant³, Germany reported 7248. This figure, however, corresponds to the total number of EAW-based alerts entered in the SIS by other Member States during such period⁴.

¹ Only two cases were recorded, both in Baden-Wuerttemberg.

² Detailed information on the grounds for refusal is provided in chapter 4.6 below.

³ 10330/08.

⁴ For the same period Germany reported a total of 3899 EAW-based requests received via Interpol from Member States that did not participate in the SIS.

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During the evaluation visit information was also given with regard to 2008, according to which until 31 August Germany had received 592 EAWs and surrendered 461 persons based on an EAW, 270 of whom had consented to surrender and 191 had not. In this period the German authorities refused the execution of 115 EAWs¹.

4.1 RECEIPT PROCEDURES

The authority competent for the receipt of an EAW is the Public Prosecutor at the Higher Regional Court (StAOLG) in whose jurisdiction the requested person is located².

Germany accepts EAWs in German and in any official language of any issuing State which recognises EAWs in German issued by the German judicial authorities³. The expert team was advised, however, that in urgent cases German public prosecutors can start to work with the EAW in the language of the issuing State if they understand this language sufficiently (in practice: English).

In those cases in which the requested person is arrested on the basis of an alert, a language-compliant EAW must be received within 40 days of the arrest of the requested person, otherwise the latter will be released (although he can be arrested again upon receipt of the EAW duly translated). Several judges and prosecutors interviewed complained about the poor quality of translations of EAWs being sent to Germany.

¹ According to the information provided, there were 16 cases in which a decision to execute the EAW had been made, but the surrender of the requested person had been postponed due to the existence of proceedings against him in Germany.

² 12509/06 - Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States of the European Union (2002/584/JI), specifically: Notification under Article 34(2) of the Framework Decision concerning incorporation into domestic law reads: "... *Re Article 6(3) of the Framework Decision: Under Article 6 the competent judicial authorities are the Ministries of Justice of the Federal Republic and of the Länder. As a rule, these have transferred ... the powers to meet incoming requests (Article 6(2)) to the chief public prosecutor's offices of the Länder.*"

³ 12509/06 - Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States of the European Union (2002/584/JI), specifically: Notification under Article 34(2) of the Framework Decision concerning incorporation into domestic law. Notification relating to Article 8(2) of the Framework Decision.

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As to the means of transmitting an EAW to Germany, fax transmission is accepted for the purpose of the arrest of the requested person and for initiating proceedings, provided that the origin is verifiable. In case of doubt concerning the authenticity of the request, this is verified by the receiving public prosecutor by contacting the issuing authority directly. According to the information provided, so far e-mail transmission has been seldom used. For the decision on the admissibility of the surrender, some courts require the original EAW while others do not. Pursuant to the implementing law, SIS-alerts are deemed to be equivalent to EAWs, provided that they include the necessary information¹.

4.2 INVESTIGATIONS CONCERNING THE LOCATION OF THE REQUESTED PERSON

In cases of direct transmission where the EAW provides information on the possible whereabouts of the requested person, the public prosecutor instructs the local police to verify such information and, if the person is not found immediately, carry out the appropriate searches² in order to locate and arrest him.

In cases of EAW-based search requests transmitted via Interpol or the SIS, the BKA checks all accessible databases, such as the central foreigners register and the central register of ongoing investigations, to find out whether there is any indication that the requested person may be located in Germany. According to the information provided, the BKA has no access to the population registers in the Länder. If, as a result of such a check, the whereabouts of the requested person are established, the search requests, together with a translation into German, are forwarded via the LKA to the competent public prosecutor (who will proceed as stated above), otherwise - if the search request is not based on a SIS alert - a search notice is issued in the Police Information System - INPOL (accessible to every German police officer) and in the Federal Central Criminal Register.

¹ Section 83a(2) of the IRG.

² Section 18, second sentence, of the IRG reads: "*No special request is required for the ordering of specific search methods*".

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4.3 ARREST PROCEDURES/FIRST HEARING

The requested person may be arrested following a written order of the OLG ("*extradition arrest order*"¹), on the basis of an EAW ("*extradition detention*"²), a SIS-alert, or an Interpol diffusion ("*provisional extradition detention*"³). Arrest is handled by the local police authorities of the place where the requested person is located, with the assistance of specialised police units when necessary.

Pursuant to the IRG, an *extradition arrest order* may be issued where there is a risk of the requested person absconding or tampering with evidence⁴. An *extradition arrest order* is not issued "*if it appears from the outset that extradition will not be granted*"⁵.

If the conditions for an *extradition arrest order* exist, any police officer who discovers a requested person is entitled to apprehend him without a prior order by the OLG ("*provisional arrest*"⁶).

Following arrest, the requested person must be brought without delay, at the latest on the day following his apprehension, before the nearest Local Court (Amtsgericht - AG). At the latest on the day after having been brought to the court, the individual must be examined by the magistrate with regard to his personal circumstances and especially with regard to his nationality. The requested person will be also asked whether, and if so on what grounds, he wishes to object to the surrender or to the *extradition arrest order*/provisional arrest. If no objections to the surrender are raised, the magistrate must advise the requested person with regard to the possibility of a simplified procedure and its legal consequences. Any statement by the requested person will be incorporated in the record.

¹ Section 17 of the IRG.

² Section 15 of the IRG.

³ Section 16 of the IRG.

According to paragraph (1).2, provisional extradition detention may also be ordered without any EAW or SIS/Interpol alert having been received where "*a foreigner, on the basis of certain facts, is under strong suspicion of an offence which may lead to his extradition*". The expert team notes that paragraph 1(1) remedies the too short time limit (6 hours) of Article 41 of the Schengen Application Convention for the receipt of an EAW in case of arrest after hot pursuit in Germany.

⁴ Section 15(1) of the IRG.

⁵ Section 15(2) of the IRG.

⁶ Section 19 of the IRG.

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Where the examination shows that the detainee is not the person identified in the EAW/EAW-based alert, the magistrate will order his release; otherwise he will be kept in detention. There is no appeal against the decision made by the AG magistrate. The Higher Regional Court (Oberlandesgericht - OLG) rules on any objections raised by the requested person to his detention.

The *extradition arrest order* will be suspended if the requirements for the *extradition detention* or for the *provisional extradition detention* no longer exist, or the StAOLG applies for it. The OLG may also suspend the execution of the *extradition arrest order* if other coercive measures less intrusive than detention ensure that the purpose of the latter will be achieved. Pursuant to the IRG, the OLG must decide about the continuation of the detention within two months of the date on which the requested person was detained or of the last decision concerning the continuation of the detention.

According to the information provided, in practice, the requested person remains in almost all cases in detention. However, the defence lawyers interviewed indicated that they observed differences of attitude between the different Länder towards the application of alternatives to detention.

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

The EAW is checked following receipt by the StAOLG to assess if there is a basis for the request to be granted, with a view to deciding whether to request the OLG to issue an *extradition arrest order* or not¹. Furthermore, it is for the StAOLG to establish whether the EAW meets the formal requirements, the information provided is complete (and if not, to ask for the necessary supplementary information), and the material conditions for granting surrender are fulfilled, as a basis for its own decision on whether or not to invoke any *obstacles to granting extradition*² and to prepare the decision of the Higher Regional Court³. There is no specific best-practice guidance for such a check.

¹ It should be noted that extradition detention may not be ordered where it appears from the beginning that surrender will not be granted. See chapter 4.3.

² See chapter 4.5 below.

³ See chapter 4.5 below. Section 13(2) of the IRG reads: "*The public prosecutor at the Higher Regional Court shall prepare the decision regarding extradition ...*".

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Pursuant to the IRG¹, the surrender will not be declared permissible if the EAW form does not contain the necessary information as described in the Framework Decision². In that connection, there is a statutory obligation to give the requesting authority the opportunity to provide additional information prior to the OLG decision on the permissibility of the surrender³, if it is considered that particulars supplementary to the EAW are necessary⁴. According to the information provided, where the court deems it necessary to ask for such additional information, this is done through the StAOLG.

As to the most common grounds for requests for additional/supplementary information, the German authorities reported instances of unclear description of the offence underlying the EAW, convictions *in absentia* (in order to get information either on the conditions under which the judgment *in absentia* was rendered or on the retrial guarantee), and cases involving German nationals or foreigners with habitual residence in Germany (either to get enough information on the circumstances of the underlying offence in light of the relevant provisions concerning these groups of persons, or to obtain a return guarantee). Such requests are forwarded to the issuing authority either directly or via SIRENE/Interpol. The involvement of the EJM contact points in helping to solve any outstanding difficulties in that connection was noted by the officials interviewed.

4.5 THE SURRENDER DECISION/GUARANTEES REQUIRED AND GUARANTEES PROVIDED

The StAOLG in the district where the requested person has been arrested or first located is the competent authority to determine surrender pursuant to an EAW. The procedure leading to such a decision varies depending on whether the requested person consents to surrender or not.

¹ Section 83a.

² According to the statistical information provided during the visit, an EAW was refused on the grounds that the formal requirements were not met in 6 and 15 cases in 2007 and 2008 (to 31 August) respectively. See chapter 4.6 below.

³ See chapter 4.5 below.

⁴ Section 30(1) of the IRG.

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Non-consented cases

The procedure is organised in three steps. Firstly the StAOLG makes a decision on whether or not to invoke any "*obstacles to granting extradition*" as described in Section 83b of the IRG; the StAOLG is under a statutory obligation to give reasons for the decision not to invoke any such obstacles. Then the case is brought to the OLG for: (i) review of the StAOLG's decision, and (ii) a decision on whether the surrender is "*permissible*" or not; the decision of the OLG is not subject to review¹. Afterwards the file goes back to the StAOLG for final decision on granting the surrender; in taking such a decision the StAOLG is legally bound by refusal decisions of the OLG².

It was explained to the expert team that, in reviewing the StAOLG decision, the powers of the OLG are rather limited and focus mainly on whether the public prosecutor committed any legal mistake or abused his discretionary powers.

During the interviews, the expert team noted that there is no common understanding as to whether, in cases in which the StAOLG is of the opinion that the EAW is not permissible, a decision by the OLG is necessary or the EAW may be refused by the public prosecutor himself without referring the case to the court.

The expert team also noted that an oral hearing before the OLG is not required for the latter to prepare its decision³.

According to the information provided, the average duration of the surrender procedure in non-consented cases (time between the arrest and the decision on surrender) was 40,4 and 32,6 days in 2007 and 2008 (to 31 August), respectively. The 90-day time limit was not complied with in 27 cases (of which 7 exceeded the time limit within a 10 %-margin (< 99 days)) in 2007, and in 7 cases in 2008 (to 31 August).

¹ Section 13(1) of the IRG.

² Section 12 of the IRG reads: "*Except in a case covered by Section 41* ("simplified extradition": see below), *extradition may be granted only if the court has rendered a decision admitting it*".

³ Section 30(3) of the IRG, under the heading "*Preparing the decision*" reads: "*The Higher Regional Court may hold an oral hearing*".

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Simplified procedure in consented cases

A court decision is not needed for granting surrender if the requested person consents to it. Such consent may be given at any stage of the procedure, provided that the requested person has been duly informed by the magistrate of the competent AG of the consequences thereof and, specifically, that the consent cannot be revoked and that there will be no judicial review. As stated above¹, this may take place already when the requested person is brought to the AG following arrest, provided that he raises no objection to the surrender, or at a later stage, on the application of the StAOLG². The consent becomes legally effective only if it is put on record.

According to the information provided, the average duration of the surrender procedure in consented cases (time between the arrest and the decision on surrender) was 14,3 and 15,5 days in 2007 and 2008 (to 31 August), respectively.

GUARANTEES REQUIRED AND GUARANTEES PROVIDED

Germany demands guarantees in the three cases listed in Article 5 of the Framework Decision.

According to the information provided, guarantees were given in practically the totality of cases in which they were required³. Compliance with these guarantees is monitored by the StAOLG, usually by means of a cursory review after a certain time. In that connection, it was explained to the experts that no specific systems for recording the fact of their observance or breach have been established.

As to *in absentia* cases in particular, some of the authorities interviewed stressed that sometimes difficulties had arisen from the fact that only a copy of the relevant provisions, but not an unequivocal guarantee that the retrial was possible, had been forwarded by the issuing authorities. The experts were also informed that meetings had taken place with the French authorities to discuss certain procedural issues of surrender in *in absentia* cases.

¹ Chapter 4.3.

² Section 41(4) of the IRG.

³ See chapter 4.6 below.

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4.6 REFUSALS TO SURRENDER

Under German law the grounds for non-execution of an EAW may be classified in two categories:

- *obstacles to granting extradition*, which may lead to refuse the execution of the EAW and are checked by the StAOLG¹, and
- grounds for declaring the surrender non permissible, which mandatorily lead to refusal of the execution of the EAW and are checked by the OLG.

As already mentioned, Germany refused execution of an EAW in 104 and 115 cases in 2007 and 2008 (to 31 August) respectively. The following table lists the grounds for non-execution pursuant to German law, detailing which of them were applied according to the information provided:

	2007	2008 (31.08)
OBSTACLES TO GRANTING EXTRADITION (Section 83b)		
Existence of domestic proceedings for the same act	5	1
Decision not to initiate criminal proceedings for the same acts or to terminate proceedings already initiated for the same acts	6	-
Request for extradition made by another State to be given priority	-	1
Reciprocity	-	-
Foreigner with habitual residence in Germany - prosecution cases: conditions for non-surrender of German nationals are met	-	-
Foreigner with habitual residence in Germany - conviction cases: no consent	11	10
Surrender would result in breach of principles set forth in Article 6 of the Treaty on European Union (Section 73.2)	4	2

¹ As to the limited scope of the revision of the StAOLG's decision by the OLG, see chapter 4.5 above.

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NON-PERMISSIBILITY OF SURRENDER		
German national - prosecution cases: no return guarantee (Section 80 para 1 No. 1)	2	2
German national - prosecution cases: no relevant connection with the issuing Member State, relevant connection with Germany (Section 80 para 1 and 2)	6	-
German national - prosecution cases: no relevant connection with the issuing Member State, no relevant connection with Germany, prevailing legitimate expectation not to be extradited (Section 80 para 2)	-	-
German national - conviction cases: no consent (Section 80 para 3)	55	39
Offence carries less than 12 months' imprisonment (Section 81 No.1)	1	1
Sentence to be executed amounts to less than four months (Section 81 No.2)	2	1
Acts not punishable under German law ("outside" list offences) (Section 81 No. 3)	2	-
Requested person already finally tried by another Member State (Section 83 No. 1)	1	7
Requested person under the age of criminal majority (Section 83 No. 2)	-	-
Judgment <i>in absentia</i> without complying with the requirements pursuant to Article 5(1) of the Framework Decision (Section 83 No. 3)	2	4
Life sentence not subject to review (Section 83 No. 4)	-	-
Incompleteness of the EAW (Section 83a para 1)	6	15
Person sought not found in Germany	1	4
Persecution because of the race, religion, citizenship, association with a certain social group or political beliefs (Section 6 para 2)	-	-
Concurrent jurisdiction - Statute of limitations (Section 9 No. 2)	-	27
Concurrent jurisdiction - Amnesty (Section 9 No. 2)	-	-
TOTAL	104	114¹

¹ A case in which Germany did not consent to the subsequent surrender of the requested person to another Member State has to be added.

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Questions were raised by the experts in relation to the functioning in practice of certain specific grounds for non-execution, namely in relation to those envisaged in Sections 81.2 (scope of the EAW), 83b(1)d) (reciprocity) and 73 (breach of principles set forth in Article 6 of the Treaty on European Union) of the IRG.

With regard to Section 81.2, the question arose during the evaluation visit as to how it was to be interpreted, since in the view of the experts its wording is not clear enough when stating that in conviction cases the surrender shall be permissible only if "... *the custodial sentence to be executed amounts to at least four months*". More precisely, the question was put whether this provision should be understood as referring to the duration of the sentence imposed or to the time to be actually served. The officials interviewed indicated that there is no common position on this issue at the courts level.

Section 73, second sentence, of the IRG reads as follows: "*In the case of requests pursuant to Parts VIII, IX and X, the provision of legal assistance shall be inadmissible where execution would be contrary to the principles set forth in Article 6 of the Treaty on European Union*". According to the information provided, this provision has been applied in cases in which the German judicial authorities deemed that a minimum proportionality standard had not been observed in issuing the EAW. In that connection, the expert team was advised that, according to the Constitutional Court case law, in deciding on the permissibility of a surrender based on an EAW, the OLG must examine whether the harm caused by the surrender of the requested person is so disproportionate that it would not be in compliance with the principles of Article 6 TEU.

According to Section 83b(1)d) of the IRG, the execution of an EAW may be subject to the condition of reciprocity¹. The officials interviewed explained that this provision was intended to be used in exceptional cases in relation to Member States which had implemented the Framework Decision in a very restrictive way. No rejections on the basis of Section 83b(1)d) have been reported in practice.

¹ Section 83b(1)d) of the IRG reads: "*The granting of extradition may be refused where... d) it is neither on account of a duty to extradite under Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ EC L 190 p. 1) nor on account of an assurance provided by the requesting State or for other reasons that it can be expected that the requested State would grant a similar German request*".

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4.7 OWN NATIONALS AND YOUTHS ARREST AND SURRENDER ISSUES

Own nationals (and foreigners with habitual residence in Germany)¹

Germany opted for regulations applying both Article 4(6) and Article 5(3) of the Framework Decision. These provisions have been transposed as mandatory grounds for refusal (i.e. as grounds for declaring the surrender not permissible²) for German nationals, and as optional grounds for refusal (i.e. as obstacles to granting surrender³) for foreigners who have their habitual residence in Germany, in both cases in connection with certain circumstances as described hereunder.

- Prosecution cases

Pursuant to the IRG, in prosecution cases the surrender of a German national is permissible only if a guarantee is given that the requested person will be offered to return to Germany, if he so wishes, to serve his sentence. The offence underlying the EAW must have a "*relevant connection*"⁴ with the issuing Member State, otherwise the surrender will be permissible only under the following conditions: i) the offence has no relevant connection with Germany; ii) the act constitutes an offence also under German law; and iii) where, the "*conflicting interests having been weighed in the concrete case, the legitimate expectation of the requested person that he would not be extradite does not prevail. In the weighing up, circumstances to be weighed and compared to each other shall include, in particular, the alleged offence, the practical requirements and opportunities of effective criminal prosecution and those interests of the requested person which are safeguarded as fundamental rights, taking into account the objectives connected with the establishment of a European Judicial Area*"⁵. Similar conditions apply to foreigners with permanent residence in Germany.

¹ According to the information available 92 and 78 German nationals/foreigners with habitual residence in Germany were surrendered on the basis of an EAW in 2007 and 2008 (to 31 August) respectively.

² Section 80 of the IRG.

³ Section 83b(2) of the IRG.

⁴ Section 80(1), second paragraph, of the IRG reads: "*As a general rule, the offence shall have a relevant connection with the requesting Member State if the act constituting the offence was committed as a whole or to a substantial extent in its territory and its result occurred there at least to a substantial extent, or if the act constituting the offence is a serious crime which is typically transnational in nature and which was at least in part also committed in its territory*".

⁵ Section 80(2) of the IRG.

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Germany regards the 1983 Council of Europe Convention on the Transfer of Sentenced Persons as the applicable legal basis for the return of the surrendered person¹.

- Conviction cases

Surrender shall be declared permissible only if the requested German national, after being instructed, gives his consent before a judge, to be recorded in writing². In the case of foreigners with permanent residence in Germany, surrender may be refused where the requested person expressly declares before a judge that he does not consent to surrender, and his "*legitimate interest in the domestic execution of the sentence*" prevails³.

Whether or not a foreigner residing in Germany is eligible for benefiting from these provisions (i.e. is to be considered as having his habitual residence in Germany), is assessed by the StAOLG in the light of the particular circumstances of the case. In that connection, during the interviews it was noted that no minimum time of residence in Germany is required, and that the determining factor for the public prosecutor's decision is whether the individual has become integrated or not, which is to be considered on a case-by-case basis. The decision of the ECJ of 17 July 2008 (C-66-08) has further elaborated on this issue.

¹ As to the changes introduced in these matters by the Council Framework Decision 2008/909/JHA, see footnote in chapter 3.8 above.

² Section 80(3) of the IRG.

³ Section 83b(2).b) of the IRG.

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In cases where a conviction EAW has been refused because the convicted German national or habitual resident in Germany did not consent to surrender, and where a German national or habitual resident in Germany has been surrendered for the purposes of prosecution under a return guarantee, an *ad hoc* request by the issuing Member State is required for the sentence to be executed in Germany. Section 58 of the IRG allows, under certain conditions¹, to keep the sentenced person in custody since the request for enforcement is received (or if prior to its receipt it has been requested by the issuing Member State) and until a decision on such request is taken. The sentence imposed in the issuing Member State is recognised and converted following the procedure established in the IRG². Pursuant to Section 54(1) thereof, the foreign decision shall be authoritative regarding the extent of the penalty to be imposed, although it may not exceed the maximum of the penalty which could be imposed for the offence in Germany. The expert team noted that in these cases the sentence will be declared enforceable even if the act forming the basis of it is not punishable according to German law, with a maximum of two years' imprisonment^{3, 4}.

As to the functioning of these provisions in practice, the German authorities reported that in relation to Poland the question had arisen whether the Polish authorities could give a return guarantee in cases of dual nationals (with a German and a Polish passport) or Polish citizens who reside in Germany. According to the information provided, bilateral consultations were going on at the time of the evaluation visit.

Youth surrenders

Only one issue was reported in connection with this subject: in a case with Hungary in which the offence underlying the EAW was the theft of three sunglasses, the surrender of the pregnant 15-year-old requested person was denied.

¹ Namely the following: (1) if there is reason for the suspicion that the sentenced person would remove himself from the proceedings on enforceability or from enforcement; or (2) if there is reason for the strong suspicion that in the proceedings on enforceability the sentenced person would in a dishonest manner obstruct the finding of the truth.

² Part IV- Assistance in the execution of foreign judgments, Sections 48 - 58.

³ Section 80(4) of the IRG.

⁴ The expert team notes that, according to Article 25 of the Council Framework Decision 2008/909/JHA, "*without prejudice to Framework Decision 2002/584/JHA, provisions of this Framework Decision shall apply, mutatis mutandis, to the extent they are compatible with provisions under that Framework Decision, to enforcement of sentences in cases where a Member State undertakes to enforce the sentence in cases pursuant to Article 4(6) of that Framework Decision, ..., so as to avoid impunity of the person concerned*".

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4.8 SPECIALITY

Renunciation of entitlement to the speciality rule is guided by similar provisions to those applicable to consent to surrender¹. Unlike extradition cases, the provision of a guarantee to ensure that the speciality rule is observed by the requesting Member State is not a condition for surrender to be granted².

No difficulties had been experienced in relation to this matter.

4.9 ONWARD SURRENDER/EXTRADITION

At the time of the evaluation visit only one case was recorded, in which Germany did not consent to the subsequent surrender.

4.10 TEMPORARY/CONDITIONAL SURRENDER

Temporary surrender is decided by the StAOLG after consultation with the public prosecutor who conducts the domestic investigation or is responsible for the execution of the sentence. A request from the issuing authority is required to that end.

At the time of the evaluation visit the number of these cases was very small. No difficult experiences were recorded.

4.11 THE MECHANICS OF SURRENDER (INCLUDING TEMPORARY AND CONDITIONAL SURRENDER) OF REQUESTED PERSONS

The StAOLG is legally responsible for organising the surrender process in coordination with the issuing Member State's competent authority³. The LKA is charged with all practical arrangements for the conveyance of the requested person.

¹ Section 41(2) of the IRG.

² Section 82 of the IRG.

³ Section 13(2) of the IRG reads: *"The public prosecutor at the Higher Regional Court ... shall execute the extradition request if it is granted"*.

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The German authorities reported 291 and 235 cases in 2007 and 2008 (to 31 August) respectively, in which the surrender took place after the 10-day limit envisaged in Article 23(2) of the Framework Decision. The officials interviewed explained that this time limit was proving to be problematic due to the size of the country and the federal structure of Germany, in relation to the system used for the transport of prisoners. In that connection it was noted that the German authorities rely on a country-wide system of transport for prisoners used both for domestic files and for surrender/extradition procedures. The German authorities maintained that the transport of single prisoners would be far too expensive and staff-intensive. Cases of surrender by air were also reported in which the 10-day limit had not been sufficient due to the difficulties encountered by the issuing Member State's authorities in booking the required number of seats on planes.

No case was recorded in which the person had to be released in accordance with Article 23(5) of the Framework Decision.

4.12 CONFLICT OF EAWS/EXTRADITION REQUESTS

According to Section 83b(1)c) of the IRG, the execution of an EAW may be refused where the request for surrender made by another Member State or the request for extradition to a third State is to be given priority. There is no specific provision in the IRG, however, laying down the criteria according to which the decision on precedence has to be taken. According to the information provided, in practice such conflicts are decided by the German authorities based on the same criteria as those provided for in Article 16 of the Framework Decision.

4.13 EXPENSES

At the time of the evaluation visit no issues had been reported in respect of the payment of expenses associated to EAW procedures in which Germany acted as executing Member State.

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4.14 MISCELLANEOUS COMMENTS

Prohibitive validity flags

When checking an incoming Article 95 alert, the SIRENE bureau may, on its own, add a restrictive flag in a number of cases where surrender is obviously not permissible. This covers instances of German nationals where there is a relevant connection with Germany, double criminality, minors younger than 14 years old and statute of limitations in cases of concurrent jurisdiction. In case of doubt, the Federal Office of Justice is consulted. The officials interviewed explained that no protocol for processing these cases has been established so far on account of the limited number of instances in which a validity flag was issued on this basis.

Prohibitive validity flags are also added following an announcement by the German executing authority that the EAW underlying the SIS alert has been refused, and in those cases in which the issuing Member State does not withdraw the alert after the requested person has been surrendered.

Accessory surrender

Under German law¹ surrender is permitted on the basis of an EAW in respect of offences which do not meet the penalty thresholds laid down in the Framework Decision.

Transit cases

Germany designated the StAOLGs as the authorities responsible for receiving transit requests. The experts noted that, pursuant to the IRG, the deadline for making a decision is 30 days after the request has been received, which, in their view, may give rise to difficulties in complying with the prescribed time limits for surrender of the requested person. According to the German authorities, the StAOLG always takes into account any factual necessity for a quick decision.

5. TRAINING PROVISION

The "Deutsche Richterakademie" (German Judicial Training Academy) offers annually specific courses on international legal cooperation in criminal matters. Judges and prosecutors may also attend the courses offered by the European Law Academy. Participation in such courses is open to officials from other Member States, and officials and academics from other Member States are regularly invited by both institutions for presentations.

¹ Section 78 in connection with Sections 3 and 4 of the IRG.

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In-house training on EAW issues is regularly organised for staff working at the BKA.

In each Land, a public prosecutor responsible for extradition and EAW cases within the StAOLG has been designated as EAJ contact point. The German EAJ contact points meet once a year to discuss matters of common interest.

Once a year Niedersachsen organises training on international matters for public prosecutors coming from all Germany. Also regional meetings of public prosecutors take place on a regular basis where, among others, EAW-related matters are discussed. According to the information provided, where appropriate, liaison magistrates, foreign officials and Germany's national member in Eurojust take part in these meetings.

The officials responsible for mutual legal assistance in the Federal Ministry of Justice, the Ministries of Justice of the Länder and the Federal Office of Justice meet biannually, to discuss, inter alia, EU legislation developments and their impact on German law including all EAW matters; representatives of the Federal Ministry of the Interior, the BKA and the Ministry of Foreign Affairs may also attend these meetings.

As to the dissemination of good practices, it was explained to the expert team that the Federal Office of Justice, based on the information provided by the authorities involved in EAW procedures, is able to identify and disseminate best practices if necessary. Important decisions are also disseminated among relevant authorities.

Language training is provided for the staff at the BKA. The "Deutsche Richterakademie" offers courses in English.

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6. DEFENCE PERSPECTIVES

The requested person may at any time during the proceedings have the benefit of the assistance of counsel¹; he must be informed of this right already being examined by the AG magistrate following his apprehension². The right to legal assistance as envisaged in the IRG implies that the requested person may privately seek the assistance of a lawyer at any stage of the proceedings. Otherwise a defence counsel will be assigned to him *ex officio* (and paid for by the State) only in the following situations: (i) where, due to the complexity of the case, assistance may be appropriate, (ii) it is apparent that the individual cannot himself adequately protect his rights, (iii) he is under 18 years of age³.

As to the functioning of these provisions in practice, the expert team had the opportunity to meet two representatives of the Bar, who complained that in the big majority of cases a defence counsel is not assigned *ex officio* (and paid for by the State) in EAW procedures, since, as a rule, these are not considered complex enough to justify mandatory legal assistance.

The lawyers interviewed confirmed that an oral hearing before the OLG almost never occurs. In that connection the expert team was advised that, in practice, such a hearing is in most cases considered unnecessary in view of the examination of the requested person by the AG magistrate (which, however, takes place at an early stage and usually without any lawyer participating in it), and the OLG tries the case upon the written statements of the defence counsel and the StAOLG.

The representatives of the Bar were critical about the fact that the OLG decisions are not subject to review. There was also criticism of the lack of any compensation mechanism in cases of unjustified detention.

At a more general level, the lawyers interviewed emphasised the need to have common procedural safeguards all over the European Union as a prerequisite for the principle of mutual recognition being fully applied. They also referred to the advantages of promoting the timely use of MLA requests as a less constraining alternative for an EAW in certain cases, e.g. for service of a summons at an early stage, instead of issuing an EAW based on an *in absentia* judgment at the end. The team shares these views.

¹ Section 40(1) of the IRG.

² Sections 21(2) and 22(2) of the IRG.

³ Section 40(2) of the IRG.

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7. CONCLUSIONS

The expert team would like to emphasise the high standards applied by Germany in organising the visit. The logistical support provided by the German authorities was outstanding, enabling the team to visit the relevant institutions at federal level and meet the authorities involved in the processing of EAWs in three different Länder. The team appreciated the quality of the persons interviewed and their readiness to provide answers to any questions posed by the experts. The information provided before and during the visit was noteworthy. All these factors together enabled the experts to get a thorough overview of the operation of the EAW in the Länder visited (Berlin, Hessen and Rheinland-Pfalz), although they cannot comment on the practices and procedures followed in the other Länder.

The members of the team were left with the impression that the operation of the EAW in Germany is successful and, in general terms, were extremely satisfied with the functioning of the EAW in this Member State in practice. However, in their view:

- (i) differences with the old extradition system are not sufficiently marked; even more, to a certain extent, in the German system the EAW appears to be conceived merely as an evolved simplified form of extradition and to be inspired by similar principles, namely as regards the system that guides decision-making when Germany acts as executing State;
- (ii) in certain aspects there is still room for further improvement of the system.

7.1. GENERAL CONCLUSIONS

Implementing legislation

7.1.1. Germany implemented the Framework Decision by adding Part VIII - "Assistance to Member States of the European Union in extradition and transit matters" to the IRG¹, which lays down a number of provisions on so-called "*extradition*" to and from another Member State. Such provisions contain specific rules on the EAW, but do not form a complete set of rules. Pursuant to Section 78 para (1) "*to the extent that this part does not contain any special provisions, the remaining provisions of this Act shall apply to extradition and transit matters among the Member States of the European Union*".

¹ See chapter 2.2 above.

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In the team's view, this way of implementing the EAW mitigates its differences with the traditional extradition system and does not help practitioners to understand that surrender on the basis of an EAW is not merely a slightly different variety of the classical extradition but a new form of assistance based on completely different principles. In this situation, the experts consider that there is a risk that the judicial authorities will fall back on extradition legislation and case-law when confronted with controversial cases, instead of developing specific solutions in line with the Framework Decision. In that connection it may be noted, for instance, that, during the interviews, opinions were expressed that Section 10(2) of the IRG (innocence plea)¹ may be applied in EAW cases; also, the authorities interviewed sometimes referred to examples or concepts under traditional extradition, whereas such examples or concepts were not of relevance to the EAW.

Procedures

7.1.2. The procedure laid down in the implementing law for the execution of incoming EAWs remains rooted in the old extradition system: after the decision by the court declaring the surrender permissible, a final decision by the public prosecutor ("*Bewilligung*") is required for the EAW to be executed; in making such a decision, the public prosecutor acts by delegation from the Ministry of Justice of the Land.

7.1.3. Differences in the way the implementing legislation is applied by the authorities of the Länder visited in relation to certain basic aspects of the procedure must be noted: whereas in Berlin and Hessen the execution of an EAW is sometimes refused by the StAOLG without bringing the case to the OLG, in Rheinland-Pfalz, on the same legal basis, each and every case is referred to the OLG for decision, even if the StAOLG believes that the EAW should not be executed. Differences as to the way relevant provisions are applied in the Länder other than those visited by the evaluation team were also referred to by the representatives of the Bar who were interviewed.

Practice

7.1.4. German practitioners assess positively the EAW. In their view, although the EAW gives rise to some problems in practice, these are very limited compared with those existing under the extradition system.

¹ Section 10(2) of the IRG reads: "*If special circumstances justify a review as to whether there is reasonable ground to believe that the accused has committed the offence with which he is charged, extradition shall be granted only upon presentation of the facts showing probable cause that the offence has been committed*".

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7.1.5. The expert team was left with the impression that EAW matters are dealt with quite efficiently in Germany, due to a great extent to the very pragmatic approach of the authorities involved.

7.1.6. That approach also has a positive impact on the relationship with other Member States. In this regard a number of practices have developed in Germany that, in the view of the expert team, should be commended, namely the following:

- (i) the flexible and informal approach of the German authorities as to the ways in which information is communicated and exchanged with their counterparts abroad;
- (ii) the extensive use of the mechanisms set up at European level to facilitate judicial cooperation between Member States, in particular the EJN, but also Eurojust whenever the case falls within its sphere of competence;
- (iii) the practice developed by the Public Prosecutor at the Court of Appeal in Berlin of organising visits to other Member States (Spain and Poland) in order to discuss directly with the authorities involved practical problems that arise in bilateral relations, to consider possible solutions and to draw up a common plan to prevent those problems becoming bigger and more frequent in the future. According to the German authorities, similar visits have been organised by other Länder with their neighbouring Member States.

7.1.7. Guidelines

The quality of the draft guidelines that were presented to the team (updated draft versions of the RiVASt and the RiStBV) should be underlined: being simultaneously very broad and yet straight to the point, they tackle important issues not always as evident as they should be (e.g. the recommendation to the issuing authorities to make a summary of facts no longer than 1/2 A4 page, and to call back all warrants from the very moment the person has been arrested).

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The experts noted, however, that such guidelines do not deal with each and every aspect relevant to the processing of EAWs, but, on the other hand, can be supplemented in every Land in a different way. In this connection, the team was informed (in Koblenz, Berlin and Frankfurt) that every StAOLG drafts internal guidelines and gives general instructions to the police on, for example, the way in which particular cases are to be dealt with.

7.1.8. Fiche Française

At the moment of the visit, the fiche available on the Council's website was dated 23 September 2004¹. In the view of the expert team, Germany should complete and update this version to reflect developments in Law and practice.

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

7.2.1. Issues

7.2.1.1. Return of nationals of the executing Member State

In Germany, the legal regime applicable for the return of a national of the executing Member State for the enforcement of the sentence passed in the proceedings underlying the EAW is the Strasbourg Convention of 1983 on the Transfer of Sentenced Persons². This choice has, in the view of the expert team, some drawbacks, namely the following:

¹ 12510/04.

² See footnote in chapter 3.8 above.

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- (i) extended detention in Germany after the case has been definitively tried in this country (as it appeared when defence counsels were heard, the process for the transfer of the sentenced foreigner may last about nine months)¹;
- (ii) additional duties for the executing Member State, which has to submit a number of supplementary documents as provided by the abovementioned Convention to make sure that its national has the possibility of serving the sentence in his country of origin²;
- (iii) costs incurred by the executing Member State for the re-transfer of its own national, in conflict with Art. 30(2) of the Framework Decision, according to which all expenses other than those incurred in the territory of the executing Member State for the execution of the EAW are to be borne by the issuing Member State (i.e. Germany)³.

7.2.1.2. The ratio between domestic arrest warrants and EAWs

Although no precise information was given on this issue, it turned out during the visit to the BKA that the German authorities are aware of the relatively low number of EAWs issued (1785 in 2007) compared with the total amount of outstanding domestic arrest warrants (circa 168.000), many of them relating to offences susceptible of an EAW. In this connection the team was informed that a letter had been sent by the Federal Office of Justice to the Länder to the effect that public prosecutors should check their files as regards this particular aspect.

¹ Article 15 – Transfer of the sentenced person, of the Council Framework Decision 2008/909/JHA, reads: "*1. If the sentenced person is in the issuing State, he or she shall be transferred to the executing State at a time agreed between the competent authorities of the issuing and the executing States, and no later than 30 days after the final decision of the executing State on the recognition of the judgment and enforcement of the sentence has been taken.*

2. If the transfer of the sentenced person within the period laid down in paragraph 1 is prevented by unforeseen circumstances, the competent authorities of the issuing and executing States shall immediately contact each other. Transfer shall take place as soon as these circumstances cease to exist. The competent authority of the issuing State shall immediately inform the competent authority of the executing State and agree on a new transfer date. In that event, transfer shall take place within 10 days of the new date thus agreed".

² Pursuant to the Council Framework Decision 2008/909/JHA, the only documents that must be forwarded are the judgment and the certificate provided in annex.

³ Article 24 - Costs of the Council Framework Decision 2008/909/JHA reads: "*Costs resulting from the application of this Framework Decision shall be borne by the executing State, except for the costs of the transfer of the sentenced person to the executing State and those arising exclusively in the sovereign territory of the issuing State".*

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7.2.2. Good practices

7.2.2.1. Informatics tool to assist the public prosecutors when creating an EAW

The team was impressed by the informatics tool to assist public prosecutors in filling in an EAW form, which was demonstrated during the visit to the GenStA Koblenz. In the view of the experts, Germany should be encouraged to have this tool more widely used by the authorities in other Länder. Equally, other Member States should be encouraged to develop similar systems (taking advantage of existing ones, where possible) with a view to facilitating the work of their national authorities.

7.2.2.2. Regular review of outstanding EAWs

According to the information provided, outstanding EAWs are regularly reviewed to check whether it would be better to withdraw them, having regard to the importance of the case and the time that has elapsed. In the view of the expert team, this practice is to be commended.

7.2.2.3. Proportionality test

According to the Constitutional Court case law, in issuing an EAW German public prosecutors must apply a proportionality test. It has to be noted, however, that there are no indicators or guidance on which elements are to be given weight in this connection or on assessing the appropriateness of issuing an EAW in a particular case.

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

7.3.1. Issues

7.3.1.1. The three-step procedure for the execution of EAWs

The procedure for the execution of incoming EAWs is organised in three steps, as described above¹. Particular consideration must be given to the third and last phase of this procedure in the light of the system set up by the Framework Decision, since the StAOLG, in making the final decision on granting the surrender, acts in an administrative capacity by delegation from the Ministry of the Land, pursuant to Section 74(2) of the IRG². In that connection, the experts were informed that the Federal Minister of Justice had delegated the power to decide in this field to the Governments of the 16 Länder, and that the latter had subdelegated such power to the respective StAOLG. This results in 16 different subdelegation settlements: for instance the StAKG Berlin gives its decision as Ministry of Justice, whereas in Hessen the StAOLG decides on his own title being mandated by the Ministry of Justice.

Whereas in practice the functioning of the system appears to be quite close to what the Framework Decision intended to establish, since the involvement of the Ministries of Justice of the Länder seems to be limited to the recording of decisions made by the public prosecutor (Hessen) and/or of specific types of cases (e.g. in Rheinland-Pfalz the Ministry of Justice must be kept informed on the progress and proposed decision-making in designated cases, namely those involving nationals/habitual residents, assessment of double criminality and competing EAWs), and no instance in which the StAOLG had been instructed or given any indication with a view to making its decision was reported³, ultimately we are talking about a delegated competence, and problems could arise (at least in theory). In the view of the expert team, this conception, which is a remnant of the former extradition procedure, does not conform to the Framework Decision, according to which the decision on the execution of an EAW is purely judicial.

¹ See chapter 4.5.

² Paragraph (2) of Section 74 - *Federal Jurisdiction*, in "Part VII. Applicable General Regulations" of the IRG reads: "... (2) *The Federal Government may delegate the exercise of the power to decide on foreign requests for legal assistance and to request foreign states for legal assistance, by way of an agreement, to state governments. The state governments shall have the right to further delegate their powers*". See also 12509/06 - Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States of the European Union (2002/584/JI), specifically: Notification under Article 34(2) of the Framework Decision, in footnote in chapter 4.1 above.

³ As to the Minister's powers to give binding orders to the public prosecutor concerning particular cases, see chapter 2 above.

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Furthermore, no advantages in this procedure are found in practice. The OLG's decision declaring the request permissible is made only upon the application of the StAOLG; once such a decision is given, however, the case must come back to the latter to grant the surrender ("*Bewilligung*"). The procedure could very conceivably be kept in two phases: the first before the StAOLG and the second before the OLG, conferring upon the latter the competence to grant the surrender.

7.3.1.2. Oral hearing before the OLG

The procedure at the level of the OLG is in practice entirely written. During the interviews the team were informed that the oral hearing before the OLG envisaged in Section 30(3) of the IRG actually almost never occurs.

In fact, the requested person is heard (or more precisely, examined) only by a magistrate at the AG following his arrest¹. This judge does not have much time for preparation and may not be experienced in this type of case (according to the information provided, during the weekends the individual is examined by the duty judge, who may be a civil or family judge). However, it is this judge who has to interrogate the requested person, report on the grounds for rejecting surrender put forward by this person and advise him that he may be represented by a defence counsel. It should be noted that such examination may take place without any defence counsel assisting the individual (see below as regards the issue of legal assistance). The outcome of the examination carried out in such conditions is actually the basis for further decisions by the StAOLG and the OLG.

7.3.1.3. Legal assistance

As described above², according to the law the requested person has the right to a lawyer to assist him at any time during the proceedings. If the requested person does not appoint one, a pro-deo defence lawyer is assigned to him by the OLG only in those cases expressly listed in the IRG: insufficient mental capacity, minority and complexity of the case. In practice, however, the court rarely appoints ex officio a lawyer in EAW proceedings, since, as a rule, this kind of case is not considered complex enough to justify it. Generally speaking, there is no legal counsel present at the examination of the requested person by the AG magistrate, and a State-paid counsel is designated for the procedure in the OLG only if some difficulty arises.

¹ See chapters 4.5 and 6 above.

² Chapter 6.

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In the view of the expert team this situation is not satisfactory, since it is not always possible to assess from the outset whether a case raises doubts. It may be that a (good) lawyer finds reasons to doubt a case, even if the court was primarily of another opinion. Furthermore, the absence of a lawyer raises particular concerns since, as noted before, the procedure at the level of the OLG is in practice entirely written. One cannot expect, however, all persons who may be surrendered on the basis of an EAW to be able to defend themselves in writing.

7.3.1.4. Scope of the EAW in conviction cases

Section 81(2) of the IRG seems not to be in line with the Framework Decision in saying that "*extradition for execution of a sentence shall be permissible only if, pursuant to the law of the requesting Member State, the custodial sentence **to be executed** amounts to at least four months*". This phrasing may give rise to different interpretations as to whether it refers to the duration of the sentence imposed or to the time to be actually served, as demonstrated during the interviews. The experts are aware that the debate on this issue dates back from the 1957 Convention and has not been solved so far; they note, however, that Article 2(1) of the Framework Decision refers clearly to the duration of the penalty imposed.

7.3.1.5. The issue of German nationals and habitual residents in Germany

In relation to this matter the expert team notes the following:

- Prosecution cases. In cases in which a relevant connection with the issuing Member State as defined by the IRG does not exist, conditions beyond those envisaged in the Framework Decision apply for the surrender to be granted, namely that the act underlying the EAW constitutes an offence under German law, and that the "*conflicting interests having been weighed in the concrete case, the legitimate expectation of the requested person that he would not be extradited does not prevail*"¹.

¹ See chapter 4.7 above.

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- Conviction cases. As a result of the specific system created by the Law¹, after the Federal Constitutional Court judgment of 18 July 2005, on the surrender of nationals and habitual residents, in 2007 and 2008 (to 31 August), Germany refused execution of an EAW in 66 and 49 cases (for both German nationals and habitual residents) respectively. According to the information provided, in none of these cases did the German authorities take over the enforcement of the foreign decision, allegedly by omission of the issuing Member State in sending an *ad hoc* explicit request, which is required for the decision to be executed in Germany.

This situation of practical impunity of German nationals and habitual residents is not acceptable. The German authorities do not seem particularly satisfied with it either. Whereas doubts may arise regarding the transposition of Article 4(6) of the Framework Decision as a mandatory ground for not executing an EAW, the team is more concerned that this provision allows the executing Member State to refuse to execute an EAW only when that executing Member State undertakes to execute the sentence in accordance with its domestic law. From the figures the team was given it is clear that Germany does not undertake to execute the sentence in any case where it refuses to execute an EAW on this basis. In the view of the expert team, it results from the articulation, in the German system, of a new form of cooperation (the EAW) with traditional forms of cooperation in connection with the enforcement of foreign criminal judgments, which appears not to be always easy. According to the officials interviewed, Germany is prepared to undertake the execution of a sentence where it refuses to execute an EAW on this basis. In that connection, it was noted that whenever notifying the refusal of the execution of the EAW, the German authorities regularly advise the issuing authority that they are prepared to take over the execution of the sentence, but that they need a request to do so.²

¹ See chapter 4.7 above.

² As to the changes introduced in these matters by the Council Framework Decision 2008/909/JHA, see footnote in chapter 3.8 above. Particularly in connection with the issue raised by the German authorities concerning the omission of issuing Member States in sending the *ad hoc* request required for the judgment to be enforced in Germany, the expert team notes that, pursuant to Article 4(5) of the abovementioned Framework, "*the executing State may, on its own initiative, request the issuing State to forward the judgment together with the certificate ...*".

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The expert team also noted the lack of clarity about what constitutes "integration" when considering whether a foreign resident should be treated in the same manner as a German national¹. The experts were told, for example, that this decision is not contingent on the person having been resident in Germany for a minimum or set period of time but rather that it is a question of degree in each case. In the absence of more concrete guidelines, this risks a lack of uniformity of approach as different StAOLGs will have regard to different factors and accord them different weight. The decision of the ECJ of 17 July 2008 (C-66-08) is helpful for practitioners in this regard.

7.3.1.6. Proportionality as a ground for non-execution of EAWs

During the interviews the expert team heard numerous complaints about EAWs being issued in some other Member States for petty cases, causing a lot of work for virtually "nothing". Critical comments were directed in particular towards Poland. Moreover, according to the information provided, a number of EAWs were refused by German authorities with referral to Section 73 of the IRG, on the basis that a minimum proportionality standard had not been observed in issuing them².

The experts share the German authorities' concerns in this regard. They note, however, that the practice of controlling the proportionality of the EAW at the level of the executing authorities is to be criticised. Such control is confrontational and contrary to the spirit of mutual trust on which the EAW is based. Furthermore, giving the executing Member State an opportunity to refuse an EAW on this ground opens the way to a vague and unpredictable new category of grounds for non-execution which is not in conformity with the explicitly limited mandatory and optional grounds for refusal in Articles 3 and 4 of the Framework Decision.

7.3.1.7. Grounds for refusal not envisaged in the Framework Decision

In addition to what has been said in the preceding paragraph concerning Section 73 of the IRG, it has to be noted that Section 83b(1)(d) thereof, according to which the execution of an EAW may be subject to the condition of reciprocity³, does not have any correspondence in the Framework Decision either.

¹ See chapter 4.7 above.

² See chapter 4.6 above.

³ See chapter 4.6 above. As stated there, no rejections on the basis of Section 83b(1)(d) have been reported in practice.

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7.3.1.8. Compliance with the 10-day time limit for surrender

Germany reported a rather high number of cases in which the 10-day time limit for surrender envisaged in Article 23(2) of the Framework Decision was exceeded (291 and 235 cases in 2007 and 2008 (to 31 August) respectively), due to its internal transportation system for detainees.

Whereas no case was reported in which the requested person had been released in accordance with Article 23(5) of the Framework Decision, the expert team has severe doubts that the reasons adduced by the German authorities constitute a valid argument in the light of Article 23(3) thereof ("*circumstances beyond the control of any of the Member States*") to justify the systematic breach of the abovementioned deadline.

7.3.1.9. Transit cases

Whereas the 30-day time limit envisaged in Section 83f(4) for a decision on a transit request to be taken may give rise to problems in complying with the time limit for surrender envisaged in Article 23 of the Framework Decision, the team notes that, in practice, this decision is given at very short notice (e.g. in Frankfurt, which has a major airport, within one day).

7.3.2. Good practices

7.3.2.1. SIS-alerts deemed as equivalent to EAWs

Germany often does not request the physical EAW, considering that the relevant SIS-alert equals an EAW in application of Article 9(3), second sentence, of the Framework Decision¹.

8. RECOMMENDATIONS

8.1 RECOMMENDATIONS TO GERMANY

GENERAL

Recommendation 1.- Take the necessary measures at legislative level to draw a clear distinction between traditional extradition and the new EAW regimes (see 7.1.1).

Recommendation 2.- Take the measures considered appropriate to promote a common procedural approach in EAW cases in the different Länder (see 7.1.3).

Recommendation 3.- Update the Fiche Française to reflect current law and practice (see 7.1.8).

¹ Section 83a(2) of the IRG.

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AS EXECUTING MEMBER STATE

Recommendation 4.- Modify the law with a view to vesting the surrender decision in a judicial authority acting in its own right (see 7.3.1.1).

Recommendation 5.- Ensure that the requested person is heard by the OLG in cases where he or she does not consent to surrender (see 7.3.1.2).

Recommendation 6.- Take measures as considered appropriate to ensure that legal assistance is provided to the requested person throughout the procedure (see 7.3.1.3).

Recommendation 7.- As regards conviction EAWs, take the necessary measures (e.g. redrafting the implementing law or producing guidelines on this particular issue) to ensure that the outstanding sentence to be served is not used as a ground for refusal of surrender (see 7.3.1.4).

Recommendation 8.- Amend the implementing legislation so that no limitation applies to the surrender of own nationals and habitual residents based on their "*legitimate expectation*" that they would not be surrendered, or, in cases of listed offences, on the fact that the act does not constitute an offence under German law (see 7.3.1.5).

Recommendation 9.- In those cases where the German authorities refuse to execute a conviction EAW because the subject is a German national or a permanent resident in Germany and does not consent to surrender, and until rules adopted pursuant to the Framework Decision 2008/909/JHA apply, consider accepting the EAW itself as the request required to initiate proceedings for execution of the sentence (see 7.3.1.5).

Recommendation 10.- Reconsider the practice of considering the lack of proportionality as a ground to refuse to execute an EAW (see 7.3.1.6).

Recommendation 11.- Amend the implementing legislation so that the condition of reciprocity does not apply in EAW procedures (see 7.3.1.7).

Recommendation 12.- Consider a rethink of the logistical procedures for the physical surrender of requested persons (see 7.3.1.8).

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8.2 RECOMMENDATIONS TO CERTAIN OTHER MEMBER STATES

Recommendation 13.- Follow the practice of exchange visits to resolve recurrent practical problems (see 7.1.6).

Recommendation 14.- Ensure that judicial authorities are aware of the roles of the EJM and Eurojust in solving difficulties arising from EAW procedures (see 7.1.6).

Recommendation 15.- Follow the German practice of providing clear guidelines on very practical issues (see 7.1.7).

Recommendation 16.- Consider introducing an informatics tool following the example of Rheinland-Pfalz (see 7.2.2.1).

Recommendation 17.- Follow the practice of reviewing outstanding EAWs on a regular basis with a view to checking whether they are still current, necessary and proportional (see 7.2.2.2).

Recommendation 18.- Apply a proportionality test before issuing an EAW (see 7.2.2.3).

Recommendation 19.- Consider following the German practice of regarding a SIS alert as equivalent to an EAW (see 7.3.2.1).

Recommendation 20.- Take the necessary measures to ensure quality of translations (see 4.1).

8.3 RECOMMENDATIONS TO THE EUROPEAN UNION

Recommendation 21.- Consider disseminating information on the existing informatics tools for processing EAWs with a view to similar tools being developed in all Member States (see 7.2.2.1).

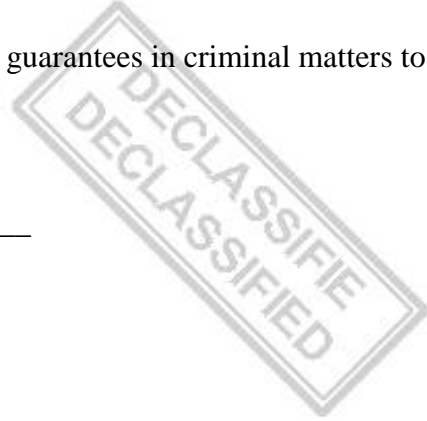
Recommendation 22.- Discuss at the appropriate level the development of common standard criteria for a proportionality test when issuing an EAW (see 7.2.2.3).

Recommendation 23.- Consider setting up common manageable time limits for the receipt of language-compliant EAWs (see 3.5).

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Recommendation 24.- Address divergences in interpreting the questions included in the questionnaire on quantitative information on the practical operation of the EAW, and difficulties encountered by Member States in this regard (see 4).

Recommendation 25.- Create a minimum set of procedural guarantees in criminal matters to be observed in all Member States (see 6).



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ANNEX A

PROGRAMME OF VISIT

Monday 8 September

Afternoon Arrival of the delegation at Berlin-Tegel airport - Pick-up at the airport and transfer to the hotel.

Tuesday 9 September (Berlin)

09.00 Welcome and presentation of the EAW in Germany
Lunchtime Invitation to lunch by the Federal Ministry of Justice
14.00 The Public Prosecutor General and the Higher Regional Court in Berlin

Wednesday 10 September (Wiesbaden)

Morning Transfer to Berlin-Tegel airport
09.30 Flight to Frankfurt A.M.
11.00 Transfer to Wiesbaden
Lunchtime Lunch at the Federal Criminal Police Office (BKA)
14.00 Discussion at the BKA with Interpol and Sirene
17.00 Transfer to the station in Wiesbaden. By train to Koblenz.
20.00 Invitation to dinner by the Federal Ministry of Justice

Thursday 11 September (Koblenz/Frankfurt)

08.15 The Public Prosecutor General and Public Prosecutor in Koblenz
10.45 Short walk to the station in Koblenz. By train to Frankfurt.
Lunchtime Lunch with the Public Prosecutor General in Frankfurt
14.30 Discussion at the Office of the Public Prosecutor General and the Higher Regional Court in Frankfurt.
Evening Invitation to dinner (informal) by the Federal Ministry of Justice

Friday 12 September (Frankfurt)

09.00 Discussion on the EAW with lawyers (defence perspective)
11.00 Summary/end
Lunchtime Lunch
Afternoon Departure

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ANNEX B

LIST OF PERSONS INTERVIEWED

Federal Ministry of Justice

Mr Diwell State Secretary
Dr Herrfeld Head of Division for International Criminal Law; European and Multilateral Criminal Law Cooperation
Dr Knauss Desk Officer, Division for International Criminal Law; European and Multilateral Criminal Law Cooperation

Federal Office of Justice

Dr Johnson Head of Directorate for International Legal Assistance and Research
Dr Riegel Head of Division for Extradition, Transfer of Prisoners, Mutual Legal Assistance, European Judicial Network in Criminal Matters
Dr Wilms Desk officer, Division of Extradition, Transfer of Prisoners, Mutual Legal Assistance, European Judicial Network in Criminal Matters

Public Prosecutor General in Berlin

Mr Mehlis Chief Senior Public Prosecutor
Mr Hahne Senior Public Prosecutor
Ms Bath Senior Public Prosecutor

Higher Regional Court in Berlin

Mr Hanschke Presiding Judge
Ms Töpfer Judge
Mr Bartl Judge

Public Prosecutor General in Koblenz

Mr Kruse Senior Public Prosecutor
Mr Fritzen Senior Public Prosecutor
Dr Angerer Public Prosecutor

Public Prosecutor in Koblenz

Mr Wissen Senior Public Prosecutor
Mr do Paco Quesado Public Prosecutor

Ministry of Justice of the State of Hesse

Mr Daniel Volp Senior Public Prosecutor

Public Prosecutor General in Frankfurt

Mr Rückert Senior Public Prosecutor
Ms Gallandi Senior Public Prosecutor
Ms Créde Senior Public Prosecutor
Mr Dreßen Public Prosecutor

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Higher Regional Court in Frankfurt

Mr Gürtler	Presiding Judge
Mr Pohl	Judge
Dr Teßmer	Judge

Federal Criminal Police Office

Dr Mentzel	Detective Chief Superintendent
Mr Seiler	Detective Chief Superintendent
Mr Czarnecki	Detective Superintendent
Mr Grieshaber-Heib	Detective Chief Inspector
Mr Schäfer	Detective Chief Inspector
Mr Meyer	Detective Chief Inspector



Lawyers of the Federal Bar Association and the German Bar Association

Prof. Dr Matt	Defence Counsel
Mr Rosenthal	Defence Counsel

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ANNEX C

LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

ACRONYM ABBREVIATION TERM	ENGLISH EXPLANATION
AG	Local Court (Amtsgericht)
BGH	Bundesgerichtshof (Federal Court of Justice)
BKA	Federal Criminal Police Office (Bundeskriminalamt)
Council Framework Decision 2008/909/JHA	Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union
StAOLG	Public Prosecutor at the Higher Regional Court (Staatsanwaltschaft beim Oberlandesgericht)
INPOL	Police Information System
IRG	Law on International Legal Assistance in Criminal Matters (Gesetz über die internationale Rechtshilfe in Strafsachen)
LG	Regional Court (Landgericht)
LKA	Land Criminal Police Office (Landeskriminalamt)
OLG	Higher Regional Court (Oberlandesgericht)
RiStBV	Guidelines for Criminal Proceedings and Proceedings to Impose a Regulatory Fine (Richtlinien für das Straf und Bußgeldverfahren)
StA	Public Prosecutor at the Regional Court (Staatsanwaltschaft beim Landgericht)