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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 GREECE

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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 document ST 14272/05 CRIMORG 131 COPEN 175 EJM 57 EUROJUST 77.
- 1.5. Also at its meeting on 28 October 2005 the MDG discussed and approved document 13824/05, the revised sequence for the mutual evaluation visits. Greece is the twentieth Member State to be evaluated during the fourth round of evaluations.

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

² Document 6206/06/REV1 - Timetable for 2006 and designation of experts.

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- 1.6. The experts charged with undertaking this evaluation were: Mr Juhani Korhonen (Legal Adviser, Ministry of Justice, Finland), Mr Kamen Mihov (Prosecutor, Head of the International Legal Cooperation Department, Public Prosecutor's Office, Bulgaria) and Mrs Eli Kanari-Morphaki (in charge of the Unit for International Legal Cooperation, Ministry of Justice and Public Order, Cyprus). Two observers were also present: Mr Juan Antonio Garcia Jabaloy (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 8-11 April 2008, and upon the detailed and helpful responses of Greece 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 Greece 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 Greek Public Prosecution Service is part of the judiciary and as such is independent both of the courts and of the executive power. It is governed by the principles of indivisibility and hierarchical subordination. By virtue of the former, any procedural act of a public prosecutor is considered as an act of the prosecution service. The principle of hierarchical subordination means, generally speaking, that public prosecutors are obliged to follow the instructions of their superiors.

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There is a public prosecutor's office at each court of each of the three levels of the Greek court system (first instance court, Court of Appeal and Areios Pagos - Supreme Court in civil and criminal matters). The highest authority in the prosecution service is the Public Prosecutor at the Areios Pagos. He is vested with the power to address orders, general instructions and recommendations to all public prosecutors relating to the exercise of their duties. In that connection, the Public Prosecutor at the Areios Pagos has the task of supervising the implementation of a proper prosecution policy at national level.

The only prosecutors empowered to prosecute are the prosecutors at the first instance courts and, in some special cases (e.g. terrorism and laundering of proceeds of crime), the public prosecutors at the courts of appeal. However, as already mentioned, by virtue of the principle of hierarchical subordination the Public Prosecutor at the Areios Pagos and the public prosecutors at the courts of appeal are vested with the power to mandate the public prosecutors at the courts of first instance to prosecute a case. The latter are legally bound by the instructions from their superiors, subject to two restrictions: the principle of legality, according to which the activities of the members of the prosecution service must always be in conformity with the law, and the freedom of opinion, meaning that the public prosecutor is bound to proceed with the procedural acts ordered by his superiors while keeping the freedom to determine the action to be taken/requested from the court in connection with those procedural acts.

The prosecution service has a monopoly over prosecutions. In this regard, according to the Greek Code of Criminal Procedure, in the pre-trial phase of criminal proceedings two types of procedure can be differentiated:

- The main investigation, applied in felony cases and some serious misdemeanors, is carried out by an examining magistrate. The latter is to a great extent independent in his acts and is not obliged to follow the proposals made by the public prosecutor. However, in some cases (e.g. when issuing an arrest warrant or a pre-trial detention order), the agreement of the public prosecutor is required; otherwise the indictment chamber decides on the issue.
- The summary investigation is applied in misdemeanor cases and is carried out by an investigating officer.

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Both investigating procedures are instituted following a written request by the public prosecutor. In addition, the summary investigation is conducted by the investigating officer under the direction of the public prosecutor. The latter is also empowered to conduct preliminary investigations, in order to decide whether to institute proceedings or not.

In Greece the prosecution system is governed by the principle of mandatory prosecution. The Code of Criminal Procedure envisages, however, some exceptions to that principle.

The Minister of Justice superintends the administration of Justice, meaning that it is his duty to supervise, to issue general instructions and to secure the material and technical infrastructures which are necessary for the proper functioning of the courts and the prosecution service. The Minister's supervision concerns merely the running of the prosecution service as a civil service, not the operation of its members in their capacity as public prosecutors. Therefore, the Minister of Justice is not empowered to issue any instructions, recommendations or indications concerning any substantive or procedural matter. However, pursuant to the Code of Criminal Procedure, the Minister of Justice is vested with the power to mandate the public prosecutor to conduct a preliminary investigation on any criminal offence. Moreover, in cases of political offences and of offences which may have the effect of disrupting the international relations of the country, the Minister of Justice may, after receiving the assent of the whole Government, postpone the prosecution of a case, or suspend it if it has been initiated. The Code of Criminal Procedure also stipulates that, in exceptional cases, the Minister may request the Public Prosecutor at the Areios Pagos to order that the investigation of a certain case be given priority.

As to EAW-related matters, the Public Prosecutor at the Court of Appeal plays a central role: he has been designated as the authority competent to issue EAWs, as well as, in cases where Greece acts as executing State, for the receipt of the EAW, the arrest and detention of the requested person, the submission of the case to the competent judicial body and the execution of the court decision on surrender.

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Greek courts dealing with criminal offences are organised in a three-tier system: courts of first instance, courts of appeal and the Supreme Court (Areios Pagos)¹.

In those cases where the requested person consents to surrender, the competence to decide on the execution of the EAW is vested in the Presiding Judge of the Court of Appeal². Cases where the requested person does not consent to surrender are tried by a Judicial Council composed of three Court of Appeal judges. In principle, any judge at the Court of Appeal dealing with criminal matters may be a member of the Judicial Council which decides on the execution of EAWs. However, in the Court of Appeal of Athens EAW cases are allocated to 2 divisions whose members rotate every two years.

The decision of the Judicial Council may be appealed in the Supreme Court. There is no appeal against the decision on surrender in consented cases.

The Ministry of Justice has been designated³ as the central authority to assist the competent judicial authorities in EAW matters. Furthermore, pursuant to the implementing law⁴, the Ministry of Justice can act as a conduit for the (administrative) transmission and reception of EAWs and official correspondence relating thereto, and may be entitled to keep statistical data. The Department of Special Criminal Cases and International Judicial Cooperation in Criminal Cases, within the Legislative Coordination and Special International Legal Relations General Directorate, is responsible for performing those tasks.

The International Police Cooperation Division is responsible for international law enforcement cooperation, and includes 4 sections: International Relations and Missions - European Union, Europol, SIRENE and International Organizations & INTERPOL.

¹ The type of court which tries the case in first instance and in appeal varies depending on the kind of offence (felony, misdemeanour or infringement).

² There are 15 Courts of Appeal.

³ Doc. 12887/04 - Greece's notifications with regard to the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.

⁴ Article 3.

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2.2 THE LEGAL BASIS

- Law 3251/2004, on the European arrest warrant and amending Law 2928/2001 on criminal organisations and other provisions, Official Gazette FEK A-127, of 9 July 2004.

3. ORGANISATION AND PRACTICES - ISSUING MEMBER STATE ROLE

In 2006 the Greek judicial authorities issued 53 EAWs, 4 of which resulted in the effective surrender of the requested person¹.

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 Court of Appeal (hereinafter referred to as "the PPCA") with territorial competence in light of the underlying criminal proceedings.

There is no special procedure whereby the decision to issue an EAW is taken by the PPCA. EAWs are issued following an arrest warrant issued by an examining magistrate, transmitted to the PPCA via the public prosecutor at the corresponding court of first instance. The public prosecutor at the court of first instance forwards the domestic arrest warrant to the PPCA for the purposes of issuing an EAW where the requested person cannot be located in Greece and there is some circumstantial evidence that he might be in some other Member State. However, the great majority of EAWs are issued following a written report by the police services within the PPCA's jurisdiction, the SIRENE Bureau or Interpol NCB, including identity information of the person concerned and a list of all pending domestic arrest warrants and/or final enforceable judgments against him, when it is found that he has probably fled abroad.

In issuing an EAW the PPCA has no discretionary powers: whenever the legal conditions for the domestic arrest warrant and the penalty thresholds pursuant to the implementing law are met, an EAW must be issued.

¹ Doc 11371/5/07 - Replies to the questionnaire on quantitative information on the practical operation of the European arrest warrant - Year 2006.

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3.2. VERIFYING THE POSSIBLE EXISTENCE OF MULTIPLE REQUESTS

Should a public prosecutor at the first instance court or a PPCA wish to obtain information on whether an EAW has already been issued concerning a given individual, he may obtain such information by contacting the SIRENE bureau¹. If earlier EAWs issued for the same person are found an EAW is not made containing all the offences.

Where prior to issuing an EAW information is obtained on the existence of outstanding domestic arrest warrants against the same person, a single unified EAW may be issued by the PPCA competent for the most serious crime upon consultation with the other PPCAs involved.

3.3. THE COMPLETION OF THE FORMS

Completion of the EAW form is the sole responsibility of the competent PPCA, based on the data contained in the arrest warrant and an accompanying letter from the public prosecutor at the first instance court, as well as on the information (e.g. as regards identity or possible residence abroad) provided by the police.

There are no written guidelines to assist the issuing authority in completing the EAW form, nor a catalogue of standard interpretations agreed at national level in respect of prescribed elements of it. No regular training is organised on these matters either². During the interviews, it was noted that the advice of the Public Prosecutor at the Court of Appeal of Athens (hereinafter referred to as "the PPCAA") is often sought by other PPCAs, although no written record is kept of such queries. The Ministry of Justice may also play an advisory role in these matters.

3.4. TRANSLATION OF THE EAW

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

All EAWs that are transmitted to the SIRENE Bureau or Interpol NCB are translated into English. This means in practice that EAWs are translated into English in practically all cases³. Translation into any other language takes place when notification is received that the requested person has been arrested; only if the location of the requested person is known and the EAW is sent directly to the executing judicial authority is a "preventive" translation into the official language of the executing Member State produced.

¹ See chapter 3.5 below.

² See chapter 5 below.

³ See chapter 3.5 below.

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3.5. TRANSMISSION OF THE EAW

Even in those cases where there is specific information on the whereabouts of the requested person and the EAW is sent directly to the executing judicial authority pursuant to Article 6.1 of the implementing law, an SIS alert and, where appropriate, an Interpol diffusion, are issued, with a view to establishing the location of the individual should he have left the supposed executing Member State, or the Member State where he is located refuses to execute the EAW.

The transmission of the EAW to the competent authority in the executing Member State is the responsibility of the issuing PPCA. In doing so the PPCA may seek the assistance of the Ministry of Justice, especially if it is difficult to establish contact with the addressee¹.

As to the mode of transmission, pursuant to the implementing law² the PPCA may use any secure means capable of producing written records under conditions allowing the executing Member State to establish the authenticity of the EAW. In practice, SIRENE and INTERPOL channels are used in most cases. Otherwise the EAW is usually transmitted by ordinary fax.

In cases where the competent executing authority is not known, use is made of the EJM Atlas to identify it. The SIRENE Bureau and the INTERPOL NCB can also be called upon to provide their assistance in this matter.

According to the information provided, there is no 24/7 duty scheme within the PPCA offices³. In that connection, the Greek authorities reported that no difficulties concerning the timely provision of language-compliant EAWs had been encountered to date. There was no answer, however, to the question of how the Greek authorities would deal with urgent requests from the executing Member State (e.g. concerning the transmission of the EAW form following the arrest of the requested person based on an SIS alert) during or very close to weekends and official holidays.

¹ Article 3.1 of the implementing law.

² Article 6.4.

³ At weekends and on official holidays there is always a public prosecutor on call able to decide on provisional arrest of the person apprehended in Greece on the basis of an SIS/INTERPOL alert entered in the system by another Member State.

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

There were reports in relation to France concerning the need to use courier services at the expense of the Greek Ministry of Justice in order to meet the tight deadline for receipt of the original of the EAW. There were also reports in relation to the United Kingdom concerning the requirement to include in the EAW specific statements in accordance with its domestic legislation¹ and the length of the procedure to get a final decision on the execution of the EAW.

In its replies to the questionnaire, Greece expressly referred to difficulties encountered in relation to the volume of additional information concerning the underlying criminal proceedings (e.g. detailed description of the acts and explanations as to the degree of participation of the requested person) and evidential material extracted from the case file, requested by the executing judicial authorities when the EAW was issued for the surrender of a national of the executing Member State, particularly in the case of the Netherlands and the United Kingdom. In that connection the following case with the Netherlands was reported.

Greece had issued an EAW against a Dutch national for prosecution purposes in a case of internet fraud. Upon arrest of the requested person in the Netherlands, the Dutch authorities requested additional information on the relevant legal provisions and the maximum possible sentence, as well as guarantees that the requested person would be returned to the Netherlands in order to serve there any sentence passed on him in Greece. The question of the appropriateness of the EAW was also raised by the Dutch authorities, namely whether the requested person was actually involved in the case. The PPCA replied to all requests for additional information and provided details from the case file which indicated the participation of the requested person. Finally the surrender of the person concerned was refused by the Dutch authorities on the grounds that evidence of his involvement in the act was insufficient.

¹ This requirement in the United Kingdom's legislation was changed in January 2007.

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There followed correspondence from the Dutch authorities asking for the EAW to be withdrawn, which was not accepted by the issuing PPCA. In the opinion of the Greek authorities, in this particular case the Dutch authorities went beyond the Framework Decision by entering into the substance of the matter and questioning the issue of the EAW on that basis¹.

One case was reported with Sweden in relation to the issue of double criminality, as follows. An EAW had been issued against a Greek national who was resident in Sweden and, according to the information obtained afterwards, had taken Swedish nationality. The requested person had been found guilty of various offences, including swindling. The EAW indicated "swindling" as an offence included in the list of 32 offences which do not need to be checked for double criminality by ticking the corresponding box in the form. The Swedish public prosecutor in charge of the case expressed doubts as to whether the offences committed by the requested person as described in the EAW form should be classified as swindling, and asked for additional information, which was provided immediately by the PPCAA. In the end the Stockholm Court ruled that the acts could not be defined as swindling, whereas, under Greek legislation, this was clearly the case. Finally the execution of the EAW was refused.

According to the information provided, difficulties arising in the execution of an EAW are notified to the issuing PPCA mainly via SIRENE/INTERPOL channels or directly by fax, and are resolved by way of bilateral direct correspondence (involving either the national member of Eurojust or the EJM where necessary) with the foreign executing judicial authorities.

¹ This case gave rise to a number of questions to the European Commission by the European Parliament. The representative of the former participating in the evaluation team explained that, according to the information gathered in preparing the answer to such questions, part of the information in this case, and more specifically the information on the attribution to the requested person of a mobile phone number used in the course of the criminal activities underlying the EAW, had been provided by the Netherlands authorities by means of mutual legal assistance. However, afterwards it became clear that this phone number was assigned to the requested person only several years after it had been used by the swindlers, so that the Netherlands authorities refused to execute the EAW issued by the Greek authorities on grounds of *erreur manifeste*. In the end the Greek authorities withdrew the EAW following the Netherlands' authorities information.

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3.7. REQUESTS FOR FURTHER INFORMATION MADE BY EXECUTING MEMBER STATES

No instance was reported in which Greece had been unable to comply with requests for further information received from foreign authorities.

As to the common grounds for these requests, the Greek authorities reported the following: information on how the person was summoned or otherwise informed of the date and place of the hearing which led to a conviction rendered *in absentia*, requests for copies of the decision on which the arrest warrant was based, requests for the relevant legal provisions referred to in the EAW form, and provision of guarantees pursuant to Article 5 of the Framework Decision.

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

The implementing law contains no provision on the return of persons who have been surrendered to Greece on condition of their return to the executing Member State of which they are nationals in order to serve the sentence passed on them by a Greek court.

According to the replies to the questionnaire, the legal basis for the return of those persons is to be found in Article 5(3) of the Framework Decision¹. It is for the public prosecutor or the judge intervening in the underlying proceedings to provide any undertakings necessary in that connection.

3.9. YOUTH SURRENDERS AND CORRESPONDING GUARANTEES

No case involving minors was recorded at the time of the evaluation visit.

3.10. GENERAL COMMUNICATIONS WITH THE EXECUTING MEMBER STATE

In practice communications and exchange of information between the Greek judicial authorities and their counterparts abroad are channelled mainly via SIRENE/INTERPOL. Language difficulties seem to have an important impact on the Greek judicial authorities' preference for using this conduit².

¹ Therefore, the 1983 Council of Europe Convention on the Transfer of Sentenced Persons does not apply.

² See chapter 5 below.

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According to the replies to the questionnaire, information about the progress of EAW procedures is usually requested by the Greek authorities from their counterpart abroad.

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

Once the judicial authorities involved have reached an agreement on the surrender date, the SIRENE Bureau (INTERPOL NCB for non-Schengen Member States) is responsible for all necessary arrangements for the physical surrender, including liaison with the foreign authorities and coordination with the national agencies involved in the transfer.

As for time limits, the Greek authorities reported instances in which, due to practical difficulties (e.g. availability of flight tickets), the actual surrender could not take place within the prescribed 10-day deadline. It was stressed, however, that in all such cases an extension of the time limit had been granted, and the physical surrender had taken place a few days later.

3.12. THE MECHANICS OF THE SURRENDER IN RESPECT OF REQUESTED PROPERTY

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

3.13. CONFLICT OF EAWs/EXTRADITION REQUESTS/ONWARD SURRENDER

At the time of the evaluation visit Greece had received no notification of any conflicting EAW or extradition request and had experienced no difficulty in relation to the issue of subsequent surrender/extradition of a requested person to a third Member State.

3.14. EXPENSES

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

3.15. MISCELLANEOUS COMMENTS

Replacement of pre-existing alerts with EAWs

Pre-existing alerts based on International Arrest Warrants have not been replaced by EAWs. According to the information provided, in these cases the competent PPCA issues an EAW immediately after information is received via SIRENE/INTERPOL that the requested person has been located. No problem in relation to this issue has been recorded to date.

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Accessory offences

According to the information provided, no offences other than those which come within the scope of the Framework Decision may be included in EAWs issued by the Greek authorities.

4. ORGANISATION AND PRACTICES - EXECUTING MEMBER STATE ROLE

During the calendar year 2006, Greece received 79 EAWs and surrendered 45 persons based on an EAW. Of the persons surrendered, 31 consented to surrender and 14 did not¹. In the same period the Greek authorities refused the execution of 12 EAWs².

4.1. RECEIPT PROCEDURES

The Public Prosecutor at the Court of Appeal of the region where the requested person is located is the authority competent for the receipt of an EAW. If the whereabouts of the person in Greece are unknown, the EAW has to be sent to the Public Prosecutor at the Court of Appeal of Athens.

An EAW may be transmitted to the Greek authorities by any secure means which can be substantiated in writing. This includes direct transmission by fax and also by e-mail. However, according to the information provided, not all public prosecutor's offices have an e-mail account³.

An EAW may also be forwarded to the Greek receiving authority through the good offices of the Ministry of Justice. The Ministry of Justice has been designated as the central authority empowered to assist the competent judicial authorities responsible for the administrative reception of EAWs as well as for all other official correspondence relating thereto⁴. On receiving an EAW the Ministry of Justice normally forwards it to the competent PPCA by fax initially.

¹ Doc. 11371/5/07 - Replies to questionnaire on quantitative information on the practical operation of the European arrest warrant - Year 2006.

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

³ Greece's responses to Eurojust's substantive EAW questionnaire.

⁴ Article 3.1 of the implementing law.

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According to the information provided in the replies to the questionnaire, upon receipt of the EAW by any of the abovementioned means, the public prosecutor checks the name, address, telephone and fax numbers and e-mail address of the issuing authority. He also checks that the signature of the court official and the official stamp are visible. If there is any doubt as to the authenticity of the document received, the issuing authority is contacted directly to verify any problems. At the time of the visit no issues had been reported in connection with certification issues.

Greece only accepts EAWs in Greek. However, a translation into English is accepted to start execution and for the purpose of the arrest of the requested person. In this case, the translation of the EAW into Greek must be received within 15 day of the arrest. This time limit may be extended by the PPCA on serious grounds, but in any event the individual will be set free after the elapse of thirty days following the arrest if the EAW in Greek has not been received¹. Some of the experts interviewed noted the poor quality of the translations into Greek received from some Member States.

The issuing authority is always requested to send the EAW in the original language in addition to its translation into Greek.

4.2. INVESTIGATIONS CONCERNING THE LOCATION OF THE REQUESTED PERSON

During the visit to the SIRENE Bureau the expert team was informed that only those SIS/INTERPOL alerts with an indication that the requested person is in Greece or is a Greek national are checked. The reason given was the lack of capacity for checking all alerts entered in the system irrespective of whether there is any indication of a link with Greece, since the available national databases are not connected and have to be checked one by one.

When an EAW-based search request received via INTERPOL or an SIS alert or an EAW sent directly to the PPCA provides specific information on the whereabouts of the requested person, the local police service is contacted to verify such information and trace the person. If the requested person is not found, the PPCA must order the search to be extended to the whole of the Greek territory; this search is carried out by the central national authority in charge of searches at a national level, the so-called "4th Searches Section".

¹ Article 15.3 of the implementing law.

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When the whereabouts of the requested person in Greece are not established in the EAW, the Public Prosecutor at the Court of Appeal of Athens¹ may order the "4th Searches Section" to organise the appropriate checks and searches in order to locate the requested person.

If the EAW concerns a Greek national, irrespective of whether there is any indication of his whereabouts or not, the SIRENE Bureau coordinates a thorough investigation, in cooperation with other law enforcement agencies, in order to try to locate him in Greece.

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

There is no specific provision in the implementing law on these matters other than Article 19.2: *"If the judicial authority deciding on the execution of the European arrest warrant finds the information forwarded by the issuing Member State not to be sufficient to allow it to decide on surrender, it shall request, through the Public Prosecutor at the Court of Appeal, the urgent submission of the necessary supplementary information, especially with reference to Articles 2 and 11-13 hereof, and it may fix a time limit for their receipt, taking into account the obligation of complying with the time limits laid down in Article 21 hereof (time limits for issuing a decision on the execution of the EAW)".* It has to be noted that Articles 2 and 11-13 of the implementing law correspond to Articles 8 (content of the EAW) and 3-5 of the Framework Decision respectively.

However during the interviews it emerged that following receipt every EAW is checked by the PPCA as to the formal requirements and as to the contents, not only with a view to preparing the motion he will submit when the case comes to court, but also as a basis for a possible decision of the PPCA himself not to initiate the procedure to execute the EAW, which is not expressly envisaged in the abovementioned law².

¹ See chapter 4.1 above.

² See chapter 4.5 below.

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A specific issue concerning this matter arose during the evaluation visit in connection with the way the list of offences in the Framework Decision has been transposed into the implementing law. On several points the list in Article 10 of the implementing law is different from the list set out in the Framework Decision:

- some categories have been added: "procurement to prostitution", "violation of sexual liberty" and "extortion";
- some of the categories listed in the Framework Decision have been re-formulated: "corruption" has been replaced by "offences pertaining to corruption and bribery", and "fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July of 1995 on the protection of the European Communities' financial interest" has been split in two: "offences against the financial interests of the European Communities" and "fraud";
- some of the categories listed in the Framework Decision have been omitted in the implementing law: "racketeering" and "swindling".

Although the Greek authorities have reported no problems to date with incoming EAWs in relation to any of the categories listed in the Framework Decision, since all of them constitute offences punishable under Greek law, the expert team notes that problems in connection with verification of double criminality may arise when Greek authorities are confronted with EAWs issued in respect of some of the categories omitted in the implementing law. This was confirmed by the judges of the Court of Appeal of Athens interviewed: they said that in order to proceed further with the EAW in such cases the circumstances of the offence must be described in a way that allows them to submit the facts under some specific type of offence provided for in Greek law.

As a rule, requests for additional information are drawn up in English. During the evaluation visit it was explained that such information may be furnished in English as well. According to the information provided, the PPCA communicates directly with the issuing authority, either by fax or e-mail, or (occasionally) by telephone where the matter is urgent.

As to the most common grounds for these requests, the Greek authorities referred to the need for detailed information on chronology and location of the acts in connection with the issues of statute limitations and territoriality clause.

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4.4. ARREST PROCEDURES/FIRST HEARING

Two situations can be differentiated here:

- Arrest on the basis of an SIS (INTERPOL) alert.

The requested person may be arrested based on an SIS/INTERPOL alert following an order of the local competent PPCA¹. This order can be given orally², even following the apprehension of the requested person (e.g. at a border control or routine police control), and documented afterwards, when the requested person is brought before the public prosecutor (see below).

- Arrest on the basis of an EAW.

Pursuant to Article 14.1 of the implementing law, when the competent PPCA receives an EAW he must arrange for the arrest of the requested person.

The expert team was informed that public prosecutors have developed the practice of not proceeding to the arrest of the requested person based on statutory limitations pursuant to domestic provisions (e.g. health issues). According to the answers of some of the public prosecutors interviewed this practice may also be followed in instances where any of the grounds for non-execution of the EAW envisaged in the implementing law applies. In such cases a decision on the execution of the EAW by the Court of Appeal does not follow. Four cases of this kind were recorded in 2006 (two by the Public Prosecutor's Office at the Court of Appeal of Athens and two by the Public Prosecutor's Office at the Court of Appeal of Thrace); in 2007 there were six cases (three at the Public Prosecutor's Office at the Court of Appeal of Athens, one at the Public Prosecutor's Office at the Court of Appeal of Thessaloniki, and two at the Public Prosecutor's Office at the Court of Appeal of Thraki).

¹ Article 15.3 of the implementing law.

² According to the information provided, there is always a public prosecutor on-call empowered to decide on this issue, including at weekends and on official holidays.

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Pursuant to the implementing law, following arrest the requested person must be brought to the PPCA "without delay"¹. The expert team raised the question of how this provision should be interpreted in relation to the existence of a deadline, particularly in cases where the arrest takes place at or very close to weekends or official holidays. According to the answer given by the Greek authorities, in such cases the hearing before the PPCA is held the following working day. During the preparation of this report the Greek authorities forwarded the English translation of Article 6 of the Greek Constitution, in reaction to the team's request to provide the relevant provisions. Paragraph 2 thereof reads: "A person who is arrested in the act of committing a crime or on a warrant shall be brought before the competent examining magistrate within twenty-four hours of his arrest at the latest...".

The PPCA must verify the identity of the requested person and inform him of the EAW and its contents, of his right to be assisted by a legal counsel and an interpreter, and of the possibility of consenting to surrender².

Having heard the requested person, the PPCA must decide whether the requested person is to remain in detention pending the decision on the execution of the EAW or not, and, in the latter case, whether subject to restraining measures or not³. Pursuant to the implementing law, this matter is to be decided exclusively on grounds of the existence of a risk of absconding. This regime applies regardless of the seriousness of the offence underlying the EAW and the nationality of the requested person.

In the event that detention has been ordered or restraining measures have been imposed, the requested person may, within two days of the issue of the relevant order, lodge an appeal with the Judicial Council of the Court of Appeal, which must schedule a hearing within five days and decide irrevocably immediately after such a hearing⁴.

¹ Article 15.1.

² Article 15.1 of the implementing law.

³ Article 16.1 of the implementing law. According to this provision "the restraining measures imposed on the requested person may be replaced by detention if a risk of absconding appears".

⁴ Article 16.2 of the implementing law.

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As already mentioned, the person arrested on the basis of an SIS/INTERPOL alert must be set free if no EAW is received within 15 days of the detention order. This term may be extended by the PPCA on serious grounds, but in any case must be no longer than 30 days following the arrest.

4.5. THE SURRENDER DECISION

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

- Consent to surrender

As already mentioned, when the requested person appears before the PPCA following arrest, he is informed of the possibility of consenting to surrender. Furthermore, pursuant to the implementing law¹ the public prosecutor "shall clearly" inform the requested person of the consequences of the consent to surrender and of the renunciation of entitlement to the speciality rule (these questions are considered separately), as well as of the irrevocability of such statements.

Consent to surrender (and renunciation of entitlement to the speciality rule) can only be given at this precise stage of the procedure. Once the consent is officially recorded, the PPCA must forward the file to the Presiding Judge of the Court of Appeal for decision, the requested person being entitled to a hearing before him. The consent to surrender does not make the grounds for refusal envisaged in the implementing law avoidable, so that, in trying the case, the court must check whether any of them applies.

The question was raised whether the EAW was necessary for the consent to be legally effective. The public prosecutors who were asked on this particular issue indicated that consent may be given on the basis of an SIS/INTERPOL alert, although the file would be transferred to the court only upon receipt of the EAW.

¹ Article 17.1.

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- Non consent to surrender

Pursuant to Article 18.1 of the implementing law, if the requested person does not consent to surrender, the PPCA must refer the case to the Judicial Council of the Court of Appeal (three judges), where a hearing is held with a view to a decision on surrender. The requested person is entitled to appear either in person or assisted by a legal counsel selected by him, and to ask for a counsel appointed by the court. Attendance at this hearing by the public prosecutor is mandatory. The decision issued by the Court of Appeal may be appealed in the Supreme Court within 24 hours following its publication¹.

In its decision ordering that the requested person be surrendered, the court must also try the question of whether detention or any other restraining measure should be imposed on the individual until the surrender decision has been enforced².

4.6. REFUSALS TO SURRENDER

As already mentioned, in 2006 the Greek judicial authorities refused execution of 12 EAWs. The following table details the grounds for non-execution applied according to the information provided³:

GROUNDS FOR REFUSAL	No. OF CASES
Acts not punishable according to Greek law	3
Non bis in idem (Article 3(2) of the Framework Decision)	1
Lapse of time (Article 4(4) of the Framework Decision) ⁴	1
Greek nationals (Article 4(6) of the Framework Decision)	5
Territoriality clause (Article 4(7)(a) of the Framework Decision)	1
EAW withdrawn by the issuing judicial authority	1

A number of questions were raised by the expert team in relation to certain specific grounds for refusal as laid down in the implementing law.

¹ Article 22.1 of the implementing law.

² Article 16.3 of the implementing law.

³ Doc. 11371/5/07 - Replies to the questionnaire on quantitative information on the practical operation of the European arrest warrant - Year 2006.

⁴ The Greek authorities noted in their reply to the questionnaire on quantitative information the following: "Remark: the Prosecutor's office at the court of appeal does not count statutory limitation cases as refusal of execution of EAW".

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- Grounds for refusal regarded as optional in the Framework Decision and taken as mandatory in the implementing law

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

FRAMEWORK DECISION	Transposed as OPTIONAL	Transposed as MANDATORY
Article 4.1		X
Article 4.2	For non Greek nationals	For nationals
Article 4.3 (first)	X	
Article 4.3 (second)	X	
Article 4.3 (third)	X	
Article 4.4		X
Article 4.5	X	
Article 4.6	For domiciled and residents	For nationals
Article 4.7.a		X
Article 4.7.b		X

During the interviews it was noted that depriving the Greek executing authorities of the discretionary power to apply some of the grounds laid down in the Framework Decision as optional could create difficult situations in practice. This is the case of the ground for non-execution relating to territoriality when the offence has been committed in part in the territory of Greece, in connection with the issue of the jurisdiction best-placed to prosecute, particularly in relation to certain forms of crime. The ground relating to the existence of domestic proceedings against a Greek national for the same offence underlying the EAW could be mentioned in the same connection. One may also wonder whether the difference between nationals and non-nationals could not be considered to be discriminatory.

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- Ground for non-execution inspired by recital 12 of the Framework Decision

The Greek legislator has not only converted recital 12 of the Framework Decision into a ground for non-execution, but also, in doing so, has overstepped the Framework Decision by laying down that the EAW must be refused if it has been issued for the purpose of prosecuting or punishing a person on the grounds of "his/her activities for freedom"^{1, 2}.

4.7. APPEAL PROCEDURES AND THE IMPACT ON TIMELIMITS

Whereas the time limits for the decision on the execution of the EAW envisaged in the implementing law are in line with the Framework Decision, it is not clear from the wording of the former whether those time limits include the time necessary for the ruling of the Supreme Court in the event of appeal³. Moreover, the hearing before the Supreme Court may be postponed on certain grounds, including instances where the court feels it necessary that more evidence be examined, which may take the case beyond the mandatory 8-day time limit for a ruling.

The implementing law does not include any provision specifying the consequences of a breach of the time limits for the decision on the execution of the EAW, apart from the obligation to inform Eurojust, giving reasons for the delay. According to the information provided during the visit, should such an instance occur the requested person would be kept in detention provided that a risk of absconding exists.

¹ Article 11.e) of the implementing law.

² The insertion of this ground for refusal beyond the Framework Decision is expressly noted in the two reports issued by the European Commission to date.

³ Article 22.1 reads: "In the event that the arrested person does not consent, then an appeal may be lodged to the Supreme Court by the requested person or by the public prosecutor against the *final decision issued by the Judicial Council of the Court of Appeal* within a period of twenty-four hours following the publication of the decision...".

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4.8. OWN NATIONAL AND YOUTH ARREST AND SURRENDER ISSUES

Own nationals

Greece opted for regulations applying both Article 4(6) and Article 5(3) of the Framework Decision. The former was transposed as a mandatory ground for refusal for Greek nationals¹ and as an optional ground for refusal for non-nationals domiciled or residing in Greece². Pursuant to the implementing law, the provision of a return guarantee in cases where the surrender of a Greek national is requested for the purpose of conducting a criminal prosecution is a precondition for the execution of the EAW³; such guarantee may also be requested for non-Greek nationals domiciled in Greece⁴.

According to the information provided during the interviews, in conviction cases the sentence imposed by the issuing authority is enforced in its own terms⁵, although the way it is served (e.g. penitentiary rights) is governed by Greek law. Concerning the procedure for the transfer of the enforcement of the sentence, it was explained that the EAW itself is considered as a request to execute the sentence; therefore, no specific request by the issuing Member State authorities is required. As for the rest, the procedure seems⁶ to be extremely simple: the judgment has to be sent to the PPCA, who in turn forwards it directly to the public prosecutor competent to enforce the sentence.

¹ Article 11.f) of the implementing law.

² Article 12.e) of the implementing law.

³ Article 11.h) of the implementing law.

⁴ Article 13.3 of the implementing law.

⁵ There is one exception: no sentence will be served beyond the maximum period of imprisonment pursuant to Greek law (25 years).

⁶ The provisions governing this matter were not provided.

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As to prosecution cases, the question was raised whether and how the principle of active personality that governs Greek law interfered with the operation of the EAW in practice¹. The answer given was that it is not a practice to institute proceedings for acts committed outside Greek territory unless the crime in question is covered by the universality principle. Where the crime is committed in whole or in part in Greek territory, proceedings are instituted in Greece upon decision of the public prosecutor. During the final meeting with the Greek authorities, it was made clear, however, that in these cases the SIS alert or the EAW is used as a mere source of information, not as something to be acted upon necessarily. In that connection it has to be noted that, according to the explanation provided by the representative of the Athens Bar Association who participated in the interviews, Greek public prosecutors have managed to deal with this issue by adopting the practice of initiating preliminary investigations rather than instituting prosecution where they consider it appropriate in such cases, as a means of avoiding hampering the execution of the EAW.

Youth surrenders

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

4.9. SPECIALITY

According to the information provided, Greece has experienced no difficulties relating to this issue to date.

4.10. ONWARD SURRENDER/EXTRADITION

No difficulties arising from this issue were reported.

4.11. AD HOC ISSUES SURROUNDING UNDERTAKINGS

The Greek authorities reported one case with the United Kingdom concerning a Greek national in which, almost two years since the requested person had been surrendered with a return guarantee, no official notification as to the progress of the case had been received. Only upon receipt of a request for judicial assistance from the UK authorities was it discovered that the proceedings had been completed and a prison sentence had been passed against the person concerned. Finally, through the intervention of the Greek National Member of Eurojust acting on instructions from the Public Prosecutor at the Court of Appeal of Athens, the process for the transfer back of the requested person was completed.

¹ See also chapter 6 below as to the criticism expressed by the representatives of the Thessaloniki Bar Association on this issue.

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4.12. TEMPORARY/CONDITIONAL SURRENDER

At the time of the evaluation visit no use had been made of this mechanism.

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

The SIRENE Bureau (the INTERPOL NCB for non-Schengen Member States), following an order from the PPCA to proceed to the surrender and under his supervision throughout the process¹, organizes the surrender and makes all the arrangements necessary for the actual surrender to take place, including contacts with the foreign authorities involved and issue of (temporary) travel documents for the requested person where necessary.

4.14. CONFLICT OF EAWS/EXTRADITION REQUESTS

The corresponding provision of the implementing law is fully in line with Article 16 of the Framework Decision.

Only one case of two competing EAWs was recorded involving Germany and France, which was described as follows. Both EAWs had been issued for the purposes of execution (a 2-year sentence in the case of the EAW issued by the French authorities, and a 4-year sentence in the case of the EAW issued by the German authorities). The Court of Appeal of Thrace decided to give priority to the EAW issued by the German authorities based on the seriousness of the respective offences, the length of the sentences, the nationality of the requested person (he was a German national) and the fact that the latter agreed to being handed over to the German authorities.

4.15. EXPENSES

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

¹ Pursuant to Article 9.1 of the implementing law, the PPCA is responsible for the execution of the decision on surrender.

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4.16. MISCELLANEOUS COMMENTS

Prohibitive validity flags

The validity of incoming SIS alerts is checked at the SIRENE Bureau under the supervision of judges and prosecutors expressly seconded to this office for that purpose. Should any difficulties arise, they are solved in direct consultation with the foreign SIRENE office involved. In any event, prohibitive validity flags may only be added on from the orders of the PPCA competent to process the EAW.

Privileges and immunities

Article 24 of the implementing law does not match Article 20 of the Framework Decision in that the provision contained in the second subparagraph of Article 20(1)¹ is missing.

Competing international obligations

Article 25 of the implementing law does not match Article 21 of the Framework Decision in that the last sentence of Article 21² is missing.

5. TRAINING PROVISION

Training for judges and prosecutors

The National School of Judges in Thessaloniki is in charge of the selection, initial training and continuous training of judges and prosecutors. According to the information provided, within the National School of Judges' regular programme for civil and criminal specialisation there is a 24-hour module on European Union Law where the topic of the EAW is included. In the beginning of 2008 two seminars were organised by the National School of Judges where EAW-related matters were examined, the National Member of Eurojust participating in one of them as main speaker. No information was given on regular ongoing/refresher training on EAW matters.

Almost all judges and prosecutors interviewed considered the current system to be insufficient, and called for a more consistent coordinated approach on this matter.

¹ "The executing Member State shall ensure that the material conditions necessary for effective surrender are fulfilled when the person no longer enjoys such privilege or immunity."

² "Pending the decision of the State from which the requested person was extradited, the executing Member State will ensure that the material conditions necessary for effective surrender remain fulfilled."

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As to language training, according to the replies to the questionnaire, compulsory training on legal terminology in a foreign language is included in the National School of Judges' regular programme for civil and criminal specialisation. However, during the evaluation visit the lack of basic skills in this field was noted quite frequently.

Training for SIRENE/INTERPOL staff and police officers

According to the replies to the questionnaire, following the coming into force of the law implementing the Framework Decision on the EAW, training was organised for SIRENE and INTERPOL staff on the receipt, transmission and registration of EAWs.

In July 2004 and July 2005 explanatory notes from the Greek Police Headquarters on the implementation of the EAW were disseminated amongst police services and other law enforcement agencies. The replies to the questionnaire also specify that training on the EAW is provided on a regular basis by the Police Academy to staff of the agencies and services in charge of executing arrest warrants and judgments, within training courses on general matters, and to police liaison officers posted in other Member States or third countries. The Greek authorities reported that an electronic database on the national police on-line system has been created with legal information on the EAW.

Training for lawyers

Information was given that in October 2006 two one-day seminars were organised by the Athens Bar Association that touched (but not exclusively) upon EAW-related matters. In February 2007 the Northern Greece Jurists Society, in collaboration with the Public Prosecutor at the Court of Appeal of Thessaloniki, held a meeting on the subject of the EAW.

6. DEFENCE PERSPECTIVES

The expert team had the opportunity to meet representatives of the Athens and Thessaloniki Bar Associations. A number of questions arose during these interviews concerning the functioning of the system in practice.

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- Legal assistance in EAW procedures.

Pursuant to Article 15.1 of the implementing law, when the requested person is brought before the PPCA following arrest he is informed of his right to be assisted by a legal counsel (and by an interpreter). The representatives of the Thessaloniki Bar Association explained that the implementing law postdates the regulation governing *ex officio* legal assistance matters in Greece, and therefore there is no specific provision in the latter relating to EAW procedures. Furthermore, they noted that the relevant provisions in the implementing law refer simply to "the right to be assisted by a legal counsel", without making express reference to the right to be assisted by an *ex officio* lawyer. This might, in their view, have an impact on the individual seeking such assistance where information is given strictly following the wording of the implementing law.

Where the requested person asks for legal aid, he is assigned a defence counsel from a list created for that purpose following a rota scheme. Any lawyer can apply for registration, i.e. no specialization is required. The lawyers interviewed explained, however, that fees are very low, and therefore it is not so attractive for experienced professionals to join the list.

- Procedural rights of individuals and possibilities of defence.

Several issues were raised in this connection:

- Right to an interpreter. The representative of the Athens Bar Association explained that there is not a body of court interpreters and that freelancers are not properly paid. This situation might, in his opinion, act as an obstacle to the defence rights of foreigners and result in practice in discriminatory treatment of them.
- No documents are furnished to the requested person. Pursuant to Article 15.2 of the implementing law, the individual is only entitled to request and receive copies of the case documents at his own expense.
- The 24-hour time limit for lodging an appeal against the decision on surrender. The representatives of the Thessaloniki Bar Association deemed this term extremely short, given the obligation to file the appeal with the secretary of the Court of Appeal and the practical arrangements necessary for doing so. They were also of the opinion that such a short limit may hinder the work of the defence lawyer.

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- Performance of judicial authorities in handling EAW cases.

The representative of the Athens Bar Association assessed positively the efforts made by the Greek judicial authorities to implement the EAW, while emphasizing that some of them are not sufficiently familiar with the system and its implications. He also stressed the need to provide the judges and prosecutors dealing with these matters with appropriate support (e.g. in terms of training, court staff and communications.). The Thessaloniki Bar Association representatives criticised the quality of judgments delivered by the judicial authorities dealing with EAW matters, in that they strictly follow the case-law, without giving consideration to academic developments and to the fact that the case-law may change.

The Thessaloniki Bar Association members were extremely critical on the issue of surrender of nationals, stressing that the possibility of surrendering a Greek national for prosecution purposes envisaged in the implementing law is incompatible with the principle of active personality governing the Greek legal system.

7. CONCLUSIONS

The expert team acknowledges the high degree of organization of the visit. The members of the team would like also to stress the excellent hospitality of the Greek authorities.

The following findings are based on the state of law and practices regarding the implementation of the EAW in Greece as reflected in the preceding chapters. It has to be noted, however, that the expert team was struck by the diversity of interpretations offered by the Greek authorities when asked about the provisions of Greek law and practices in respect of the EAW. The team's questions sometimes gave rise to extensive debates among the persons interviewed and several questions remained without a clear answer.

7.1. GENERAL CONCLUSIONS

Implementing legislation and procedures

7.1.1. The Greek implementing law is, to a large extent, a copy-and-paste of the Framework Decision. In using that technique for the transposition of the Framework Decision into Greek law, it seems that the legislator did not pay due attention to the relationship with regulations and practices in other fields of criminal law, which however interact with the handling of the EAW. It appears indeed that on several points the Greek criminal code and other legal texts apply, although this has not been specified in the Greek implementing law.

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This situation may complicate the work of practitioners, since it is difficult to obtain a clear picture of the law and practices that apply in respect of the handling of the EAW, given also that the application of certain provisions of the Greek procedural system may result in problematic solutions without the necessary adaptation to the specificities of EAW procedures.

In order to remedy this situation, it would be advisable that practitioners be invited to take part in producing written guidelines providing detailed guidance on how the Greek implementing law should be applied in practice. Such guidelines, which could contain practical examples and should be regularly updated, would also be very helpful for those prosecutors and judges in Greece who deal only on a more occasional basis with the issue and/or execution of EAWs and therefore have little experience themselves.

However, it would be preferable (at least in the long term) that the implementing law be redrafted so that it comprises a thorough set of rules on the handling of the EAW, where necessary with explicit clear references to relevant regulations.

Practical implementation

7.1.2. All court of appeal judges trying criminal cases can sit on judicial councils dealing with the execution of EAWs, and rotations are frequent¹. This, combined with the low number of EAW cases in some courts of appeal (see below), leads to the conclusion that in most of them it will be exceptional for a judge to sit in even one EAW case. This situation makes it preferable, in the view of the expert team, that specialized judges participate in the above-mentioned judicial councils. The same could apply to public prosecutors.

7.1.3. The expert team noted that regular systematic coordination among the different prosecution offices throughout Greece is lacking. There are no rules, guidelines or clear instructions unifying the action of prosecutors in this field. Moreover, seminars and meetings for the exchanging of views are rare. This situation may lead to different practices in the different jurisdictions.

¹ According to the information provided by the judges of the Court of Appeal of Athens, the members of the two divisions dealing with these matters (eight judges in total) rotate every two years.

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7.1.4. Currently, 15 Public Prosecutor's Offices at the Court of Appeal are competent to issue EAWs. In practice, however, more than two-thirds of the EAWs issued by Greece emanate from the PPCA in Athens. In 2007, for example, 60 out of the total of 86 EAWs were issued by this office; the other 26 EAWs were issued by the other 14 PPCA, most of them issuing only one EAW per year. On the executing side the situation is more balanced, although still more than two-thirds (102) of the total of 153 EAWs received in 2007 by Greece were assigned to three PPCA (Athens, Thessaloniki and Thraki); the remaining 51 EAWs were spread over the other 12 PPCAs.

In these particular circumstances, the expert team believes that it is of paramount importance that the accumulated experience be disseminated effectively to all practitioners, e.g. by producing guidelines, providing extensive training and establishing centres of expertise, as a means of improving the efficiency of the system.

7.1.5. During the interviews it became evident that the great majority of the key actors lack appropriate training on EAW matters. The expert team was also left with the impression that language skills essential for establishing direct contacts with foreign partners are in general insufficient¹.

7.1.6. The way in which EAWs are registered and further processed by the administrative staff seems outdated. There is no computerized application adapted to the needs of EAW procedures which might facilitate the efficient provision of information to issuing Member States about the state of the proceedings, the monitoring of deadlines and the production of statistics². Currently, there is no statutory obligation for the judicial authorities to provide statistical information.

¹ An exception should be made for the Public Prosecutor's Office at the Court of Appeal of Athens, which has a very competent multilingual staff.

² Article 3.2 of the implementing law.

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7.1.7. During the discussions with the Greek officials the question was raised¹ of which court or authority would be competent (and which procedure should be followed) under Greek law to hear an action to correct, delete or obtain information, or to obtain compensation in connection with an SIS alert involving the claimant pursuant to Article 111.1 of the Convention implementing the Schengen Agreement², in cases where the EAW which gave rise to the SIS alert was not issued by Greece. No clear answer was given by the officials interviewed.

The expert team notes that this issue, and more specifically the impact on the EAW underlying the SIS alert, of the obligation imposed on the Parties to the Convention to enforce the final decision taken by the competent court or authority in relation to such an action³, has not been sufficiently addressed by the relevant EU working groups to date.

¹ In that connection, the observer from the European Commission referred to a complaint received from a Greek national relating to an EAW issued against him by the German authorities. According to the description of facts provided by the complainant, he applied for removal of the corresponding alert from the SIS to the Public Prosecutor at the Court of Appeal of Thraki (where he resided), who referred the request to the issuing German authority, which in turn refused to remove the alert from the SIS. It has to be noted that proceedings against the complainant were initiated by the Greek authorities upon receipt of the EAW for one of the offences underlying it.

² It reads: *"Any person may, in the territory of each Contracting Party, bring before the courts or the authority competent under national law an action to correct, delete or obtain information or to obtain compensation in connection with an alert involving them"*.

³ Article 111.2 of the Convention implementing the Schengen Agreement reads: *"The Contracting Parties undertake mutually to enforce final decisions taken by the courts of authorities referred to in paragraph 1..."*.

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7.2. CONCLUSIONS IN RESPECT OF GREECE ACTING AS ISSUING MEMBER STATE

7.2.1. Issues

7.2.1.1. The decision to issue an EAW - Proportionality.

No proportionality check is applied in issuing an EAW. Furthermore, it seems that the EAW might be used for the sole purpose of attendance at a hearing before the court, even if the offence underlying the proceedings is a misdemeanour. In such a case consideration might not be given to whether pre-trial detention may be ordered for the particular offence or not¹. On the other hand, this may result in a much longer deprivation of liberty than would have been the case on the basis of a domestic order of summons for a hearing². The expert team is of the view that this practice is not in conformity with the spirit of the Framework Decision. A proportionality check and/or the use of other forms of assistance (MLA request, video or telephone conference) would be advisable in such cases.

7.2.1.2. No 24/7 duty scheme at PPCAs.

According to the information provided, the PPCAs do not have a 24/7 duty scheme. This could cause problems in urgent cases, e.g. when the requested person is arrested in another MS which requires a language-compliant EAW to be forwarded by a very tight time limit, or when information is requested as a matter of urgency by the executing authority.

7.2.1.3. Replacement of pre-existing SIS alerts.

Pre-existing Article 95 alerts and alerts based on International Arrest Warrants have not been converted into SIS alerts based on EAWs.

¹ Pre-trial detention is not possible for misdemeanours (except in cases of caught-in-the-act or severe traffic accidents). It could be added that judgment in absentia is not possible for felonies; in misdemeanour cases, however, sentencing is possible without the defendant being present.

² The representative of the Athens Bar Association interviewed considered this practice a misuse, if not an abuse, of the EAW since, in his view, real efforts are not always made to try to locate the person prior to the issue of the warrant.

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The expert team notes that, although the Greek authorities have reported no issue in that connection to date, such a practice might cause problems in relation to some SIS Member States that no longer accept International Arrest Warrants coming from another SIS Member State as a ground for starting to search for a person.

7.2.2. Good practices

7.2.2.1. Translation of EAWs into English.

All EAWs are translated into English and sent to SIRENE Bureau/INTERPOL NCB. In the view of the expert team this practice enormously facilitates the entering of an alert in the system and helps to ensure its accuracy. It might also have a positive impact on the action to be taken following the arrest of the requested person on the basis of an alert, in connection with the issue of the transmission of a language-compliant EAW to the executing Member State.

7.3. CONCLUSIONS IN RESPECT OF GREECE ACTING AS EXECUTING MEMBER STATE

7.3.1. Issues

7.3.1.1. PPCA powers.

The Greek public prosecutors have developed the practice of not proceeding to the arrest of the requested person based on statutory limitations pursuant to domestic provisions (e.g. for health reasons: a particular case of risk to the life of a pregnant woman was expressly mentioned), and if they consider that one of the grounds for non-execution of the EAW envisaged in the implementing law applies.

This practice seems not to be in accordance with the implementing law, according to which "when the competent public prosecutor at the Court of Appeal receives the European arrest warrant that has been issued in the form provided by the law, he *shall* arrange for the arrest of the requested person"¹. No transparent criteria seem to be applied in these decisions either.

¹ Article 14.1 of the implementing law.

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The expert team also notes that this "refusal to arrest" has the same consequences in practice as a decision by the Court of Appeal not to execute an EAW, since in such cases a decision by the court on the execution of the EAW does not follow. The Greek authorities argued that this practice is based on the general principle that the public prosecutor has to guarantee proper preparation of the case. This might lead, however, to a situation in which only self-evident cases are brought to court. Furthermore, in the Greek implementing law it is nowhere envisaged that public prosecutors have the power to refuse the execution of an EAW. This power is confined to the Courts of Appeal. Accordingly, in its notifications to the Council's General Secretariat¹ Greece indicated that "*The judicial authority competent to execute the EAW is the Presiding Judge of the Court of Appeal, if the arrested person consents to surrender, and the Judicial Council of the Court of Appeal, if the arrested person does not consent to surrender*". The expert team is also unclear about the reasons why the decision not to order arrest should preclude the procedure in the Court of Appeal. Finally the experts would point out, as regards cases where arrest is not ordered by the public prosecutor on grounds related to the personal situation of the subject (the above-mentioned example of the pregnant woman), that the Greek practice is in conformity neither with the Framework Decision nor with the implementing law, in that both envisage the possibility of postponing the surrender of the requested person in such cases.

7.3.1.2. List of offences not covered by the double criminality test.

On several points the list in Article 10 of the implementing law is different from the list set out in the Framework Decision: see chapter 4.3 above².

Whereas the unilateral removal by Greece of verification of double criminality for a number of categories not envisaged in the Framework Decision does not seem to interfere in the practical operation of the EAW, the expert team notes that problems in connection with verification of criminality may arise when Greek authorities are confronted with EAWs issued in respect of some of the categories omitted in the implementing law (racketeering and swindling). This was confirmed during the interview with the judges of the Court of Appeal of Athens, who explained that in such cases they ask for a factual description in box (e) of the form detailed enough to enable them to submit the facts under one of the specific categories of the Greek penal code.

¹ Doc. 12887/04.

² Such differences do not appear in the EAW form used by the Greek authorities when acting as issuing authorities. The list in box (e) of the official Greek version of the form is completely in line with the Framework Decision.

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7.3.1.3. Grounds for optional non-execution transposed into Greek legislation as mandatory. Several optional grounds for non-execution laid down in Article 4 of the Framework Decision have been taken as mandatory in the implementing law.

While admitting that Greece is far from being the only Member State that has taken this approach, the expert team is of the opinion that this way of transposing the Framework Decision is contrary not only to the spirit but also to the letter of the Framework Decision, which in Article 4 clearly refers to the "executing judicial authority" as the competent body having discretion to refuse to execute an EAW on the grounds envisaged therein.

This is mainly, but not only, a matter of principle. Depriving the executing judicial authorities of the discretionary power to apply some of the grounds for non-execution conceived as optional in the Framework Decision could cause undesirable situations in practice. This was noted during the interviews with Greek practitioners, namely in connection with the ground for refusal relating to territoriality when the offence has been committed in part in the territory of Greece¹. By obliging the Greek executing authority to refuse the execution of the EAW in such cases, the Greek legislator makes it impossible for the former to decide on a case-by-case basis where the person concerned could best be prosecuted taking into account all relevant factors. The ground relating to the existence of domestic proceedings against a Greek national for the same offence underlying the EAW² could also be mentioned in the same connection. Such an approach seems particularly to ignore the reality of transnational organised crime.

7.3.1.4. Ground for non-execution based on recital 12 of the Framework Decision.

The Greek legislator has converted recital 12 of the Framework Decision on "human rights" into a (mandatory) ground for non-execution. The expert team is aware that legislators in other Member States have acted in a similar way, but considers, firstly, that the insertion of this ground for non-execution is contrary to the text of the Framework Decision, which provides an exhaustive list of grounds for non-execution in Articles 3 and 4; recital 12 does not form part of this exhaustive list of grounds.

¹ Article 11 g)(i) of the implementing law.

² Article 11 h) of the implementing law. It must be noted that this ground for non-execution of the EAW is envisaged as optional for non-nationals in Article 12 a).

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The expert team considers, secondly, that the ground for non-execution based on human rights is redundant in the light of the European Convention on Human Rights and Fundamental Freedoms, to which all Member States are signatory.

The expert team observes, thirdly, that the Greek legislator has overstepped the Framework Decision, insofar as the execution of an EAW must also be refused when it was issued for the purpose of prosecuting or punishing a person on the grounds of "his/her activities for freedom". The Greek authorities explained that this addition was made in order to bring the implementing law into line with the Greek Constitution. The expert team notes however that the Framework Decision, like other European law, takes precedence over national law, whatever its nature. The Greek legislator was therefore not empowered to insert this addition relating to "activities for freedom", no matter how understandable it may be in view of recent Greek history.

7.3.1.5. Institution of proceedings against Greek nationals upon receipt of an EAW. According to the information provided during the evaluation visit, based on the principle of active personality, Greek prosecutors may institute proceedings against a Greek national upon receipt of an EAW for the offence underlying it¹. In such a case the EAW will not be executed.

The expert team is of the opinion that this approach, in admitting that the execution of an EAW may be refused not only when prosecution had been started at the time of the receipt of an EAW², but also when the proceedings are started subsequent to such receipt, is contrary to the spirit of the Framework Decision, in that it introduces a ground for refusal relating to nationals not envisaged in it.

7.3.1.6. Duration of police custody.

Article 15.1 of the implementing law provides that following arrest the requested person must be brought before the public prosecutor "without delay"; it does not specify the time during which the person can be kept in police custody. This provision has been interpreted by the Greek authorities as meaning that the person has to appear before the public prosecutor the same or, when not possible, the following *working day*.

¹ See chapter 4.8 above.

² Article 4(2) of the Framework Decision.

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In principle such an approach seems to be in line with Article 6, paragraph 2 of the Greek Constitution, according to which *"A person who is arrested...on a warrant shall be brought before the competent examining magistrate within twenty-four hours of his arrest at the latest..."*. It fails however when the arrest takes place on Friday evening or on Saturday, or just before an official holiday. This issue is linked to the lack of a 24/7 duty scheme in Greece in relation to EAW matters.

7.3.1.7. Legal assistance in EAW procedures.

It appears from the implementing law that the right of the requested person to legal counsel is announced when he is brought before the PPCA. This means that the appointed lawyer may not have had the opportunity to assist the person at the important first moments after arrest, and that the possibilities for the requested person to consult his lawyer and of the lawyer to give advice prior to his client being heard by the PPCA and asked about consent to surrender and renunciation of the speciality rule are rather limited.

The implementing law does not refer explicitly to the right to have a lawyer paid by the state, where appropriate in the light of the limited resources of the requested person. Furthermore, since the general provisions on this matter entered into force before the implementing law, they do not envisage or contain any reference to EAW procedures.

7.3.1.8. Appeal procedures.

Pursuant to the implementing law the decision of the Court of Appeal on surrender may be appealed within 24 hours of its publication. The appeal must be lodged with the secretary of the Court of Appeal, stating the reasons in writing.

Although the expert team appreciates that short deadlines should be set in order to maintain a rapid procedure, a time limit of 24 hours for lodging an appeal seems to be extremely short, in particular if the person concerned still needs to find a lawyer. Furthermore the obligation to lodge the appeal with the secretary of the Court of Appeal may be cumbersome if the person is in prison, which will normally be the case¹,

¹ This is different from the normal procedure in Greek criminal procedural law, where in such situation the appeal may be lodged with the prison director and the term for appeal is much longer.

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In the opinion of the team, the rigid time limit and the strict formalities described may hamper the right to appeal, all the more so as it is not certain that the subject will be assisted by a defence counsel before lodging the appeal and be in possession of the relevant documents¹.

7.3.1.9. Contacts with the issuing authority.

According to Article 19 of the implementing law, whenever the Court of Appeal feels it necessary to ask for supplementary information in order to try the case, it must apply to the issuing authority through the PPCA.

In the view of the expert team it seems unnecessary to require in all instances that the contacts be carried out through a third person. A judge at the Court of Appeal who feels himself sufficiently at ease to contact the issuing authority directly should be able to do so.

7.3.2. Good practices

7.3.2.1. Check of SIS alerts and addition of prohibitive validity flags.

The experts commend the system that Greece has put in place whereby judges and prosecutors are seconded to the SIRENE Bureau to assist on the spot in checking the validity of incoming SIS alerts, and prohibitive validity flags can only be added on the orders of the PPCA, thereby ensuring the legality of such actions.

7.3.2.2. Flexible language regime.

Greek authorities accept an English translation of the EAW to initiate the procedure and for the purpose of the arrest of the requested person. Additional information may be provided by the issuing authority, spontaneously or at the request of the Greek authorities, also in English.

8. RECOMMENDATIONS

8.1. RECOMMENDATIONS TO GREECE

GENERAL

Recommendation 1.- Produce written guidelines with the involvement of practitioners to provide detailed guidance on how the Greek implementing law should be applied in practice (see 7.1.1).

¹ As to the right to get copies of the case documents, see chapter 6 above.

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Recommendation 2.- Review the conformity of the implementing law with the Framework Decision, as well as the correlation between the former and domestic criminal procedural law, and fill the gaps where appropriate (see 7.1.1).

Recommendation 3.- Consider establishing a pool of judges and prosecutors in each Court of Appeal to handle EAW cases (see 7.1.2).

Recommendation 4.- Establish mechanisms to ensure the appropriate coordination among prosecution offices with a view to avoiding divergent practices in the processing of EAWs and promoting a common understanding of the relevant legislation (see 7.1.3).

Recommendation 5.- Take measures to ensure that accumulated experience relating to EAW matters be disseminated effectively to all practitioners, e.g. by drawing up a handbook, providing extensive and regular training and/or establishing centres of expertise, as a means of improving the efficiency of the system (see 7.1.4).

Recommendation 6.- Organize training in basic foreign legal language for judges and prosecutors, enabling them to establish direct contacts with their partners abroad in the most commonly spoken languages (see 7.1.5).

Recommendation 7.- Establish tools aimed at modernizing the processing of EAW files and the information related thereto (see 7.1.6).

RECOMMENDATIONS TO GREECE AS ISSUING MEMBER STATE

Recommendation 8.- Ensure that an EAW is only issued when the objective sought can not be achieved by using other forms of (mutual legal) assistance less intrusive for the individual (see 7.2.1.1).

Recommendation 9.- Set up appropriate mechanisms to deal with urgent EAW matters at weekends and on official holidays, e.g. by introducing a 24/7 duty scheme for the Public Prosecutor's Offices at the Courts of Appeal (see 7.2.1.2).

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Recommendation 10.- Ensure that existing SIS alerts based on International Arrest Warrants and (where appropriate) INTERPOL alerts based on EAWs are replaced with SIS alerts based on EAWs (see 7.2.1.3).

RECOMMENDATIONS TO GREECE AS EXECUTING MEMBER STATE

Recommendation 11.- Correct the current practice of the Public Prosecutors at the Courts of Appeal of exercising powers not envisaged in the implementing law to refuse the execution of EAWs (see 7.3.1.1).

Recommendation 12.- Reconsider the current situation where the initiation of the court procedure for a decision on surrender de facto depends on the decision of the Public Prosecutor at the Court of Appeal to arrest the requested person (see 7.3.1.1).

Recommendation 13.- Amend the implementing law to conform with the Framework Decision with respect to the list of offences not covered by the double criminality test (see 7.3.1.2).

Recommendation 14.- Amend the implementing law to conform with the Framework Decision with respect to the grounds for optional non-execution of EAWs (see 7.3.1.3 and 7.3.1.5).

Recommendation 15.- Reconsider the inclusion of Article 11 paragraph e) as a ground for refusal in the implementing law (see 7.3.1.4).

Recommendation 16.- In connection with recommendation 9, reconsider, in the light of domestic legislation, the validity of the current practice of extending the period of arrest at weekends and on public holidays beyond 24 hours (see 7.3.1.6).

Recommendation 17.- Fill the current gap in Greek law as regards the right of a person arrested on the basis of an EAW to a state-paid lawyer (see 7.3.1.7).

Recommendation 18.- In the meantime, ensure that the requested person is duly informed of his rights immediately after the arrest and provided with a quality linguistic assistance where necessary (see 7.3.1.7 and chapter 6).

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Recommendation 19.- Amend Article 15.2 of the implementing law so that the requested person is provided with free copies of the relevant file documents (see chapter 6).

Recommendation 20.- Adopt the necessary measures to ensure that the requested person can effectively exercise his right to appeal the court's decision on surrender (see 7.3.1.8).

Recommendation 21.- Amend Article 19 of the implementing law to allow the court to establish direct contacts with the issuing authorities without the intervention of the Prosecutor General at the Court of Appeal (see 7.3.1.9).

8.2. RECOMMENDATIONS TO OTHER MEMBER STATES

Recommendation 22.- Follow the Greek practice that prohibitive validity flags may only be added to incoming SIS alerts on the orders of a competent judicial authority (see 7.3.2.1).

Recommendation 23.- Follow the Greek authorities' practice of initiating EAW procedures based on EAWs drafted in English (see 7.3.2.2).

8.3. RECOMMENDATIONS TO THE EUROPEAN UNION

Recommendation 24.- Consider addressing at the appropriate level the issue of the possibility for the concerned person to challenge an EAW in a country other than the issuing Member State, including the right to bring the actions envisaged in Article 111.1 of the Convention implementing the Schengen Agreement, as well as the impact on the EAW underlying the SIS alert of the obligation imposed on the Member States parties to the Convention by Article 111.2 thereof to enforce the final decision taken by the competent court or authority in that connection (see 7.1.7).

Recommendation 25.- Discuss at the appropriate level the possibility of introducing a mediation mechanism to determine the jurisdiction best-placed to prosecute in cases of concurrent prosecutions in two or more Member States (see 7.3.1.3).

Recommendation 26.- Consider discussing at the appropriate level the issue relating to the impact of the principle of active personality on the operation of the EAW (see 7.3.1.5).

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ANNEX A

PROGRAMME OF VISITS

Tuesday, 8 April 2008

- 09:15 Departure from President Hotel.
9:30-11.30 Ministry of Justice: Welcome of the Evaluation Team. General information on the competent authorities and the procedure for the issuing and execution of EAW in Greece. Questions on the practical application of the EAW in Greece.
12:00-13.30 Visit to the headquarters of the Sirene Office.
14:00 Lunch offered by the Ministry of Justice.
16:30–18:30 Visit to the Athens Bar Association. Interview with lawyers.
20:00 Departure from President Hotel – Dinner offered by the Ministry of Justice.

Wednesday, 9 April 2008

- 09:45 Departure from President Hotel.
10:00-12.00 Visit to the Office of the Public Prosecutor at the Court of Appeal of Athens.
12.00- 14.00 Court of Appeal of Athens.
14.00 Lunch offered by the Ministry of Justice.
Transport to Thessaloniki.

Thursday, 10 April 2008

- 08:45 Departure from Hotel.
09:00- 11.00 Visit to the Office of the Public Prosecutor at the Court of Appeal of Thessaloniki.
11.00-12.30 Court of Appeal of Thessaloniki.
13.00- 14.30 Visit to the Thessaloniki Bar Association. Interview with lawyers.
15.00 Lunch offered by the Thessaloniki Bar Association.
Transport to Athens.

Friday, 11 April 2008

- 09.15 Departure.
09:30-11:30 Visit to the Supreme Court.
12:00-14:00 Wrap-up meeting.
End of visits - Departures.

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ANNEX B

LIST OF PERSONS INTERVIEWED

MINISTRY OF JUSTICE

Nikolaos Tsagkas, Public Prosecutor at the Court of Appeal of Pireus

Nikolaos Livos, Assistant Professor at the University of Athens

Evdokia Kolpondinou-Boudoura, Head of General Directorate for Legislative Coordination and International Special Legal Relations

Eftaxia Flenga, Head of Section for European Union Matters

Lambrini Koletta, Administrator, Section for International Judicial Cooperation in Criminal Matters

Ioanna Voulgaraki, Administrator, Section for European Union Matters

SIRENE OFFICE

Ioanna Bekiari, Police Colonel, Deputy Director of the International Police Cooperation Division/Greek Police Headquarters

Elias Boubouris, Police Major, Head of the Sirene Section/ International Police Cooperation Division/Greek Police Headquarters

Aristidis Stamoulis, Police Captain, Officer of the Extradition Office/National Central Bureau of Interpol/Greek Police Headquarters

Vasiliki Christopoulou, First Lieutenant, Police Officer of the Sirene Section/International Police Cooperation Division/Greek Police Headquarters

Miltiadis Zolotas, Constable, Police Officer of the Sirene Section/International Police Cooperation Division/Greek Police Headquarters

ATHENS BAR ASSOCIATION

Elias Anagnostopoulos, Lawyer

OFFICE OF THE PUBLIC PROSECUTOR AT THE COURT OF APPEAL OF ATHENS

Georgios Batzalexis, Presiding Judge

Georgios Pantelis, Public Prosecutor

Anna Zairi, Vice Public Prosecutor

Ioannis Angelis, Vice Public Prosecutor

Maria Mallouchou, Vice Public Prosecutor

Antonia Giannakopoulou, Judicial Secretary of the Public Prosecutor's Office

COURT OF APPEAL OF ATHENS

Gerasimos Furlanos, Presiding Judge

Ioannis Chamilothis, Judge

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OFFICE OF THE PUBLIC PROSECUTOR AT THE COURT OF APPEAL OF THESSALONIKI

Eleftherios Michailidis, Public Prosecutor at the Court of Appeal of Thessaloniki
Charalampos Papageorgiou, Vice Public Prosecutor
Kallitropia Dakou, Judicial Secretary of Office of the Public Prosecutor

COURT OF APPEAL OF THESSALONIKI

Anna Michalopoulou, Presiding Judge
Sofia Karachaliou, Presiding Judge
Panagiotis Pavlidis, Investigating Judge

THESSALONIKI BAR ASSOCIATION

Ioannis Kotzamanidis, First Vice-President of the Council of the Thessaloniki Bar Association, Lawyer
Nikolaos Valergakis, Secretary-General of the Council of the Thessaloniki Bar Association, Lawyer
Ioannis Makris, Member of the Council of the Thessaloniki Bar Association, Lawyer
Roksani Konstatziki, Member of the Council of the Thessaloniki Bar Association, Lawyer
Christos Raptis, Member of the Council of the Thessaloniki Bar Association, Lawyer
Nikos Dialinas, Lawyer

Dimitris Simeonidis, Lawyer

SUPREME COURT (ARIOS PAGOS)

Iraklis Konstantinidis, Vice-President of the Supreme Court

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ANNEX C

LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

ACRONYM ABBREVIATION TERM	ENGLISH EXPLANATION
EAW	European arrest warrant
PPCA	Public Prosecutor at the Court of Appeal
PPCAA	Public Prosecutor at the Court of Appeal of Athens
SIS	Schengen Information System
