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# RESTREINT UE



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

**REPORT ON SLOVENIA**

# RESTREINT UE

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## 1. INTRODUCTION

- 1.1. Following the adoption of the Joint Action of 5 December 1997, a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime was established.
- 1.2. Following the discussion of a proposal introduced by the Luxembourg Presidency concerning the topic of the fourth round of mutual evaluations<sup>1</sup>, the MDG of 11 July 2005 adopted the topic as proposed, namely "the practical application of the European Arrest Warrant and corresponding surrender procedures between Member States". It was also agreed at the MDG of 11 July that the evaluation questionnaire was to be prepared by the UK Presidency.
- 1.3. Experts with substantial practical knowledge of the European Arrest Warrant were nominated by Member States pursuant to a written request to delegations made by the Chairman of the MDG on 9 September 2005<sup>2</sup>.
- 1.4. At its meeting on 28 October 2005 the MDG approved the evaluation questionnaire for the fourth round of mutual evaluations. The objectives of the evaluation exercise and the questionnaire itself are set out in ST 14272/05 CRIMORG 131 COPEN 175 EJM 57 EUROJUST 77.
- 1.5. At its meeting on 28 October 2005 the MDG also discussed and approved 13824/05, the revised sequence for the mutual evaluation visits. Slovenia is the fifteenth Member State to be evaluated during the fourth round of evaluation.

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

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

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- 1.6. The experts charged with undertaking this evaluation were: Ms. Tünde Forman (Deputy Head, Department of International Criminal Law, Ministry of Justice, Hungary), Mr. Juhani Korhonen (Legal Adviser, Ministry of Justice, Finland) and Mr. Joakim Zetterstedt (Department Director, Division for Criminal Cases and International Judicial Cooperation, Ministry of Justice, Sweden). Two observers were also present: Mr. Antonio Luis Santos Alves (Eurojust) and Mr. Peter Csonka (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 2-4 October 2007, and upon Slovenia's detailed and helpful responses to the evaluation questionnaire.
- 1.8. The report makes reference to differing processes in respect of arrest and prosecution cases only insofar as there is a divergence of practice between the two procedures.
- 1.9. The expert team's overarching purpose was to evaluate the distinct practical processes operated and encountered by Slovenia both as issuing and as executing Member State, to assess relevant training provisions and the views of the defence, before moving on to conclude and to make such recommendations as they felt were appropriate to enhance the means by which the EAW and its corresponding surrender provisions may be further streamlined and improved.

## 2. THE AUTHORITIES AND THE LEGAL BASIS

### 2.1 THE AUTHORITIES

The Slovenian Court System comprises four layers of courts of general jurisdiction:

- 1 Supreme Court;
- 4 High Courts (Ljubljana, Maribor, Celje and Koper);
- 11 District Courts;
- 44 Local Courts.

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Only these courts of general jurisdiction play a role in EAW matters. In this matter there is only one level of appeal, either to a panel of three district court judges against the decision of the investigating judge (within the district court as well) in simplified procedures based on the consent of the requested person to surrender, or to the High Court. The Supreme Court is competent to decide on cases of conflict between an EAW and a request for extradition presented by a third country.

The State Prosecution Service of the Republic of Slovenia consists of:

- the Supreme State Prosecutor's Office, headed by the State Prosecutor General;
- 11 District State Prosecutor's Offices.

In the Slovenian system the district state prosecutor directs the police investigation in the pre-trial phase<sup>1</sup>. Criminal proceedings can only be commenced at the request of the prosecutor, but it is for the court (investigating judge or, in limited cases, a non-trial panel of district court judges) to decide on its initiation. This phase of the proceedings is conducted by the investigating judge; it is of an adversarial nature, the district state prosecutor intervening as a party. When the investigation is completed, it is the district state prosecutor who decides whether to file a charge or to abandon criminal prosecution. In deciding whether to present an indictment, the state prosecutor is bound to the principle of legality.

The state prosecutor has very limited competences in relation to the enforcement of penalties. It is the court that issued the judgement at first instance who is responsible for ensuring the enforcement of the final judgment.

The "higher state prosecutors", within the appeals department of the Supreme State Prosecutor's Office, at its main office in Ljubljana and three external departments (Maribor, Celje and Koper), represent the appeals of the district state prosecutors before the High Courts. The "supreme state prosecutors", within the criminal law department of the Supreme State Prosecutor's Office, perform their legal duties before the Supreme Court.

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<sup>1</sup> A special unit, the Group of state prosecutors for special affairs, has been established within the Supreme State Prosecutor's Office; it operates throughout the country and is responsible for prosecuting organised crime, operating as a criminal prosecution body of first instance.

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As to EAW procedures, the role of the state prosecutor is in line with his powers as described above. He is considered a party representing the interest of the issuing State. Therefore, basically he is empowered to submit motions to the court and to appeal against the decisions of the latter.

## The Ministry of Justice.

Pursuant to Article 7 of the Framework Decision, the Ministry of Justice was designated as "the central authority to assist the competent judicial authorities if difficulties arise in transmitting the arrest warrant" in the statements of Slovenia to the Council's General Secretariat regarding the implementation of the EAW.

Within the Directorate of International Cooperation and International Legal Assistance, the International Legal Assistance Sector deals with mutual legal assistance in civil and criminal matters. The unit is staffed by eight persons, of whom three lawyers deal with criminal cases and EAW related matters.

The Section for International Police Cooperation (hereunder referred to as SIPC) is included in the Criminal Police Directorate, within the Police General Directorate, Ministry of Interior. It includes the Europol National Unit, the Interpol National Central Bureau, the Sirene National Office, the Telecommunications and Administration Unit (which serves as a "single window"), and the International Liaison Office. It has its own translation service (translation services are also available 24/7 within the Ministry of Interior).

SIPC operates 24/7 for all international police cooperation and as central point for all SIS alerts, responsible for entering, modifying and deleting national alerts in the SIS, and for checking, entering and deleting foreign SIS alerts in the national system. SIPC is also responsible for Interpol alerts and for the organization of the surrender of apprehended persons against whom an international arrest warrant or an EAW has been issued.

As from 2004, the Sirene National Office is responsible for EAWs, whereas the Interpol National Central Bureau remains responsible for international arrest warrants coming from or addressed to third countries. As from 1 September 2007, when SISone4ALL started to function, the Sirene National Office became the main focal point for sending and receiving EAWs.

## 2.2 THE LEGAL BASIS

- European Arrest Warrant and Surrender Procedures between Member States Act, of 26 March 2004, which entered into force on 1 May 2004.

At the time of the evaluation visit, a draft Act on cooperation in criminal matters with the European Union Member States was being discussed in the Parliament. According to the information provided, this new text would replace the implementing law in force at the time when the evaluation took place. This new Act has now entered into force<sup>1</sup>.

- Criminal Procedure Act<sup>2</sup>, which, according to Article 1(2) of the implementing law shall be used *mutatis mutandis* for issues not specifically regulated by the latter.

The following are also of relevance:

- Constitution of the Republic of Slovenia, which provides in Article 3a that "Legal acts and decisions adopted within international organisations to which Slovenia has transferred the exercise of part of its sovereign rights shall be applied in Slovenia in accordance with the legal regulation of these organisations".
- Rules on the form of the EAW approved by the Ministry of Justice, of 29 April 2004. It basically provides for the EAW form in Slovenian.

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

In 2006 the judicial authorities of Slovenia issued 67 EAWs, all of them transmitted via Interpol, and 14 resulted in the effective surrender of the person sought<sup>3</sup>.

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<sup>1</sup> The Act on cooperation in criminal matters with the European Union Member States was published in the Official Gazette of the Republic of Slovenia 102/2007, of 9 November 2007.

<sup>2</sup> The official consolidated text was published in the Official Gazette of the Republic of Slovenia 8/2006 of 26 January 2006.

<sup>3</sup> Replies to the questionnaire on quantitative information relating to the practical operation of the European arrest warrant - Year 2006 set out in 8111/05 COPEN 75 EJN 23 EUROJUST 24.



## 3.1. THE DECISION TO ISSUE

In prosecution cases the judicial authority competent to issue an EAW is the Local or the District Court before which criminal proceedings are heard<sup>1</sup> and, in conviction cases, the District Court competent to enforce the sentence.

There is no special procedure whereby the decision to issue an EAW is taken by the competent court. The decision on whether or not an EAW is issued lies within the sole discretion of the judge overseeing the criminal proceedings or the execution of the sentence, provided that the penalty thresholds are met and a domestic arrest warrant has been issued.

As to the penalty thresholds in prosecution cases, the expert team noted that there is a divergence between Article 4(1) of the implementing law and Article 2(1) of the Framework Decision, in that under the former an EAW may be issued for offences punishable "by a custodial sentence of at least one year", whereas the latter lays down that an EAW may be issued for acts punishable "by a custodial sentence or a detention order for a maximum period of at least 12 months". They also differ in that detention orders are not considered in the implementing law<sup>2</sup>.

There are no provisions or guidelines establishing any kind of proportionality test prior to the issue of an EAW.

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<sup>1</sup> However, in its statements to the General Secretariat of the Council regarding the implementation of the EAW with reference to the Framework Decision (doc 9651/04), Slovenia included the following: "Article 6(3) - Judicial authorities in the Republic of Slovenia competent to issue an arrest warrant are district courts (okrožna sodišča)..."

<sup>2</sup> According to the draft the expert team was provided with, the wording as to the penalty thresholds in prosecution cases remains the same in the Act on Cooperation in Criminal matters with the European Union Member States (Article 40). As regards conviction cases, the law expressly permits the issue of an EAW for the enforcement of a "precautionary or other sanction that is carried out by deprivation of liberty".

## 3.2. VERIFYING THE POSSIBLE EXISTENCE OF MULTIPLE REQUESTS

The Slovenian courts are not interconnected. SIPC maintains a record of international arrest warrants and EAWs that have been distributed via Interpol/Sirene. When SIPC receives a new EAW, it informs the court whether a previous EAW has been issued in relation to the same person. Should a judge wish to obtain information on whether an EAW has already been issued in connection with a given individual, he must send a written query to SIPC requesting that information. The courts themselves do not maintain a record of whether and how many times such information has been requested.

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

The drafting of the EAW is undertaken by the competent court.

There are no written guidelines to assist judicial authorities in completing the EAW form, nor a catalogue of standard interpretations agreed at national or regional level in respect of prescribed elements of it. Ministry of Justice officials noted that their assistance was seldom sought by judicial authorities, and then it was mainly in relation to the identification of the foreign competent authority and to facilitate contacts. In addition, the possibilities for feedback in terms of training are limited so far<sup>1</sup>. As a result, practices in relation to the completion of the EAW form may vary from court to court.

## 3.4. TRANSLATION OF THE EAW

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

If the whereabouts of the person are not known, the Slovenian courts usually translate the EAW into English and attach the translation to the original of the EAW in Slovenian, which is sent to SIPC for transmission (see chapter 3.5 below). Once the court receives notification that the requested person has been arrested, the necessary arrangements for the translation of the EAW are made.

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<sup>1</sup> See chapter 5 below.

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According to the information provided, the Slovenian courts face difficulties in providing adequate translations, especially for less common languages, within the short deadline set by some Member States for sending language-compliant EAWs. They try to mitigate these issues by constantly updating the list of court interpreters.

The Slovenian authorities reported that in some cases the executing Member State itself translated the warrant into its own language in order to comply with deadlines and obligations imposed by the national legislation. This also happened when Slovenia was executing State and the person was arrested.

## 3.5. TRANSMISSION OF THE EAW

It should be noted that at the time of the evaluation visit Slovenia had recently started using the SIS, SIPC acting as the central point for entering all Article 95 alerts<sup>1 2</sup>. The participation of Slovenia in the SIS had an impact on the use of Interpol channels, which, in the previous phase, were the usual conduit for the transmission of EAWs issued by the Slovenian courts, irrespective of whether or not the whereabouts of the requested person were known. However, not all the judicial authorities interviewed were aware that the SIS had become operational<sup>3</sup>.

If the whereabouts of the requested person are known, Article 5 of the ZENPP provides that the issuing court shall send the EAW directly to the executing judicial authority in its original form, as a certified copy or in another written form that allows the executing authority to check its authenticity. The mode of transmission is decided by the court itself. The use of Interpol channels, as well as of any other system that ensures data security and enables the executing legal authority to authenticate the sender and the data being sent, is envisaged in Article 5(2)<sup>4</sup>.

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<sup>1</sup> SIPC had to insert all historical data in the SIS before 1 September 2007. According to the information provided, at the time of the visit there were 155 Article 95 entries in the SIS, of which 138 corresponded to EAWs. The expert team was advised that the reason for the difference was that courts did not issue an EAW in all cases.

<sup>2</sup> Currently the SIS is accessible to the police, the Ministry of Foreign Affairs (Article 96 alerts) and the Ministry of Justice (Article 96 and 100 alerts). It is envisaged that later on the SIS will also be accessible to courts, prosecutors and customs authorities.

<sup>3</sup> See chapter 5 below.

<sup>4</sup> The reference to the use of Interpol channels has been deleted in the new law. This expressly authorises the use of fax and electronic mail.

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As to the cases in which the location of the requested person is unknown, before 1 September 2007, as a rule, courts sent EAWs to the relevant police administration, with a request that they be forwarded to SIPC. Alternatively the EAW was sent directly by post (or, in urgent cases, by fax) to SIPC, where the Sirene staff<sup>1</sup> proceeded to prepare a formal request for international search, which was circulated through Interpol channels.

As from 1 September 2007 no significant changes can be noted compared with the previous situation as to the way in which the EAW is handled prior to its receipt by the Sirene National Office. After a cursory verification of the EAW, intended to detect possible mistakes as regards dates, names, etc, the Sirene officers insert the details into the SIS and produce the "A" and "M" forms.

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

No issues were reported.

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

The Slovenian authorities reported that there had been few cases in which a request for additional information had been received from foreign authorities. Such requests referred mainly to the statute of limitations and interruption of the statute of limitations for criminal prosecution.

No issues were reported in relation to the transmission of the information requested in such cases or the impact of the information provided on the processing of the EAW.

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<sup>1</sup> In 2004 it was decided that the Sirene National Office would be responsible for the processing of EAWs. Interpol NCB remained responsible for international arrest warrants addressed to or coming from countries outside the EU.

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

The implementing law contains no provisions on the return of persons who have been surrendered to Slovenia on condition of their return to the executing Member State of which they are nationals.

The legal regime applicable for the return of an alien sentenced by a Slovenian court to his country of origin is to be found in the 1983 Council of Europe Convention on the Transfer of Sentenced persons and in Article 517(7) of the Criminal Procedure Act, whereby the petition of the convicted person is required, and the court which passed judgment is entitled to grant such a petition if so provided by an international agreement or if reciprocity exists.

The Slovenian authorities are of the opinion that it should be the court which issued the EAW which is the authority competent to provide any undertakings necessary in that connection, and to guarantee that such undertakings are fulfilled.

No practical experience on this issue was reported.

## 3.9. YOUTH SURRENDERS AND CORRESPONDING GUARANTEES

At the time of the evaluation visit Slovenia had experienced no difficulty in this regard.

## 3.10. GENERAL COMMUNICATIONS WITH THE EXECUTING MEMBER STATE

The implementing law is expressly intended to promote direct contacts between the Slovenian issuing judicial authorities and their counterparts abroad<sup>1</sup>. The judicial authorities interviewed confirmed, however, that in practice information was exchanged mainly via Interpol and direct communication with the executing judicial authorities occurred only in rare cases. In fact, it seemed that after forwarding the EAW to SIPC, the issuing court just had to wait for the information provided by Interpol/Sirene on the arrest of the requested person and the subsequent progress of the execution of the EAW, including the executing judicial authority decision on the surrender. In the view of one of the judges who participated in the meetings, language difficulties are the main obstacle to implementing the principle of direct contacts between judicial authorities and the reason for the Slovenian courts to use Interpol instead of addressing themselves to the direct authorities abroad.

The Slovenian authorities also reported that, as a rule, Eurojust and the EJM were not used by the Slovenian courts in their contacts with foreign judicial authorities, although they had been involved in some cases with Slovenia acting as the EAW issuing state.

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

SIPC is responsible for all necessary practical arrangements with the competent authorities of the executing state and for organising the physical surrender itself, including liaison with the prison facilities where the person will be confined.

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<sup>1</sup> Article 7(1) of the ZENPP reads: "The court that issued the warrant shall communicate with the executing judicial authority directly or through the ministry". During the evaluation visit it emerged, however, that the Ministry of Justice did not play a significant role in this respect. See also chapter 3.5 above.

According to the draft the expert team was provided with, the situation is even clearer under Article 14(1) of the Act on cooperation in criminal matters with the European Union Member States, which reads: "The issuing and enforcement judicial authorities shall communicate directly as a rule".

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The competent authorities of neighboring executing Member States normally bring the person to the Slovenian border, then turn him over to Slovenian police officers. Surrender of persons from countries which do not border on Slovenia is done at the airport of the executing Member State. Where necessary, a notice is sent to the airline company about potentially disturbing passengers. The requested person is then taken into a place of confinement within the jurisdiction of the court which issued the EAW. SIPC informs the court and the Ministry of Justice about the completion of the surrender.

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

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

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

At the time of the visit no experience on these issues was recorded.

It should be noted that, as regards the cases in which the person surrendered to Slovenia may, without the consent of the executing Member State, be surrendered to a Member State other than the executing Member State for an offence committed prior to his surrender, Article 28(2)(b) of the Framework Decision (cases in which the person consents to be surrendered) has not been transposed by the ZENPP<sup>1</sup>.

## 3.13. EXPENSES

No issues have been recorded in respect of the payment of expenses associated to EAW procedures.

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<sup>1</sup> Articles 8 and 9.  
According to the draft the expert team was provided with, Article 44 of the Act on cooperation in criminal matters with the European Union Member States does not provide for this case either.

## 3.14. MISCELLANEOUS COMMENTS

### Speciality rule

The experts noted a discrepancy between the implementing law and the Framework Decision in that the former<sup>1</sup> does not mention deprivation of liberty among the restrictions inherent in the speciality rule (as it is customary in standard rules on this issue).

As for the functioning of the rule of speciality in practice, the authorities interviewed were not able to describe a reliable routine ensuring that the sentencing court in Slovenia is made aware of the restrictions inherent in such a rule, apart from the possibility for the defence counsel to raise this issue in the subsequent proceedings.

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

During the calendar year 2006 Slovenia received 40 EAWs, of these 24 resulted in the effective surrender of the requested person and seven were refused, of which four refusals related to the date of the offence. Of the 24 cases in which the surrender took place, the simplified procedure with consent was used in 13 cases.

### 4.1. RECEIPT PROCEDURES

Two situations can be differentiated here:

#### 4.1.1. Before 1 September 2007

Although according to the national legislation it was possible for an EAW to be received directly by the District Court competent to execute it, in practice Interpol was the standard channel for the receipt of EAWs. The EAW -usually in the language of the issuing MS- was then forwarded to the court where the requested person resided, together with the Interpol notice. In those cases in which the police undertook the arrest of the requested person prior to the judicial intervention based on the existence of a risk of absconding (see chapter 4.5 below), the EAW and the Interpol notice were taken to the court together with the arrested person.

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<sup>1</sup> Article 8(1) of the ZENPP.

According to the draft the expert team was provided with, the Act on cooperation in criminal matters with the European Union Member States does not introduce any substantial change in this matter.



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## 4.1.2. As from 1 September 2007

As from 1 September 2007 Slovenia operates the SiSone4ALL. Therefore, at the time of the visit not much experience had been accumulated in the use of the SIS. The Sirene officers however explained that patterns similar to those under the Interpol system were being applied, with natural variations. For instance, the Interpol notice taken to the court together with the EAW and the arrested person has been replaced by the SIS "A" form translated into Slovenian.

EAWs can be transmitted to the Slovenian executing authority by any secure means capable of producing written records and allowing an authenticity check. There is no special procedure to authenticate the EAW. Should the court have any doubts as regards this issue, it can carry out the necessary checks, either directly or via de Ministry of Justice or SIPC.

## 4.2. INVESTIGATIONS CONCERNING THE LOCATION OF THE REQUESTED PERSON/CIRCULATION PROCEDURES

SIPC is responsible for entering Article 95 alerts (as well as Interpol alerts) in the national system. Initial checks are carried out to determine the presence of the requested person within the territory of Slovenia using the national databases available (24/7 access): FIO (police records) and ITSP (Administrative Internal Affairs Records: register of citizens, register of foreigners with permanent and temporary residence, register of vehicles, register of driving licenses, register of weapons owners, register of passports and identity cards). The latter is accessible but not maintained by the police. FIO can be checked with only one hit, whereas for the whole of the ITSP databases a new search is necessary. Criminal records (persons detained or in prison) are held at the Ministry of Justice; in this case the police has to send a request to the Ministry in order to obtain the information<sup>1</sup>.

According to the information provided, all Article 95 alerts entered in the system were being checked, including those not related specifically to Slovenia.

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<sup>1</sup> The expert team was advised, however, that there were negotiations in progress to grant the police a "hit access".

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All police units have access to the police telecommunications and information system, whereas the judicial authorities do not. Thus, neither judges nor prosecutors have access to the Requested Persons Register. According to the information provided, access will be granted to them in a forthcoming phase.

If the EAW was forwarded directly to the competent judicial authority, and if it was determined during the procedure that the information on the location of the requested person was incorrect or that the person did not actually reside at the address indicated in the EAW, the court should send a request to the police, listing the verification measures to check on the presence of the requested person within the territory of Slovenia.

## 4.3. THE FORM OF THE WARRANT AND REVIEW PROCEDURES.

Assessment of the content of the form is done solely by the court. The expert team was advised that the flagging of incoming EAWs in the SIS would take place only upon the decision of the competent judicial authority.

Where the EAW has not been drawn up in Slovenian, the investigating judge must first request the issuing judicial authority to send a certified translation of the EAW into Slovenian within a "reasonable time limit", which may be no longer than 20 days<sup>1</sup>. Nevertheless, if the requested person has been deprived of liberty, the court shall order the translation of the EAW *ex officio*. According to the information provided, there have been cases where the issuing authority was unable to provide such a translation (as it had no translators for the Slovenian language), which caused the court to accept a translation of the EAW in English<sup>2</sup>.

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<sup>1</sup> Article 15(3) of the ZENPP.

According to the draft the expert team was provided with, Article 15 of the Act on cooperation in criminal matters with the European Union Member States refers to "an appropriate time limit not exceeding ten days".

<sup>2</sup> According to the draft the expert team was provided with, this is expressly permitted in Article 15 of the Act on cooperation in criminal matters with the European Union Member States.

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Once the investigating judge receives the translation of the EAW, he shall check whether it contains the necessary information laid down in Article 16(1) of the ZENPP (this corresponds to Article 8(1) of the Framework Decision) and meets the conditions laid down in Article 11 of the ZENPP (which corresponds to Article 2 of the Framework Decision), as a precondition for proceeding further with the EAW.

As to the list from Article 11(2) of the transposing law enumerating the criminal offences in which double criminality is not required, the expert team noted divergences from the categories listed in Article 2(2) of the Framework Decision, mainly the following: "swindling" is absent; "committed as part of a group or using weapons or dangerous instruments" is added to "racketeering and extortion"; no reference is made to the illicit trafficking of psychotropic substances. The reason given for such discrepancies was that the expressions used in the implementing law were intended to be as close to the Slovene Penal Code as possible<sup>1</sup>.

It was also noted that Article 11(2) of the ZENPP does not properly transpose the Framework Decision as regards the penalty threshold that excludes the verification of double criminality, since it reads "a custodial sentence of at least three years", whereas the Framework Decision refers to "a maximum period of at least three years"<sup>2</sup>. The judicial authorities interviewed by the experts confirmed that such provision was interpreted literally (in spite of the incoherence with the form and the rest of the Article) and was so applied, which resulted in double criminality being checked even in relation to acts for which it should not be according to the Framework Decision. By way of example, a case with Italy acting as issuing MS was described, in which although it was indicated on the EAW form that the maximum length of the custodial sentence was 20 years, double criminality was checked (it was a case of illicit trafficking of drugs), because the minimum length of the penalty was not recorded.

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<sup>1</sup> According to the draft the expert team was provided with, Article 8 of the Act on cooperation in criminal matters with the European Union Member States introduces significant changes intended to bring the Slovenian law in line with the Framework Decision. Thus, the divergences mentioned above do not exist in the new text and there are only some differences of translation (vis-à-vis the official version of the Framework Decision), with no substantive impact.

<sup>2</sup> The new law also introduces significant changes here, since the second paragraph of Article 8(1) reads: "criminal offence sanctioned by the law of the issuing Member State by imprisonment of not less than three years as the maximum sentence of deprivation of liberty".

During the interviews the expert team was advised that, even in those cases in which one of the offences listed in box (e) 1 of the EAW form had been ticked, the Slovene judicial authorities systematically proceeded to check the factual description contained in the form against their own Penal Code.

#### 4.4. REQUESTS AND RESPONSES TO REQUESTS, FOR FURTHER INFORMATION/CLARIFICATION

According to the implementing law it is only for the investigating judge to require such information from the issuing judicial authority, on its own initiative or at the proposal of the state prosecutor, the defendant or his legal counsel, or when the panel which issues the decision on the surrender, or the High Court, in cases where an appeal has been lodged against the decision of the panel, deems it necessary.

The investigating judge may specify a time limit for receipt of the information requested.

The requests for supplementary information are sent either in Slovenian or in one of the languages admitted by the issuing Member State, at the sole discretion of the investigating judge. There is no specific provision in the implementing legislation as regards the language in which the information requested has to be delivered.

#### 4.5. ARREST PROCEDURES/FIRST HEARING

The ZENPP does not provide for the immediate arrest of the requested person following receipt of an EAW. In principle, the EAW has to be forwarded to the investigating judge, who, after checking it (see chapter 4.3 above), summons the requested person to a hearing to decide on surrender; if the requested person does not attend, an order to bring him before the court is issued<sup>1</sup>.

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<sup>1</sup> The situation is radically different in the new law. Article 17(2) of it provides that "an order on forced production of the requested person" shall be issued by the investigating judge upon checking that the EAW meets all the requirements. In principle as from 1 September 2007, the adherence to SISone4ALL should change this practice as an Article 95 alert means that there is an obligation to arrest the person.

# RESTREINT UE

Only in cases where there is a risk of absconding may the person be arrested without a prior order of the investigating judge<sup>1</sup>. Generally speaking, this is not considered to be the case when the requested person has a permanent residence in Slovenia.

At the time of the arrest, the police must inform the requested person that he has been arrested pursuant to an EAW, of the country that issued it and of the reasons for the surrender request. The person must be instructed that he is not obliged to make any statement, that he has the right to immediate legal representation of his own free choice, and that his relatives or those close to him, and, where applicable, the consulate of his country, may be notified of his arrest if he wishes so.

A card has been produced in eight different languages to inform the arrested person of his rights, which is handed to him by the police officers upon the arrest.

The arrested person must be taken to the court within 6 hours<sup>2</sup>, the investigating judge having been informed by the police about the arrest in advance. In every District Court there is an investigating judge on duty (24/7). The EAW or a copy thereof must be submitted to the investigating judge at the time when the person is brought to court.

The investigating judge must check the identity of the person and advise him of his rights. If the EAW is received in a foreign language, it is translated on the spot and entered into the records. Where appropriate, the arrested person is assisted by an interpreter, who proceeds to translate the EAW into a language understandable by him.

Within, at the latest, 48 hours from the time the person was taken to court, a hearing must take place in which the investigating judge hears the requested person about the conditions for the surrender laid down in Article 11 of the ZENPP, informs him of the contents of the warrant and advises him that he may consent to surrender. The person is assisted by a defence counsel of his own choosing or otherwise appointed by the court. The state prosecutor must be present as well.

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<sup>1</sup> Article 16(4) of the ZENPP.

<sup>2</sup> The new law extends this term to 48 hours (Article 18(2)).

# RESTREINT UE

A hearing must then be held to decide on the surrender of the requested person (see chapter 4.6 below).

The fact that an EAW has been issued does not itself entail mandatory detention of the requested person throughout the surrender procedure. According to Article 22(1) of the ZENPP, in order that surrender procedures be executed smoothly and if circumstances exist that indicate that there is a risk of the requested person absconding, the investigating judge shall decide, *ex officio* and following a decision of the issuing judicial authority or at the proposal of the state prosecutor, to order either the detention of the requested person or any other measure intended to ensure his presence by applying, *mutatis mutandi*, the provisions of the Criminal Procedure Code. Article 25(6) adds that until a final decision is adopted on surrender, the court must, using appropriate measures for ensuring the presence of the requested person, do everything in its power to ensure that the requested person is in a position to be surrendered<sup>1</sup>.

The judges interviewed confirmed that the Slovenian system is extremely demanding as regards detention. As stated above, as a rule flight risk is deemed not to exist where the requested person is a permanent resident in Slovenia. The fact that an EAW has been issued does not itself constitute grounds for considering that such a risk exists, whatever the seriousness of the act.

Following the decision of the investigating judge, the requested person may be held in detention for a maximum of one month. After this period he may be kept in detention only on the basis of a decision to extend detention made by a panel of three District Court judges for two-months periods, and up to a maximum of nine months.

## 4.6. THE SURRENDER DECISION/ GUARANTEE REQUIREMENTS AND GUARANTEES PROVIDED

The surrender procedure falls within the jurisdiction of the District Court<sup>2</sup> covering the area where the requested person resides or is located.

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<sup>1</sup> The situation does not change significantly in Articles 23(2) and 25(6) of the new law.

<sup>2</sup> There is no investigating judge at the level of the Local Courts.

## RESTREINT UE

As to the content of the hearing to decide on surrender, the investigating judge will inform the requested person of the possibility of consenting to surrender and waiving entitlement to the application of the speciality rule and the consequences thereof, warning him that neither the consent to surrender nor the waiving of entitlement to the speciality rule may be revoked. Attendance by the defence counsel, the state prosecutor and, where applicable, the interpreter, is mandatory.

The procedure leading to the surrender decision will vary depending on whether the requested person consents to surrender or not.

- Where the requested person consents to surrender, the investigating judge must, without delay and at the latest within 48 hours, issue a decision ordering it, specifying whether or not the person has waived entitlement to the speciality rule. The requested person and his defence counsel may appeal to a panel of three District Court judges within 24 hours of the decision being submitted to them.
- Where the requested person does not consent to surrender, the investigating judge shall hear him immediately with regard to the reasons for refusing to consent to surrender. The defence counsel and the state prosecutor may adduce their own motions and standpoints. The decision on the surrender is issued by a panel of three District Court judges, after receiving a substantiated proposal from the investigating judge. That decision may be appealed against in the High Court by the requested person, his legal counsel and the state prosecutor, the High Court being the final instance in EAW executing procedures.

According to the implementing law, the investigating judge may request additional information and perform any other enquiry with a view to establishing whether the conditions for the surrender of the requested person are met. It is for him also to request, where appropriate, assurances from the issuing judicial authority. It became clear from the interviews however that, as a general rule, judges did not *ex officio* carry out any additional enquiry, in order to check whether any grounds exist for refusal. There is not even a systematic check of previous convictions or possible ongoing investigations or proceedings against the requested person in Slovenia. Those interviews also witnessed the inert role adopted by the state prosecutors in this respect, on the basis that he is legally considered a party to the proceedings representing the interest of the issuing State.

## 4.7. REFUSALS TO SURRENDER

During the calendar year 2006 the Slovene authorities refused execution of EAWs in seven cases. The grounds for refusal were: the acts on account of which the EAW had been issued were committed prior to 7 August 2002 and the requested persons were Slovenian (four cases), prescription (one case), and failure by the issuing judicial authority to provide guarantees required in accordance with Article 14(1)(c) of the implementing law, which corresponds to Article 5(3) of the Framework Decision (one case)<sup>1</sup>. In another case the EAW was withdrawn by the issuing judicial authority.

It should be noted that under Article 36(3) of the ZENPP, surrender requests forwarded by Member States which relate to crimes committed before 7 August 2002 are not considered under ZENPP but instead under the extradition procedure set by the Criminal Procedure Act and the European Convention on Extradition<sup>2</sup>.

A specific ground for refusal inspired by paragraph 12 of the Preamble to the Framework Decision is included in the list of mandatory grounds for refusal<sup>3</sup>.

For the rest, the grounds for refusal listed in the implementing legislation are in accordance with the Framework Decision. The grounds for refusal laid down in Article 4(2) and 4(3) of the Framework Decision have each been split into one mandatory ground for refusal and another left to the decision of the judge in the particular case<sup>4</sup>.

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<sup>1</sup> According to the information provided, in this case the EAW was also refused on the ground that the act was committed in part in Slovenia.

<sup>2</sup> According to the draft the expert team was provided with, this provision is abrogated by the Act on cooperation in criminal matters with the European Union Member States, which in Article 124, paragraph 1, reads: "On the day this act enters into force, the European Arrest Warrant and Surrender Procedure between Member States Act (Official Gazette of the Republic of Slovenia 37/2004) and the Rules on the Form of the European Arrest Warrant (Official Gazette of the Republic of Slovenia 51/2004) shall cease to have effect". The new law does not establish any limitations as to the time when the offence was committed.

<sup>3</sup> Article 12(g) of the ZENPP. Also in Article 9(8) of the new law.

<sup>4</sup> Articles 12(f) and 13(a) of the implementing law as regards Article 4(2) of the Framework Decision, and Articles 12(c) and 13(b) of the implementing law as regards Article 4(3) of the Framework Decision.

A similar situation is reflected in the new law.



## 4.8. OWN NATIONALS AND YOUTH SURRENDER ISSUES

As regards the surrender of own nationals, Slovenia opted for the regulations of both Article 4(6) and Article 5(3) of the Framework Decision. The former has been transposed as an optional ground for refusal<sup>1</sup>, whereas, according to the wording of the implementing law, the provision of a return guarantee in cases in which the surrender of a Slovenian national or resident is requested for the purposes of prosecution, is mandatory<sup>2</sup>.

The enforcement of sentences imposed by foreign courts is regulated by Article 517 of the Criminal Procedure Act, according to which Slovenian courts may grant the request to execute a judgement passed by a foreign court, if so provided by an international agreement or, if reciprocity exists, by imposing a sanction in accordance with Slovenian criminal law. It stems from this provision, in combination with the 1983 Council of Europe Convention, that, in principle, double criminality will be required as a condition for the execution of a sentence passed in another Member State against a Slovenian national or resident upon his return to Slovenia. No court practice exists in this respect in relation to EAW matters<sup>3</sup>.

Article 36(3) of the implementing legislation has had an impact on the own nationals' surrender issue, in the sense that under that provision the surrender of nationals can be refused by applying the standards of the traditional extradition system (see chapter 4.7 above).

As to youth surrenders, the age of criminal responsibility in Slovenia is fourteen years. At the time of the evaluation visit, no EAW had been received in connection with the surrender of minors.

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<sup>1</sup> Article 13(c) of the ZENPP, which adds to the provision of the Framework Decision: "if the requested person so wishes".

<sup>2</sup> Article 14(1)(c) in connection with Article 12(h) of the ZENPP.

<sup>3</sup> According to the draft the expert team was provided with, the Act on cooperation in criminal matters with the European Union Member States introduces radical changes here. Article 72(1) provides, in relation to the refusal of the execution of an EAW on ground of Article 4(6) of the Framework Decision: "In this case, a criminal judgement in the country that resulted in the issue of the warrant, is executed in the Republic of Slovenia even if the act from the warrant is not punishable under the laws of the Republic of Slovenia". Article 72(2) reads, in relation to cases coming under Article 5(3) of the Framework Decision: "... the judgement of the court of the issuing country is executed in the Republic of Slovenia, even if the conditions under Points 2 and 3 of Article 66 of this Act are not met".

## 4.9. SPECIALITY

The speciality rule is formulated in the implementing law in a more restrictive way than in the Framework Decision (see chapter 3.14 above)<sup>1</sup>.

No difficulties arising from this issue were reported.

## 4.10. ONWARD SURRENDER/EXTRADITION

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

## 4.11. ARTICLE 32 EXPERIENCES

In its statements to the General Secretariat of the Council regarding the implementation of the EAW with reference to the Framework Decision<sup>2</sup>, Slovenia included the following: "Article 32 - The European Arrest and Surrender Warrant Act of the Republic of Slovenia applies to offences committed after 7 August 2002". This means that surrender requests related to offences committed before this date are processed following the procedure and under the principles of the old extradition system; according to the implementing law this applies only to incoming requests<sup>3</sup>.

Slovenia reported no cases involving Article 32 of the Framework Decision derogations.

## 4.12. TEMPORARY/CONDITIONAL SURRENDER

At the time of the visit Slovenia had had no temporary surrender cases as executing state.

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<sup>1</sup> The situation is similar in the new law. "*Article 4 - Principle of speciality*" reads: "The requested person surrendered to another Member State may be prosecuted, sentence may be enforced against the person or the person may be surrendered to another Member State only for the criminal offence that he committed before the surrender and which was the reason for his surrender, except if determined otherwise by this Act".

<sup>2</sup> Doc. 9651/04.

<sup>3</sup> See chapter 4.7 above.

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

SIPC is responsible for all the practical arrangements necessary for the surrender to take place, including contacts with the competent authorities of the issuing Member State, and for organizing the surrender itself.

The expert team noted that, as regards the case in which the surrender of the requested person within the period of 10 days after the final decision on the execution of the EAW is prevented by circumstances beyond the control of any of the Member States involved, Article 30 (2) of the implementing law does not match Article 23(3) of the Framework Decision, in that the former envisages that the subsequent agreement with the issuing judicial authority setting a new date for the surrender is a matter for either the investigating judge or the police<sup>1</sup>. Ministry of Justice officials made it clear that, as to the police, that provision should be understood as referring to pure technical facilitation.

As to the observance of the time limits established by the law to perform the surrender in practice, only one case was reported in which the surrender of the requested person did not take place within those time limits (the decision approving the surrender became final on the eleventh day after consent was given by the requested person, SIPC was informed on the sixteenth and the surrender took place on the twenty-sixth), due to a lack of coordination between the court, the police and the foreign law enforcement agencies. It should be noted that Article 30(5) of the implementing law expressly lays down that the release of the requested person on the expiry of the time limits envisaged for the surrender shall not prevent surrender at a later date.

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<sup>1</sup> In the same line (according to the draft the expert team was provided with), Article 34(2) of the Act on cooperation in criminal matters with the European Union Member States.

# RESTREINT UE

As stated above, the ZENPP does not provide for mandatory detention of the requested person following receipt of an EAW. Articles 22(1) and 25(6) impose on the court the obligation to use appropriate measures for ensuring the presence of the requested person during the EAW procedure and for the actual surrender itself. However, the fact that the Slovenian law is extremely demanding as regards the possibility of ordering detention of permanent residents<sup>1</sup> may result in situations where problems are encountered once the surrender order becomes final. Thus, according to the information provided, the police had recorded cases where the person scheduled to appear on an agreed date for the surrender did not appear at the agreed place.

## 4.14. THE MECHANICS OF THE SURRENDER OF REQUESTED PROPERTY

In that light of Article 34 of the ZENPP, the expert team raised the question whether items that may be required as evidence, or that have been acquired by the requested person as a result of the offence, may be seized ex officio by Slovenian courts when acting as EAW executing authorities, or whether seizure should rather be requested by the issuing judicial authority.

During the interviews with the Slovenian judicial authorities the opinion was expressed that a request from the issuing authority would be preferable. After the visit, the Slovenian authorities provided the expert team with a copy of the provisions of the Criminal Procedure Act that authorise police officers to seize objects which may serve as evidence in criminal proceedings or which must be confiscated under the Penal Code, either during the course of the investigating phase or when executing an order of the court. The Slovenian authorities argued that, according to Article 1(2) of the implementing law, the Criminal Procedure Act applies *mutatis mutandis* for issues not specifically regulated by the former. The expert team was however unclear about the applicability of such provisions to the case in question<sup>2</sup>.

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<sup>1</sup> See chapter 4.5 above.

<sup>2</sup> For items that may be required as evidence in the issuing Member State, Article 24(1) of the new law provides that the investigating judge shall seize them and hand them over if the issuing judicial authority so orders in an EAW, "or when so determined by the national penal code". For items acquired by the requested person as a result of the offence (financial profit), Article 24(2) of the new law continues to require a request from the issuing judicial authority for the Slovenian executing judicial authority to proceed to order temporary protection.

## 4.15. CONFLICT OF EAWS/EXTRADITION REQUESTS

The provisions of the implementing law on this issue take account of Article 16 of the Framework Decision in the determination of priority. It should be noted that Article 24(4) of the ZENPP adds to the Framework Decision that those provisions shall be interpreted as not affecting Slovenia's obligations not only towards the International Criminal Court, but also "towards other international criminal courts, in accordance with international treaties binding on the Republic of Slovenia"<sup>1</sup>.

The Slovene authorities reported no experience on this issue.

## 4.16. EXPENSES

See chapter 3.13 above.

## 4.17. MISCELLANEOUS COMMENTS

### Transit

The expert team noted divergences between the provisions of the implementing law and those of the Framework Decision on this issue. Specifically, the following questions were raised:

- According to the implementing law, where the transit is requested for the purpose of the execution of a custodial sentence and the person is not a Slovenian citizen, transit shall be permitted on condition that the requested person explicitly states that he wishes to serve his sentence in the issuing Member State<sup>2</sup>. This is a condition not envisaged in the Framework Decision<sup>3</sup>.
- There is no provision in the ZENPP referring to the case in which the transit concerns a person who is to be extradited from a third State to a Member State (Article 25(5) of the Framework Decision).

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<sup>1</sup> According to the draft the expert team was provided with, that addition is deleted in Article 32(4) of the Act on cooperation in criminal matters with the European Union Member States.

<sup>2</sup> Article 32(4) of the ZENPP. It also appears in Article 36(4) of the new law.

<sup>3</sup> Under Article 36(2) of the new law it is necessary to accompany a copy of the EAW with the request for transit, whereas the Framework Decision only requires in Article 25(1)(b) that information is given on the existence of an EAW.

## 5. TRAINING PROVISION

### Training for judges

The judges interviewed confirmed that some lectures on EAW procedures were organised after the implementing law was enacted. They also confirmed that a training session on this issue was carried out in 2006 as part of the activities organised in the framework of the Transition Facility Programme - Twinning Light no. SI04/JH/01/A, bringing together representatives of the Slovenian and the Austrian authorities involved in the implementation of the EAW.

Participation of some judges in international seminars on this issue was reported.

Every year the Judicial Training Centre (hereunder referred to as JTC)<sup>1</sup> organizes a "School for judges", a three day seminar which always includes a topic on European law. Attendance by judges is voluntary, although it has an impact on promotions. In that context the expert team was informed that in 2007 the topic selected was the EAW; this meant in practice that all judges working on EAW-related matters had the opportunity to attend a 90-minute lecture on this issue.

As to language training, the expert team was advised that training on English legal terminology is offered by the JTC to incoming judges in the framework of the initial training programme and also to sitting judges.

The director of the JTC explained to the expert team that a proposal had been submitted to the European Commission with a view to organizing three training programmes, for criminal judges, investigating judges and state prosecutors on EAW among other issues, in which particular attention would be given to practice.

### Training for police officers

According to the information provided, SIPC organizes an annual training seminar (refresher training) for police officers in the field of international search orders. The purpose of this is to exchange information, review case studies, familiarize them with EU legislation, target-oriented searching for persons etc. Representatives of the judiciary and state prosecutors are invited to attend these seminars as lecturers.

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<sup>1</sup> It is under the direct responsibility of the Minister of Justice.

During 2007, the Slovenian Police performed the training of staff for the implementation of the EU Acquis and the Schengen Acquis within the abovementioned Twinning project. Within this program, in January 2007, a seminar for court personnel was organised to provide them with essential information on the SIS. Staff from the Ministry of Justice were also invited to this seminar. 50 participants undertook two days of training with the Austrian twinning partners.

## Training for lawyers

The Bar Association organizes some training for its associates once or twice a year, although, according to the information provided by the representatives of the Bar interviewed, EAW procedures have never been the subject of such activities. Nor has any specific training been organized for those included in the list of defence counsels that can be called by the court to provide assistance in EAW cases.

## **6. DEFENCE PERSPECTIVES**

The expert team had the opportunity to meet two members of the Bar who had appeared as defence counsels in EAW cases.

The lawyers interviewed were of the view that, in general terms, the implementing law aligns with the safeguards inherent in the Slovenian criminal system. However, the opinion was expressed that the functioning of the EAW could be improved by guaranteeing some common procedural rights at European Union level.

They conveyed that not so many problematic issues had been raised in relation to the implementation of the domestic law on EAW so far.

The performance of judges as regards respecting the procedural rights of the defendant in EAW procedures was assessed positively. In this respect, the lawyers interviewed stressed that they had encountered no problems in practice as regards the possibility of communicating with the defendant (no interferences, extended time provided by the court if necessary), or allegations or possibilities of defence within the limits of the EAW procedure.

Nor were any problems reported as regards the handling of EAW cases by courts compared with any other type of case, apart from occasional difficulties related to the quality of the documentation provided (copies not readable, pages lost, etc.).

Details were given as to how the appointment of a defence counsel ex officio takes place in EAW procedures. According to the information provided, if the defendant does not select a defence counsel, one is appointed by the court from among those on the same list as that for standard criminal cases. There is therefore no special list for EAW cases, nor do those on the list to be called receive specific training on EAW. It is mainly for the Bar Association to ask its associates to enrol on such a list, and those who apply are generally junior lawyers.

## 7. CONCLUSIONS

The expert team would like to emphasize the high level of the organization of the visit. The members of the team appreciated the professionalism, receptiveness and frankness of the authorities they had the opportunity to meet, which provided the team with the opportunity to discuss in depth any questions raised during the interviews and conduct a detailed analysis of the practical application of the EAW in Slovenia. The substance of the information provided enabled the team to fulfil the objectives of the evaluation visit.

### 7.1. GENERAL CONCLUSIONS

#### Implementing legislation

7.1.1. The Slovenian implementing legislation is mostly in line with the letter and the spirit of the Framework Decision. Divergences however can be observed between them and some specific provisions of the Framework Decision have not been transposed. This situation is mitigated in the new Act on cooperation in criminal matters with the European Union Member States, which, at the time of the evaluation visit, was being discussed at the Parliament and has since then been adopted<sup>1</sup>.

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<sup>1</sup> In the conclusions listed hereunder express reference is made to the new law only in cases where it introduces significant changes compared with the law in force at the time of the evaluation visit.



# RESTREINT UE

## Procedures

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

7.1.3. It must be pointed out, however, that the use in the EAW system of certain mechanisms of the national system (namely, the conditions governing arrest and detention of the requested person) could have an impact on the efficiency of the EAW. It also seems unclear what impact adherence to the Schengen system may have on the immediate arrest of suspects.

## Practice

7.1.4. The Slovenian authorities and professionals have a positive opinion of the EAW.

7.1.5. The practical implementation of the EAW in Slovenia seems to be simple and clear, and no serious difficulties in relations with other Member States have been reported. It must be stressed however that so far the number of EAW cases dealt with by the Slovenian authorities is rather limited and court practice is still developing.

7.1.6. There are also a number of issues of which Slovenia has no experience yet (e.g., conflict of EAWs, temporary surrender) and therefore the question of how national provisions would operate in such cases remains open.

7.1.7. The close cooperation between Slovenian police and courts in handling EAWs is remarkable and contributes to the good functioning of the system.

7.1.8. Communications and exchange of information between the Slovenian judicial authorities and their partners in other Member States are made, by preference, via police channels, and therefore direct contacts between them continue to be rare, regardless of the provisions of the implementing law in this respect.

7.1.9. There are not enough instruments specifically designed to facilitate application of the EAW by practitioners. For instance, no guidelines have been produced to assist courts when issuing or executing an EAW; no experts groups nor other means to provide expertise to courts have been established. Efforts by the Council of the EU to draw up a handbook on how to fill in the EAW form will most certainly be welcomed by practitioners.

7.1.10. In that connection, the importance of providing extensive and regular training for all those involved in the operation of the EAW must be stressed, this being one of the main deficiencies of the Slovenian system.

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

### 7.2.1. Proportionality test

Although the Framework Decision does not include any obligation regarding a proportionality check, the expert team is of the opinion that some provisions, guidelines or other measures should be put in place aimed at ensuring a coherent and proportionate use of the option of issuing an EAW for the purpose of prosecution. For instance, it would seem that state prosecutors could take a more active role as regards this issue. The Slovenian authorities pointed out that a proportionality test is already applied when issuing a domestic arrest warrant and hence an additional proportionality test would be superfluous. The evaluation team, however, believes that the criteria for issuing this instrument should reflect the importance of using the EAW for matters of appropriate gravity, excluding cases where a national arrest warrant could be justified, but the surrender of the requested person would be disproportionate

### 7.2.2. Return of the executing Member State's own nationals

The implementing law does not envisage any particular system to ensure the fulfilment of return guarantees required by the executing Member State. On the other hand, the legal regime applicable for the return to his country of origin of a foreigner sentenced by a domestic court (1983 Council of Europe Convention in connection with Article 517(7) of the Criminal Procedure Act), in requiring the petition of the convicted person, leaves uncertain whether the undertakings provided by the Slovenian authorities (i.e. to return the person) when acting as EAW issuing authorities will be respected.

## 7.2.3. Speciality rule

The implementing legislation does not include deprivation of liberty among the restrictions inherent to the speciality rule. Thus, according to the transposing law, a person cannot be prosecuted, sentenced or surrendered to another Member State for a criminal offence committed prior to his surrender. Nevertheless, the transposing law, unlike the Framework Decision, does not expressly prohibit the taking of the surrendered person into custody (pre-trial detention) for an offence committed prior to his surrender.

The expert team noted that the operation of the speciality rule seemed in practice to rely solely on the fact that the surrendered person raised this question, since the judicial authorities interviewed were unable to describe any reliable or standardised routine for the court undertaking criminal proceedings against such a person to check the previous surrender.

7.2.4. Failure to transpose the provisions of the Framework Decision on subsequent surrender Article 8(2) of the implementing law lists the cases in which a person surrendered to Slovenia can be surrendered to another Member State for a criminal offence committed prior to his surrender other than that for which he was surrendered. It does not envisage the case in which the surrendered person himself consents to be surrendered, irrespective of the consent of the executing Member State (Article 28(2)(b) of the Framework Decision).

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

### 7.3.1. Issues

#### 7.3.1.1. Legal basis and double criminality<sup>1</sup>

The expert team found divergences in the transposition of the Framework Decision as regards the list of offences not covered by double criminality. Swindling is not listed by the implementing legislation; the illicit trafficking of psychotropic substances is not mentioned either; "committed as part of a group or using weapons or dangerous instruments" is added to "racketeering and extortion".

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<sup>1</sup> According to the draft the expert team was provided with, the Act on cooperation in criminal matters with the European Union Member States represents a clear attempt to put the domestic legislation in line with the Framework Decision as regards these issues, in the sense that it mirrors the list of offences and the penalty threshold indicated in the latter.

It was also noted that the Slovenian law does not properly transpose the Framework Decision as regards the penalty threshold, in that the implementing law requires the offence to be punished with "a custodial sentence of at least three years". This provision was interpreted literally by the Slovenian judicial authorities that the experts interviewed, which resulted in double criminality being checked even in relation to acts for which it should not be according to the Framework Decision.

## 7.3.1.2. Examination of double criminality

During the discussions it emerged that it was the practice of the Slovenian judicial authorities interviewed by the experts to check the factual description of the EAW against their own Penal Code, even in those cases in which the verification of the double criminality of the act should be excluded.

In fact, the implementing legislation<sup>1</sup> may be interpreted as requiring that such verification has to be carried out in any case.

## 7.3.1.3. Arrest and detention of the requested person

The implementing legislation does not provide for immediate arrest of the requested person following receipt of an EAW. As a rule, the executing investigating judge must first summon the individual to a hearing to decide on surrender, and only if the requested person does not attend, an order to bring him before the court is issued. According to the implementing law<sup>2</sup>, the police may proceed to arrest the requested person without a prior order of the investigating judge where there is a risk of absconding. However, generally speaking, it is considered that such a risk does not occur when the requested person has a permanent residence in Slovenia.

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<sup>1</sup> The provision in question reads: "Surrender shall also be permitted even if the requirement of double criminality has not been met, if...".

Article 8(1) second paragraph of the new law is not much clearer subject to errors in translation. It reads: "Notwithstanding the double criminality, surrender shall be admissible if ...".

<sup>2</sup> According to the draft the expert team was provided with, the Act on cooperation in criminal matters with the European Union Member States introduces important changes here, in that the summon of the requested person is replaced by an order on forced production before the court. As regards detention, the situation does not vary significantly.

Where there is a risk of absconding, the investigating judge is entitled to order either the detention of the requested person or any other measure intended to ensure his presence, by applying the provisions of the Criminal Procedure Code. The Slovenian system however is very restrictive as regards detention, irrespective of the gravity of the offence. The opinion was also expressed by some of the judicial authorities interviewed that detention would not be ordered if the underlying act did not constitute an offence under Slovenian law.

As to the risk of absconding, in addition to what has been already mentioned, it should be noted that, according to the opinion expressed by the judicial authorities interviewed, the fact that an EAW has been issued does not itself constitute grounds for considering that such a risk exists. In the view of the expert team, this may result in situations in which it would be rather easy for the requested person to evade the execution of the surrender order.

#### 7.3.1.4. Grounds for mandatory non-execution

A specific ground for refusal inspired by paragraph 12 of the Preamble of the Framework Decision is included in the list of mandatory grounds for refusal in the implementing law.

The expert team noted that Member States transposing legislations are varied in content in relation to the integration of Article 1(3) and related paragraphs 12 and 13 of the Preamble of the Framework Decision. Member States and judicial authorities are under an obligation to respect fundamental rights and, therefore, under an obligation to refuse to execute an EAW that violates them. It would be advisable however to reach a common approach on this issue.

#### 7.3.1.5. Checking of ongoing investigations

According to the implementing law, the investigating judge may request additional information and make any other enquiry with a view to establishing whether the conditions for the surrender of the requested person are met. It resulted clearly from the interviews however that, as a general rule, judges do not ex officio carry out any additional enquiry. There are not even systematic checks on possible ongoing investigations or proceedings against the requested person in Slovenia, or prior convictions. It seems that such a check will be made only if the requested person alludes to the existence of this circumstance.

7.3.1.6. Execution of the sentence passed against a Slovenian national or resident by a court of the issuing Member State

Slovenia has opted for transposing both Article 4(6) and Article 5(3) of the Framework Decision. There are, however, no specific provisions in the implementing legislation<sup>1</sup> on the execution of the sentence passed against the requested person in the issuing Member State. That may give rise to difficulties when the acts do not constitute a criminal offence under the domestic law, since the Slovenian regulation on the enforcement of sentences imposed by foreign courts refers to the 1983 Council of Europe Convention, and, therefore, double criminality should in principle operate as a condition for the execution of the sentence.

No court practice exists in this respect in relation to EAW matters. The experts and officials who participated in the interviews were unable to give a clear answer when the question was raised, and expressed doubts that such an arrangement should apply to EAW cases in which the Slovenian authorities had taken over the execution of the foreign sentence.

7.3.1.7. Declaration in relation to Article 32 of the Framework Decision

Under Article 36(3) of the implementing legislation<sup>2</sup>, surrender requests forwarded to Slovenia by other Member States in relation to crimes committed before 7 August 2002 are considered as extradition requests and will be processed according to the extradition procedure established in the domestic law and the European Convention on Extradition. Correspondingly, in its statements to the General Secretariat of the Council regarding the implementation of the EAW, Slovenia included one in relation to Article 32 of the Framework Decision, by virtue of which the European Arrest and Surrender Warrant Act would only apply to offences committed after the above-mentioned date. That provision and statement are not in line with the Framework Decision.

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<sup>1</sup> According to the draft the expert team was provided with, the changes introduced in the new Act on cooperation in criminal matters with the European Union Member States are noteworthy, since it expressly provides in Article 72 that the sentence issued by the foreign court will be executed in Slovenia even if the act on which the EAW is based is not punishable under the Slovenian law.

<sup>2</sup> According to the draft the expert team was provided with, in the Act on cooperation in criminal matters with the European Union Member States this provision is withdrawn. This must be considered to be a significant step made by Slovenia to bring the new Act in line with the Framework Decision.

## 7.3.1.8. Seizure and handing over of property

A possible interpretation of Article 29(1) of the Framework Decision is that the executing judicial authority must proceed to seize property in the possession of the requested person that may be used as evidence, or has been acquired by him as a result of the offence, on its own initiative, this is, regardless of the issuing judicial authority having asked for it. Even if this interpretation is not subscribed to by the Slovenian authorities, the expert team is of the opinion that, in order to make the cooperation efficient and adequate, Slovenia should have clear rules enabling the court (also without a previous request), at least, to secure property found on or in connection with a person who is arrested on grounds of an EAW, pending a request from the issuing state. In the absence of such provisions, important evidence might get lost and the subsequent prosecution of the requested person may be impeded. This may enable the police, for instance, to seize mobile phones or computers found on the site of the arrest of a drugs trafficker.

## 7.3.1.9. Transit cases

The expert team noted divergences in the transposition of the provisions of the Framework Decision on this matter in that, in conviction cases relating to non-Slovenian citizens, the implementing law requires an explicit statement from the requested person that he wishes to serve the sentence in the issuing Member State. The implementing law also fails to transpose Article 25(5) of the Framework Decision on transit cases concerning a person who is to be extradited from a third State to a Member State.

## 7.3.2. Good practice

### 7.3.2.1. Translation of EAWs

Under the Slovenian transposing law, if the requested person is in custody, the executing investigating judge may on his own initiative order the translation of the EAW into Slovenian and proceed further with the surrender procedure without having to wait for the issuing judicial authority to send it. According to the information provided during the evaluation visit this is regular court practice.

The expert team shares the view of the Slovenian authorities that the practice supports the rights of the requested person and helps to expedite the procedure.

7.3.2.2. Possibility of informing the arrested person of his rights in his own language

A card has been produced in eight different languages to inform the requested person of his rights, which is handed to him by the police upon his arrest.

7.3.2.3. Investigation of SIS Alerts

The team was positively impressed by the fact that, according to the information provided, the Slovenian Sirene National Office was in the process of retroactively checking whether the subjects of all Article 95 alerts introduced into the system were recorded as having links with Slovenia.

## 8. RECOMMENDATIONS

### 8.1. RECOMMENDATIONS TO SLOVENIA<sup>1</sup>

#### GENERAL

Recommendation 1 – To consider establishing tools aimed at facilitating the practical application of the EAW by practitioners, such as guidelines to assist judicial authorities to fill in the EAW and other means deemed appropriate to provide expertise to those involved in EAW procedures and to further circulate the information available on the application of the EAW in practice (see 7.1.9).

Recommendation 2 - To adopt measures to ensure that appropriate training programmes are put in place, so that extensive and regular training on EAW is provided to judges, state prosecutors and defence lawyers (see 7.1.10).

#### AS ISSUING MEMBER STATE

Recommendation 3 - To re-examine the transposition of the Framework Decision into national law as regards the speciality rule, so that the taking of the surrendered person into custody is expressly included in the scope of the domestic legislation (see 7.2.3).

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<sup>1</sup> The following recommendations correspond to the situation existing in Slovenia at the time of the evaluation visit. As regards proposed legal amendments, reference is made by footnote where, according to the draft the expert team was provided with, action is taken in the Act on cooperation in criminal matters with the European Union Member States.



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Recommendation 4 - To consider establishing a mechanism allowing the Slovenian judicial authorities, when proceeding against a person surrendered pursuant to an EAW, to check the conditions of the surrender, with a view to respecting the speciality rule (see 7.2.3).

Recommendation 5 - To re-examine the transposition of the Framework Decision into national law as regards the subsequent surrender, so that the surrendered person may be re-surrendered solely with his consent to a Member State other than the executing State without the consent of the latter (see 7.2.4).

### AS EXECUTING MEMBER STATE

Recommendation 6 - To amend the implementing law so that it conforms to the Framework Decision as regards the list of offences not covered by double criminality (see 7.3.1.1)<sup>1</sup>.

Recommendation 7 - To re-examine the transposition into national law with regard to the penalty threshold referred to in Article 2(2) of the Framework Decision (see 7.3.1.1)<sup>2</sup>.

Recommendation 8 - To take steps to correct the current judicial practice of checking the factual description of the EAW against their own Penal Code in respect of the offences listed in the Framework Decision (see 7.3.1.2).

Recommendation 9 - To take steps to correct the practice and the underlying legal criteria applicable to detention in EAW proceedings, in particular as regards Slovenian nationals and residents (see 7.3.1.3).

Recommendation 10 - To take the necessary steps to ensure that in the course of an EAW procedure the existence of ongoing investigations or proceedings against the requested person, or prior convictions, is checked (e.g. through appropriate databases or other means) (see 7.3.1.5).

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<sup>1</sup> According to the draft the expert team was provided with, action already taken pursuant to Article 8 of the Act on cooperation in criminal matters with the European Union Member States.

<sup>2</sup> According to the draft the expert team was provided with, action already taken pursuant to Article 8 of the Act on cooperation in criminal matters with the European Union Member States.

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Recommendation 11 - To take the necessary measures to ensure that Slovenia will enforce sentences passed against its own nationals and residents in the issuing Member State for offences not punishable under Slovenian law (see 7.3.1.6)<sup>1</sup>.

Recommendation 12 - To abrogate Article 36(3) of the implementing law (see 7.3.1.7)<sup>2</sup>.

Recommendation 13 - To consider amending the implementing legislation with a view to establishing clear rules enabling courts executing EAWs to proceed to seize property in the possession of the requested person that may be used as evidence, or that has been acquired by him as a result of the offence, without a prior request from the issuing authority (see 7.3.1.8).

Recommendation 14 - To re-examine the transposition of the Framework Decision into national law as regards transit of non-Slovenians in conviction cases, so that a statement by the requested person that he wishes to serve the sentence in the issuing Member State is not required (see 7.3.1.9).

Recommendation 15 - To re-examine the transposition of the Framework Decision into national law, so that transit cases from third States to another Member State are expressly addressed by the implementing legislation, and so that conditions similar to those of transit within the European Union apply (see 7.3.1.9).

## 8.2. RECOMMENDATIONS TO CERTAIN OTHER MEMBER STATES

Recommendation 16 - To consider following the Slovenian practice, when acting as executing state, of translating EAWs on one's own initiative, in cases where the requested person is in custody (see 7.3.2.1).

Recommendation 17 - To consider producing a card or a leaflet in commonly spoken languages in each Member State, in order to inform a person arrested pursuant to an EAW of his rights (see 7.3.2.2).

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<sup>1</sup> According to the draft the expert team was provided with, action already taken pursuant to Article 72 of the Act on cooperation in criminal matters with the European Union Member States.

<sup>2</sup> According to the draft the expert team was provided with, action already taken pursuant to the Act on cooperation in criminal matters with the European Union Member States.

## 8.3. RECOMMENDATIONS TO THE EUROPEAN UNION

Recommendation 18 - To continue the ongoing discussions on the benefits of instituting a proportionality test for the issue of EAWs (see 7.2.1)

Recommendation 19 - To take steps to introduce a common simplified procedure for the return of nationals, ensuring that the principles laid down in Article 5(3) of the Framework Decision are observed, in particular by eliminating the prior request of the person concerned (see 7.2.2).

Recommendation 20 - To seek to reach a common approach on how Article 1(3) of the Framework Decision should be integrated in Member States' legislations (see 7.3.1.4).

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# RESTREINT UE

ANNEX A

## PROGRAMME OF VISIT

### **Tuesday, October 2<sup>nd</sup>**

9.00 - 11.00	Ministry of Justice (Directorate for Legislation, Directorate for International Cooperation)
11.30 - 12.30	Ministry of Interior - Police (general presentation, Interpol, SIRENE)
12.30 - 14.00	Lunch - hosted by Ministry of Interior (Bela Galerija, Kotnikova ulica 8)
14.15 - 15.30	Ministry of Interior - Police (continuation)
16.00 - 17.30	Supreme State Prosecutor's Office
19:00	Dinner - hosted by Ministry of Justice (Figovec, Gosposvetska 1)

### **Wednesday, October 3<sup>rd</sup>**

09.00 - 11:00	District Court Ljubljana
11.00 - 12.30	Higher Court Ljubljana
12.30 - 14.00	Lunch - hosted by Higher court Ljubljana (Šestica, Slovenska cesta 40) and departure to Koper
15.30 - 17.30	District Court Koper

### **Thursday, October 4<sup>th</sup>**

09.30 - 11.00	Bar Association
11.20 - 11.50	Ministry of Justice (Centre for Training of Judges)
12.00 - 14.00	Round-up meeting (judges, Interpol, Ministry of Justice)

## LIST OF PERSONS INTERVIEWED

### **Ministry of Justice**

Ms. Ana Bučar Brglez - Head of Mutual Legal Assistance Sector  
Ms. Andreja Lang - Head of Department for Criminal Legislation and Personal Data Protection Legislation  
Ms. Petra Marolt Vajda - Head of Centre for Training of Judges  
Ms. Katarina Vreg - Senior Advisor in Mutual Legal Assistance Sector

### **Ministry of Interior - Police**

Mr. Dušan Kerin - Head of Sector for International Police Cooperation  
Mr. Rajko Kozmelj - Assistant Director of General Police Directorate  
Ms. Sonja Božič - Head of SIRENE Bureau

### **Supreme State Prosecutor's Office**

Mr. Mirko Vrtačnik - Supreme State Prosecutor  
Ms. Blanka Žgajnar - District State Prosecutor, Head of District State Prosecutor's Office Ljubljana  
Ms. Branka Zobec Hrstar - Higher State Prosecutor, Group of State Prosecutors for Prosecution of Organised Crime  
Ms. Maja Veber-Šajn - Higher Legal Advisor, Group of State Prosecutors for Prosecution of Organised Crime

### **District Court Ljubljana**

Ms. Marjutka Paškulin - District Court Investigating Judge  
Ms. Lea Habjanič - District Court Judge  
Mr. Andrej Baraga - District Judge, Head of District Court Ljubljana  
Ms. Tatjana Skubic - District Court Judge, Head of Criminal Department

### **Higher Court Ljubljana**

Ms. Marjeta Švab Širok - Higher Court Judge  
Ms. Milena Jazbec Lamut - Higher Court Judge  
Ms. Alijana Ravnik - Higher Court Judge

### **District Court Koper**

Mr. Julijan Glavina - District Court Judge, Head of Criminal Department  
Mr. Matevž Gros - District Court Judge, Head of Investigating Department  
Ms. Polka Boškovič - District Court Investigating Judge

### **Bar Association of Slovenia**

Mr. Janez Starman - Advocate  
Mr. Blaž Kovačič - Advocate

## LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

ACRONYM ABBREVIATION TERM	ENGLISH EXPLANATION
JTC	Judicial Training Centre
SIPC	Section for International Police Cooperation
SIS	Schengen Information System
SSPO	Supreme State Prosecutor's Office
ZENPP	Act on the EAW and surrender procedures (Official Gazette of the RS, no 37/2004)

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