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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 THE SLOVAK REPUBLIC

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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 by the Luxembourg Presidency concerning the topic of the fourth round of mutual evaluations¹, the MDG of 11 July 2005 adopted the topic as proposed, namely "the practical application of the European Arrest Warrant and corresponding surrender procedures between Member States". It was also agreed at the MDG of 11 July that the evaluation questionnaire was to be prepared by the UK Presidency.
- 1.3. Experts with substantial practical knowledge of the European Arrest Warrant were nominated by Member States pursuant to a written request to delegations made by the Chairman of the MDG on 9 September 2005².
- 1.4. At its meeting on 28 October 2005 the MDG approved the evaluation questionnaire for the fourth round of mutual evaluations. The objectives of the evaluation exercise and the questionnaire itself are set out in 14272/05 CRIMORG 131 COPEN 175 EJM 57 EUROJUST 77.
- 1.5. At its meeting on 28 October 2005 the MDG also discussed and approved 13824/05, the revised sequence for the mutual evaluation visits. The Slovak Republic is the twenty-sixth Member State to be evaluated during the fourth round of evaluations.
- 1.6. The experts charged with undertaking this evaluation were: Ms Anna Adamiak (Prosecutor, Poland), Mr Ola Löfgren (Chief Public Prosecutor, Office of the Prosecutor General, Sweden) and Ms Svetlana Klouckova (Director of International Affairs Department, Supreme Prosecutor's Office, Czech Republic). Two observers were also present: Ms Catherine Deboyser (Eurojust) and Mr Peter Kortenhorst (European Commission) together with the General Secretariat of the Council.

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

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

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- 1.7. This report was prepared by the expert team with the assistance of the Council Secretariat, based on their findings arising from the evaluation visit of 11-13 November 2008, and on Slovakia's detailed and helpful responses to the evaluation questionnaire and a written request for further information.
- 1.8. The report only refers to differing processes in respect of prosecution and conviction cases insofar as practice in the two procedures diverges.
- 1.9. The expert team's overarching purpose was to evaluate the distinct practical processes operated and encountered by Slovakia both as issuing and as executing Member State, to assess relevant training provision and provision for defence, before moving on to conclude and to make such recommendations as they felt appropriate to concerning 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 system of courts dealing with criminal matters in the Slovak Republic comprises:

- The Supreme Court of the Slovak Republic, with its seat in Bratislava,
- 8 Regional Courts, which hear cases as appeal courts,
- 55 District Courts, which are competent to try proceedings at first instance,
- 1 Higher Military Court and 3 Military District Courts
- 1 Special Court, which is exclusively competent to try cases concerning certain specific categories of crime (corruption, organised crime).

The Prosecution Service of the Slovak Republic comprises:

- The General Prosecutors' Office (at the level of the Supreme Court), which is the highest prosecution authority. The following authorities form part of the General Prosecutor's Office:
 - Special Prosecutor's Office.
 - Military Section of the General Prosecutor's Office,
- 8 Regional Prosecution Offices,

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- 55 District Prosecution Offices,
- 1 Higher Prosecution Office and 3 Circuit Military Prosecution Offices.

The Public Prosecution Service is an independent body. It has its own separate budget chapter in the state budget. It is headed by the General Prosecutor and organised according to the principle of hierarchy. The place of prosecution service within the Slovak legal system, relations between various level of the prosecution services, tasks of the prosecutors, their status and other relevant issues are regulated by the separate chapter of the Constitution of the Slovak Republic (Articles 149 – 151 of the Constitution), Act No. 153/2001 Coll. on the public prosecution service as amended and Act No. 154/2001 Coll. on prosecutors and trainee prosecutors as amended. Other functions of prosecutors are further regulated in various legal acts, e.g. the Code of Criminal Procedure.

Under the principle of hierarchy, unless otherwise provided by the law, prosecutors are obliged to follow the instructions of their superiors, all of them being subordinated to the General Prosecutor. As a result, any superior prosecutor is empowered to give binding instructions to his subordinates in respect of a particular case; he also can perform any act originally assigned to a subordinate prosecutor or decide that another subordinate prosecutor shall perform it. The General Prosecutor has also the power to issue binding orders of a general character. Within the General Prosecutor's Office there is an International Department which plays a role in EAW cases as described below.

Within the Ministry of Justice, the Judicial Cooperation in Criminal Matters Division (which forms part of the International and European Law Department), plays an assisting role in EAW matters. Pursuant to the implementing law, copies of the EAWs issued by the Slovak courts, as well as of the decisions made on the execution of incoming EAWs, must also be sent to the Ministry of Justice. Such legal basis is used for case study, dissemination of good practices and statistical purposes.

The Bureau of International Police Cooperation, within the Presidium of the Police Force, Ministry of the Interior, comprises SIRENE Bratislava and the NCB Interpol Bratislava, the latter dealing with EAW matters concerning non-SIS Member States.

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2.2 THE LEGAL BASIS

- Act No. 403/2004 Coll. of 24 June 2004, on the European Arrest Warrant and on amending and supplementing certain other laws, as amended by Act No. 342/2007 Coll. (hereinafter referred to as "the implementing law").
- Code of Criminal Procedure (hereinafter referred to as "the CCP"). Pursuant to Section 1(2) of the implementing law, *"unless otherwise provided below, the provisions of the Code of Criminal Procedure shall apply to the procedure set out in this Act. The Code of Criminal Procedure shall also govern the procedure for handling requests from Member States to surrender persons for the purposes of criminal prosecution, or for serving a custodial sentence or executing a detention order, insofar as the Framework Decision does not apply"*.
- The following provisions also apply to EAW procedures:
 - Article XIII of the Treaty between the Slovak Republic and the Republic of Poland amending and facilitating the implementation of the European Convention of 13 December 1957, which enables the Slovak and Polish authorities to forward EAWs in their own language without a translation.
 - Article XV of the Treaty between the Slovak Republic and the Republic of Austria amending the European Convention on Extradition of 13 December 1957 and facilitating its implementation, which enables the Slovak and Austrian authorities to forward European arrest warrants in their own languages without a translation.
 - Article 3 of the Treaty between the Slovak Republic and the Czech Republic on legal assistance provided by the judicial authorities and on the arrangement of certain legal relations in civil and criminal matters of 29 October 1992 with a Final Protocol, which enables the Slovak and Czech authorities to forward EAWs in their own languages without a translation.

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3. ORGANISATION AND PRACTICES - AS ISSUING MEMBER STATE

According to the replies to the questionnaire on quantitative information on the practical operation of the EAW¹, in 2007 the Slovak judicial authorities issued 208² EAWs, 71 of which resulted in the actual surrender of the person sought.

3.1. THE DECISION TO ISSUE

In both prosecution and conviction cases all district, regional and military courts, as well as the Special Court, are competent to issue an EAW. EAWs are issued by a pre-trial judge in the pre-trial stage and by the presiding judge or judge of the competent court in the trial stage. If the EAW is needed for the purposes of ensuring the enforcement of a sentence, it is issued by the presiding judge or judge of the court which sentenced the requested person.

In pre-trial proceedings an EAW may only be issued at the request of the prosecutor. Pursuant to Order of the Prosecutor General No. V Spr 4114/04 of 31 August 2004, in cases where the competent prosecutor is of the opinion that the conditions for making such a request are met, he has to seek approval to proceed from the General Prosecutor's Office (hereinafter referred to as "the GPO"), where the draft EAW produced by the requesting prosecutor and the conditions for the issuing of the EAW are checked by prosecutors from the International Division. District prosecutors must channel their requests through the corresponding Regional Prosecutor's Office (hereinafter referred to as "the RPO"), which checks incoming requests before forwarding them to the General Prosecutor's Office; however, in case of urgency, preliminary consent may be given by the latter in response to direct consultation by the district prosecutor.

¹ 10330/2/08 COPEN 116 EJN 44 EUROJUST 58.

² Of these 19 were cancelled.

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In principle, an EAW is to be issued where there exists a domestic arrest warrant, an international arrest warrant or a custodial sentence and the person concerned is staying, or there is a presumption that he is staying, in another Member State, provided that the statutory penalty thresholds are reached¹. In this regard it should be noted that, as to conviction EAWs, the implementing law requires not only that the sentence to be executed or the remainder thereof is of at least 4 months but also that the related offence is punishable by a custodial sentence of at least one year². Pursuant to the implementing law, multiple sentences or remaining sentences are to be added up in these cases.

3.2. VERIFYING THE POSSIBLE EXISTENCE OF MULTIPLE REQUESTS

When issuing an EAW, there is no mandatory requirement for the issuing court to check whether there have been any other EAWs issued in respect of the person concerned. The prosecution service has a database of pending criminal cases, but it is not a comprehensive one. This information may be provided by the SIRENE and Interpol Bureaux and other police authorities.

3.3. THE COMPLETION OF THE FORMS/COURT PAPERS

An EAW must be issued using the form provided in Appendix No. 1 to the implementing law, which mirrors the one provided for by the Framework Decision and is available on the website of the Ministry of Justice (hereinafter referred to as "the MoJ").

In prosecution cases, the prosecutor's request is accompanied by a draft EAW. This draft, prepared by the district or regional prosecutor, is always checked by the International Division of the General Prosecutors' Office to ensure accuracy.

The EAW manual drawn up by EU experts is available on the MoJ's website. However, there are no comprehensive guidelines or manuals adapted to the Slovak system to assist judges in completing the EAW form. According to the information provided, common practice is intended to be established through training and dissemination of information/good practices via the MoJ. It was also noted that, where difficulties arise, the advice of the EJM contact points or the MoJ may be sought.

¹ Section 10(1) of the implementing law.

² Section 4(3) reads: "*Where a European arrest warrant is issued with a view to the execution of a custodial sentence for a criminal offence according to paragraph 2 (i.e., an offence punishable by a custodial sentence for a maximum period of at least one year), the length of the sentence to be executed or the remainder thereof must be at least four months...*".

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To meet the needs of prosecutors, in addition to Order No V Spr 4114/04 of 31 August 2004, the GPO has issued a number of directives/instructions concerning particular aspects of EAW procedures, which are binding on prosecutors. RPOs also provide guidance to District Prosecution Offices, e.g. by means of working meetings to which prosecutors from the district prosecution offices are invited. According to the information provided, consultation between prosecutors at all levels by phone or e-mail is a daily practice. In that connection, it should be noted that a number of prosecutors specialized in the area of international cooperation have been designated at RPOs level. These specialized prosecutors, heads of international units in their respective RPO, attend regular meetings (at least 3 times a year) organized by the GPO's International Department. According to the Slovak authorities, the actual and existing problems of practice related to the implementation of the EAW are regularly on the agenda of such meetings. Discussions are held and, as a result, a guidance may be drafted by the International Department Director to address the practical difficulties identified.

During the interviews no recurrent issues were reported in relation to the EAW form or any field of it in particular.

3.4. TRANSLATION OF THE EAW

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

EAWs are issued by the Slovak authorities in Slovak. As a rule EAWs are translated following notification that the requested person has been arrested in another Member State. A translation is only produced in anticipation if the location of the requested person is known. By virtue of bilateral international treaties in force, no translation is needed for the Czech Republic, Austria and Poland¹.

Difficulties were reported in this regard in relation to the provision of translations within the short deadlines set by some Member States, as well as in relation to the lack of interpreters for certain languages. In that connection, it was noted that a translation into English is usually made. During the interviews the issue of disparity in the deadlines established by Member States for the provision of language compliant EAWs was also stressed.

¹ Section 3(3) of the implementing law reads: *"The Slovak authorities shall apply bilateral treaties on extradition concluded between the Slovak Republic and another Member State also where they relate to the use of language in mutual communication between official bodies of these States based on the principle of reciprocity". See chapter 2.2 above.*

3.5. TRANSMISSION OF THE EAW

The Slovak Republic did not make use of the possibility provided for in Article 7(2) of the Framework Decision, and the transmission option chosen for EAWs is directly between judicial authorities¹. In transmitting the EAW the court may seek the assistance of the MoJ, as well as of the SIRENE office/Interpol NCB². In this regard, the officials interviewed noted that while at the beginning of the implementation of the EAW the good offices of the MoJ were frequently requested by courts, subsequently this has rarely happened.

In cases of direct transmission difficulties in identifying the competent executing authority are solved by using the EJN Atlas, or with the assistance of the EJN contact points or the MoJ. It should be noted, however, that there is no link to the EJN website on the MoJ and GPO websites.

As to the mode of transmission, the EAW is sent either by mail or by fax³. In practice, fax transmission is frequently used where a translation of the EAW is needed within a short period of time, the original EAW being sent by mail at a later stage. Transmission by e-mail is rarely used.

Pursuant to the implementing law, all EAWs issued by the Slovak authorities must be sent to the SIRENE office for entry of an alert in the SIS. A copy of the EAW must also be sent to the MoJ for statistical purposes and monitoring of the duration of proceedings, as well as for case study and dissemination of good practices⁴.

¹ Article 5(1) of the implementing law reads: *"Where the law of the issuing Member State or of the executing Member State does not require that the European arrest warrant and other documents be transmitted through the intermediary of a central authority, judicial authorities of the issuing Member State and those of the member State executing a European arrest warrant shall communicate directly..."*.

² According to the replies to the questionnaire on quantitative information on the practical operation of the EAW, in 2007 111 and 14 EAWs were transmitted via SIS and Interpol, respectively (the total number of EAWs issued in 2007 was 208).

³ Pursuant to Section 5(2) of the implementing law, EAWs *"may be dispatched to a Member State or received from a Member State by post or by using other safe methods enabling to produce a written text whose authenticity is verifiable by the executing authority"*.

⁴ Section 10(3).

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

According to the information provided, difficulties encountered with executing Member States have primarily concerned the UK. In that connection, the Slovak authorities stressed that in some cases the UK had requested specific information which, in their view, went beyond the requirements of the Framework Decision, e.g. that the requested person was unlawfully at large, information on guarantees or the possibility of appeal, or sometimes even the history of the whole case and the steps taken. The impossibility, under Slovak law, of complying with the UK authorities' request to issue a new EAW in such cases was highlighted. As a result of dialogue with the UK, in the past courts were advised to indicate that the requested person was “unlawfully at large” if he was supposed to be in the UK in order to avoid potential difficulties arising from requests for additional information. As regards other information requested by the UK, the Slovak authorities offered to include this in a separate document issued by the court, which could be considered as an integral part of the EAW (which under Slovak law is itself deemed to be a judicial decision), instead of drafting a new one, as sometimes requested by the UK authorities.

There were reports of the Czech Republic requesting, at the beginning of the implementation of the EAW, certified copies of the applicable provisions of the Criminal Code and CCP, in particular in *in absentia* cases. Special mention was made of the Czech Republic's practice of refusing surrender of own nationals for offences committed prior to 1 November 2004. In this connection, the authorities interviewed stressed that, since the Czech Republic refuses both to execute the EAW and to apply Article 8(2) of the European Convention on the Transfer of Proceedings in Criminal Matters, a number of offenders finally judged by the Slovak courts remain unpunished.

The Košice II District Court reported one case with Belgium where the EAW, despite having been translated into (English and) German, was executed only after a translation into French was provided by the court.

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In a more general perspective, the Slovak authorities identified problems arising from the rule of speciality owing to lack of information by the executing Member State about the application/non-application of such a rule. By way of example, the following case with the Czech Republic, which received ample coverage in the media, was described in the replies to the EAW questionnaire: a person was surrendered to the Slovak Republic by the Czech authorities for the enforcement of a sentence; some time after the surrender the competent authorities started to investigate a series of murder cases in the Slovak Republic, some of them related to the surrendered person; the rule of speciality was not considered; as a consequence, the evidence obtained over several months was deemed unacceptable by the competent court and the case resulted in the cancellation of the judgment. General reference was also made to cases with Hungary where the rule of speciality had a significant impact. In their replies to the questionnaire, the Slovak authorities expressed strong doubts that the speciality rule should apply in a common area of freedom, security and justice.

The evaluation team was informed that, when facing obstacles, the Slovak authorities did not consider requesting the assistance of Eurojust.

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

The Slovak authorities reported a number of practical problems arising from requests for additional information by executing member States. These pertained mainly to UK requests for additional information which went beyond the requirements of the Framework Decision, as described above, and, in a more general perspective, to the need to provide the requested information in the language of the executing State. In this regard, dissatisfaction was expressed by the Slovak authorities concerning the lack of a specific language regime in the Framework Decision.

According to the information provided, the involvement of the EJC usually leads to a positive solution where difficulties arise in connection with this issue. The assistance of the MoJ is also requested in instances in which courts cannot find a solution directly,.

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

The Slovak authorities noted that this issue is covered by Section 12(6) of the implementing law, according to which *"if the executing Member State surrenders a person with a reservation, the reservation must be respected"*.

There is no provision in the implementing law detailing the procedure to be followed for the return of the requested person. In this connection, the Slovak authorities explained that, where the executing Member State considers it necessary, applicable international treaties as well as provisions on the transfer of sentenced persons contained in Part V of the CCP may be used to this end¹.

3.9. YOUTH SURRENDERS AND CORRESPONDING GUARANTEES

No particular problems with issues pertaining to minors/youths had been identified at the time of the evaluation visit.

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

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

3.10. EVOLVING BEST PRACTICES

A database of all extradition and EAW cases was established by the MoJ further to the abovementioned difficulties in connection with the issue of speciality, which, in the view of the expert team, is to be commended.

3.11. GENERAL COMMUNICATIONS WITH THE EXECUTING MEMBER STATE

Although, pursuant to the implementing law, the main communication option chosen for EAW matters is directly between judicial authorities, it appeared during the interviews that the exchange of information between the Slovak judicial authorities and their counterparts abroad is often effected through police channels. In that connection, the cooperation with Interpol was highlighted by courts (at the time of the evaluation visit there was not so much experience as regards cooperation with SIRENE). Sometimes information from counterparts abroad is also received through the EJN and the MoJ.

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

In the Slovak Republic the taking over of the requested person is performed by the SIRENE office/Interpol NCB, which are also charged with the practical arrangements necessary for it.

As to difficulties in this regard, some cases were reported where meeting the prescribed time limits for surrender proved to be troublesome due to the late transmission by the executing Member State of the surrender decision and/or other information necessary for the conveyance.

The Slovak authorities mentioned that difficulties to meet the time limits are also linked to the fact that in many cases the transit is needed. In that connection, problems in obtaining the corresponding authorisation from the Czech authorities within thirty days of the submission of the request were highlighted by the officers interviewed¹. Cooperation with the Austrian authorities in this regard was deemed to be excellent.

¹ It was pointed out by the Czech Republic that for 2008 the time period required for transit is very short and normally amounts to only a few day.

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3.13. THE MECHANICS OF THE SURRENDER IN RESPECT OF REQUESTED PROPERTY/TIME LIMITS/GUARANTEES

The provisions of the implementing law on this issue conform to the Framework Decision. At the time of the evaluation visit, no EAW with a request to seize and hand over property issued by the Slovak authorities had been recorded.

3.14. CONFLICT OF EAWS/EXTRADITION REQUESTS/ONWARD SURRENDER

No problems have been identified so far in these areas.

3.15. EXPENSES

The Slovak authorities raised the issue of the expenses in transit cases. In their view, the Framework Decision does not address this question and therefore the situation remains unclear. They are of the opinion that the expenses of transit should be covered by the issuing Member State¹.

3.16. MISCELLANEOUS COMMENTS

Accessory surrender

Slovak legislation does not permit the issue of an EAW for any offences which do not fall within the scope of the Framework Decision, including accessory offences. The Slovak authorities noted the lacuna in the Framework Decision in this regard and the difficulties it may pose for cooperation between judicial authorities of Member States.

4. ORGANISATION AND PRACTICES - AS EXECUTING MEMBER STATE

In 2007 the Slovak Republic received 97 EAWs and surrendered 53 persons based on an EAW. Of the persons surrendered, 19 consented to surrender and 34 did not. In the same period the Slovak Republic refused to execute an EAW in 11 cases.²

4.1. RECEIPT PROCEDURES

The authority competent for the receipt of the EAW is the RPO in the jurisdiction where the requested person is located³.

¹ This issue was raised by the Slovak delegation during the COPEN meeting (EAW experts) of 5 December 2008 (16739/08 COPEN 247 EUROJUST 109 EJN 83).

² 10330//2/08 COPEN 116 EJN 44 EUROJUST 58.

³ Section 16(1) of the implementing law.

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EAWs may be transmitted by any means capable of producing a written record whose authenticity can be established¹. An EAW may also be forwarded to the Slovak receiving authority through SIRENE/Interpol channels. According to the information provided, in some cases the EAW was delivered by mail through the good offices of the MoJ, or in person by a liaison officer (Germany).

The Slovak Republic accepts EAWs in Slovak². In relation to Poland, Austria and the Czech Republic, EAWs are accepted in Polish, German and Czech respectively³. The Slovak authorities noted that difficulties frequently arise associated with the unsatisfactory quality of translation into Slovak, although any such problems are usually solved by the prosecutor during the preliminary enquiry⁴.

A decision to release the requested person may be taken by the court at the request of the public prosecutor if the EAW and a translation into Slovak, where required, are not received within 18 days of the arrest. In any event, the original EAW, together with a translation into Slovak, must be received within 40 days of the arrest; otherwise the requested person must be released⁵. The original EAW is required in order for a decision on surrender to be taken, even in consented cases.

The expert team notes that at the time of the evaluation visit the Slovak Republic section of the EAW Atlas was not available on the EJN website, which might give rise to difficulties for the issuing authorities in identifying the competent Slovak receiving authority.

4.2. INVESTIGATIONS CONCERNING THE LOCATION OF THE REQUESTED PERSON

On receipt of an EAW-based alert, the SIRENE/Interpol officers responsible check police and other available databases (national register of residents, national register of foreigners, database of prisoners) to verify the presence and whereabouts of the requested person in the territory of the Slovak Republic. Where the whereabouts of the requested person have been established, or where they are known from the alert, the SIRENE office/Interpol bureau contacts the locally competent police authorities in order for them to verify this information and arrest the requested person.

¹ Section 5(2) of the implementing law. See footnote in chapter 3.5.

² Section 7(2).

³ See footnote in chapter 3.4.

⁴ See chapter 4.4 below.

⁵ Section 17(4)a) of the implementing law.

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If the EAW is forwarded directly to the Slovak receiving authority, the latter will call on the police authorities for the location, verification of identity and arrest of the requested person. At the same time, the prosecutor will notify the SIRENE office of the receipt of the EAW.

4.3. ARREST PROCEDURES/FIRST HEARING

When a person requested on the basis of an EAW is found in the territory of the Slovak Republic, he must be arrested¹. In the Slovak system any police officer is empowered to arrest a person based on an EAW or EAW-based alert². Information of the arrest must be immediately transmitted to the competent prosecutor with a view to initiating proceedings. The prosecutor must in turn inform the issuing authority of the arrest of the requested person.

Within 48 hours of the arrest the prosecutor must file an application to the Regional Court (hereinafter referred to as "the RC") for the person to be placed in custody. The EAW or, if it is not available, the alert must be transmitted with the application.

At present, the implementing law provides that the prosecutor must proceed as described in the preceding paragraph if he *"does not release the arrested person"* within the abovementioned 48-hour deadline. According to the explanations provided by the Slovak authorities, this provision constitutes an exception and applies only to a limited number of cases in which arrest of the requested person is not possible, namely minors and where the requested person enjoys immunity. In that connection, it should be noted that, under the implementing law, the EAW must be sent back to the issuing State without a decision being taken on its execution *"if the requested person cannot be arrested"*³.

The presiding judge of a panel of the RC must rule on the prosecutor's application within 48 hours of its submission. Under the implementing law, if the person is requested for any of the listed offences he must be placed in custody. In other cases the only ground for ordering custody is the risk of absconding⁴. The bail system is, in principle, not used in EAW cases.

¹ Section 15(3) of the implementing law.

² The SIS and the national index of wanted persons (where EAW-based red notices are entered) are accessible to all police units.

³ Section 18(4)b).

⁴ Section 17(1) of the implementing law.

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The decision of the RC may be appealed against in the Supreme Court without suspensive effect.

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

When instituting EAW proceedings, the prosecutor must carry out a preliminary enquiry aimed at verifying that the requirements for executing the European arrest warrant are met. During this process the prosecutor is under a statutory obligation to check whether the EAW provides a sufficient basis for deciding on its execution; this refers to both formal requirements and content. There is no formal procedure guiding such a check. If the information provided is considered insufficient, if the form does not provide all the information required or is not properly filled in, if it turns out that the EAW was issued by an authority manifestly lacking competence, or if the legal qualification of the act is manifestly incorrect, the prosecutor must immediately request the issuing judicial authority to provide additional information, setting, where appropriate, a "*reasonable*" time limit¹ (during which the time limit for a decision on surrender is suspended²). Requests for additional information should be in the language of the issuing state, but the additional information itself must be provided in Slovak.

It should be noted that, according to the implementing law, the prosecutor must send back the EAW to the issuing state without referring the case to the court in those cases in which, after the issuing authority has been requested to provide additional information, the information available is not sufficient to decide on the execution of the EAW³. In the replies to the questionnaire, 4 of these cases were reported (with Hungary (1), Poland (2) and Lithuania (1)).

Additional information may also be requested after the case is brought before the court, where the latter considers it necessary in order to take a decision on the execution of the EAW. If this occurs the request for supplementary information must be channelled through the prosecutor⁴.

¹ Section 18(2) of the implementing law.

² Section 22(8)b) of the implementing law. See footnote in chapter 4.7 below.

³ Section 18(4)d).

⁴ Section 21(1) of the implementing law reads: "*...If the court needs more information to make its decision, it shall ask the prosecution authority to supplement the motion*".

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As to the most common grounds for these requests, the Slovak authorities reported instances of unclear or unsatisfactory description of the facts in connection with the issues of double criminality, territoriality clause and statute limitations, as well as cases where the stamp of the issuing authority had not been affixed to the EAW form.

Recurrent problems were reported with Hungary in connection with lack of information concerning the decision on which the EAW was based. The problem originates in the fact that, under Hungarian law, if there are reasons to believe that a wanted person is located in another Member State, the judicial authorities may proceed directly with the issue of an EAW; in such a case the indictment by the prosecutor is referred to in box (b) of the form as the decision on which the EAW is based¹, which is considered to be insufficient by the Slovak authorities. The expert team was informed that, following internal consultations with judges of the Supreme Court and after studying the Hungarian system, shortly before the visit an instruction had been issued by the GPO concerning the acceptance of EAWs issued by Hungary without insisting on evidence of a national arrest warrant or another decision having the same effect. The officials interviewed noted, however, that courts are independent and therefore no general conclusion could be made concerning this issue².

The evaluation team was informed that Eurojust was not asked to provide assistance in respect of requests for further information or clarification.

4.5. THE SURRENDER DECISION/ GUARANTEES REQUIREMENTS AND GUARANTEES PROVIDED

There is a number of cases in which the EAW must be sent back to the issuing state by the prosecutor conducting the preliminary enquiry without a decision being taken on its execution. Such cases are listed in Section 18(4) of the implementing law as follows:

- a) the requested person has died or has been declared dead,

¹ See chapter 7.2.1.1 of the "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 Hungary" - 15317/1/07 REV 1 CRIMORG 174 COPEN 162 EJN 37 EUROJUST 62.

² This issue was raised by the Slovak delegation during the COPEN meeting (EAW experts) of 5 December 2008 (16738/08 COPEN 246 EUROJUST 108 EJN 82). According to the information provided during the preparation of the report, this question was discussed at Ministers' level during the visit of the Hungarian Minister of Justice to Bratislava in February 2009.

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- b) the requested person cannot be arrested¹,
- c) the place of stay of the requested person in the territory of the Slovak Republic is not known, or the person does not stay there for a prolonged period, or it is not possible to identify the location of the person,
- d) the issuing Member State does not provide sufficient information for a decision to be taken on the execution of the European arrest warrant,
- e) the European arrest warrant was served on the Slovak authority after the person had been surrendered for the execution of a custodial sentence to another Member State or to a third State, or after it had been decided to surrender the person to a third State, or
- f) the Member State or a third State that surrendered the person to the Slovak Republic did not agree to the subsequent surrender.

The procedure leading to a decision on the execution of an EAW may vary depending on whether or not the requested person consents to surrender.

Non consented cases²

The decision on surrender falls within the competence of the RC that took the custody decision or, if the requested person was not placed in custody, the RC with jurisdiction over the place where the requested person resides or over the RPO which carried out the preliminary enquiry.

¹ See "*Flagging of alerts*" in chapter 4.15 below.

² Section 21 of the implementing law.

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The court decides on the execution of the EAW at the request of the prosecutor following completion of the preliminary enquiry. The case is tried in a closed hearing; the requested person or his counsel must be given the opportunity to submit written comments before the court's decision. However, the matter will be decided in a public hearing if the requested person, his counsel or the issuing judicial authority so requires, or if the court itself considers it necessary¹.

If a decision is issued that the requested person must be surrendered, and the latter is not in custody, the court is under a statutory obligation to order his detention.

Consented cases²

When hearing the requested person in the course of the preliminary enquiry, the prosecutor must inform him of the possibility, subject to his consent, of his being surrendered without submitting the case to the court, of the consequences thereof and of the fact that consent cannot be revoked. If the requested person consents to surrender, he must also be informed of the possibility of renouncing his entitlement to the speciality rule, where applicable in relation to the issuing Member State.

Consent to surrender (and renunciation of entitlement to the speciality rule) becomes legally effective only if recorded in a protocol drafted by the prosecutor in the presence of the requested person, his defence counsel and, where appropriate, interpreter, and if given on the original EAW.

¹ Section 21(3) of the implementing law reads: *"The court shall decide the execution of a European arrest warrant by passing a resolution at a closed hearing. Before its decision the court shall allow the requested person or his/her counsel to submit written comments concerning the European arrest warrant. If the requested person or his/her counsel demands that the European arrest warrant be dealt with at a public hearing, if the court itself considers this necessary, or if a request to this effect is made by the judicial authority of the issuing Member State, the court shall decide in public hearing."*

² Section 20 of the implementing law.

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If the requested person consents to surrender and there is no reason for not executing the European arrest warrant on any of the mandatory grounds for refusal laid down in Article 3 of the Framework Decision, the prosecutor is required to decide by a resolution that the EAW be executed. However, if any of the abovementioned grounds for refusal applies, and where it appears during the preliminary enquiry that there is an EAW issued against the requested person by another Member State, the prosecutor must refer the case to the RC for decision. In such instances the procedure described above for non consented cases, or, where appropriate, the procedure established for deciding in the event of competing EAWs¹, applies.

Guarantees

Guarantees are only required in *in absentia* cases. According to the implementing law, the court “*may*” make the execution of the EAW conditional on the provision of adequate guarantees enabling the requested person, in accordance with the executing Member State’s law “*and considering the circumstances of the case*”, to ask for a retrial, where the person concerned was not summoned in person or otherwise informed of the date and place of the hearing, “*or was not duly represented by a defence counsel in the proceedings*”². No particular issues were reported in this connection.

4.6 REFUSALS TO SURRENDER

No statistics detailing the most frequently exercised grounds for refusal were provided. As already mentioned, in the replies to the questionnaire on quantitative information on the practical operation of the EAW in 2007³, it is stated that the execution of an EAW was refused by the Slovak authorities in 11 out of 97 cases, on the grounds that the offence was considered as committed in whole or in part on the territory of the Slovak Republic, the criminal prosecution or punishment of the requested person was statute-barred, or the act did not constitute an offence under Slovak law.

As to cases in which the EAW was sent back to the issuing State without a decision being taken on its execution, the only information available comes from the replies to the EAW questionnaire, in which 4 cases were reported, all of them based on the insufficiency of the information provided by the issuing authority for deciding on the execution of the EAW⁴.

¹ Section 25 of the implementing law.

² Section 14(2).

³ 10330/2/08 COPEN 116 EJM 44 EUROJUST 58.

⁴ See chapter 4.4 above.

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All grounds for refusal regarded as optional in the Framework Decision have been taken as mandatory in the implementing law, with the sole exception of the ground relating to nationals of Article 4(6), which has not been incorporated into Slovak law¹. As to the ground for refusal envisaged in Article 4(3) of the Framework Decision, it does not apply where, in light of the circumstances of the case, it is preferable to prosecute the case in the issuing Member State, “*in particular with a view to establishing the truth and ensuring due process, to guaranteeing protection of a legitimate interest of injured parties, to pronouncing or executing the sentence, or where the proceedings was terminated due to the lack of evidence or omission to file a motion, or omission to present the power of attorney issued by the injured party*”².

The judicial authorities interviewed voiced criticisms concerning the lack of any discretionary power when applying some of the optional grounds for non-execution provided for in the Framework Decision, in particular that relating to the offence having been committed only in part in Slovak territory, which may lead to unsatisfactory situations in practice. According to the information provided during the evaluation visit, an amendment of the implementing law is envisaged which introduces important changes in this regard in order to conform to the Framework Decision.

As to non listed offences, the expert team notes that the Slovak Republic has introduced additional grounds for refusal in Section 4(5) and (6) of the implementing law, by requiring that the underlying offence be punishable under Slovak law with a sentence of a maximum of at least one year's imprisonment³.

¹ Section 14(4) of the implementing law reads: “*The fact that the requested person is a national of the Slovak Republic shall not be used as a ground for refusing execution of a European arrest warrant. Analogical procedure shall apply in relation to the requested person who, under international law, is entitled to equal treatment as a national of the Slovak Republic*”.

² Section 14(1) of the implementing law.

³ Section 4(5) of the implementing law reads: “*A European arrest warrant may be executed if it was issued in respect of an act that constitutes an offence under the law of the executing Member State, punishable by a custodial sentence for a maximum of at least one year...*”. Section 4(6) reads: “*A European arrest warrant issued with a view to the execution of a custodial sentence already pronounced in respect of a criminal offence according to paragraph 5 may be executed if the length of the sentence to be executed or the remainder thereof is at least four months...*”.

4.7 APPEAL PROCEDURES AND THEIR IMPACT ON TIME LIMITS

The court's decision on the execution of an EAW may be appealed against in the Supreme Court by the prosecutor or by the requested person with suspensive effect within three days of the decision having been served. The decision to execute an EAW issued by the prosecutor in consented cases is not subject to review.

The expert team was advised that proceedings before the Supreme Court take approximately 7 days. Factors other than appeal procedures were pointed out by the professionals interviewed as having a potential impact on the duration of EAW proceedings, in particular the need to give consent on the original EAW in order for it to be legally effective, and, in non consented cases, the possibility for the requested person to ask for a public hearing. It should be noted, however, that, according to the replies to the questionnaire on quantitative information on the practical application of the EAW¹, in 2007 the average duration of EAW procedures (considering as such the time between the arrest and the decision on surrender) was 27 and 53 days in consented cases² and non consented cases respectively³, and that one single case was reported in which the 90-day time limit was exceeded.

4.8 OWN NATIONAL AND YOUTH ARREST AND SURRENDER ISSUES

The Slovak Republic opted not to impose any restriction/condition on surrender associated with the Slovak nationality of the requested person. Therefore Article 4(6) and Article 5(3) of the Framework Decision were not transposed into domestic law.

¹ 10330/2/08 COPEN 116 EJM 44 EUROJUST 58 – Replies to the questionnaire on quantitative information on the practical operation of the EAW – Year 2007.

² No distinction is made between cases where the decision to surrender was issued by the prosecutor and cases where such a decision was taken by the court.

³ It must be noted that, pursuant to Section 22(8) of the implementing law, the time limits prescribed for a decision on surrender and surrender of the person "*shall cease to run: a) if the issuing Member State failed to attach a Slovak translation, where required, to the European arrest warrant, b) if the executing judicial authority asked for additional information or for supplementing the European arrest warrant in order to be able to make a decision on its execution, c) in case of pending proceedings concerning the waiver of privileges or immunities*". According to Section 22(9) these time limits shall start running again as from the date when the reasons for their suspension cease to exist.

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The Slovak authorities are of the opinion that Article 5(3) and Article 4(6)) of the Framework Decision should apply only where the executing Member State is able to enforce in its entirety the sentence passed in the issuing Member State. According to the information provided during the evaluation visit, it is envisaged to amend the implementing law in line with this criterion, so that Slovak nationals will be able to serve in their country the sentence passed in the issuing Member State on condition that there is no legal impediment for the recognition of the judgment in the Slovak Republic, otherwise the requested person will be surrendered without regard to his nationality.

Youth surrenders

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

4.9 SPECIALITY

No particular issues have been reported in this regard. The expert team notes that there are no provisions in the implementing law on the regime applicable in cases where a request for consent to prosecute is submitted by the issuing Member State (Article 27(4) of the Framework Decision).

4.10 ONWARD SURRENDER/EXTRADITION

While there were no reports in this connection at the time of the evaluation visit, the expert team notes that there are no provisions in the implementing law on the regime applicable to requests for consent to subsequent surrender (Article 28(3) of the Framework Decision).

4.11 TEMPORARY/CONDITIONAL SURRENDER

No issues other than "common operational" difficulties were reported in relation to those instances where use had been made of this mechanism. The expert team notes that this issue is not explicitly regulated in the implementing law.

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

Pursuant to the implementing law, the decision to execute the EAW must be transmitted immediately¹ to the SIRENE office/Interpol NCB for the purposes of agreeing the date of surrender and starting preparations for the conveyance of the requested person.

¹ Sections 20(6) and 21(5) of the implementing law.

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In their replies to the EAW questionnaire the Slovak authorities noted that, at the beginning of the application of the EAW, difficulties in complying with the statutory time limit for surrender arose from the fact that, in cases where an appeal had been lodged, it took several days to inform the RC and Interpol of the decision of the Supreme Court. This issue was resolved by an agreement between the MoJ and the Supreme Court, according to which the administrative staff of the latter communicates immediately the decision of the Supreme Court to the Division for Judicial Cooperation in Criminal Matters within the MoJ, which in turn contacts the SIRENE office/Interpol bureau in order to allow them sufficient time for arranging surrender.

No instances of breach of the statutory 10-day limit for surrender were reported.

4.13. THE MECHANICS OF THE SURRENDER OF REQUESTED PROPERTY

At the time of the evaluation visit there were records of two cases (with Germany and the United Kingdom (Scotland)). As regards the case with the United Kingdom, the Slovak authorities informed the expert team that they considered the information provided by the UK issuing authority in part g) of the EAW form as a request for seizure and handing over the things, which should be used as an evidence. The assistance requested was provided in this particular in accordance with the national law on the basis of a court decision. The Slovak authorities, however, expressed the opinion that such procedure should be applied by Member States only in urgent cases. In their view, in non urgent and in non serious cases a request for mutual legal assistance, based on the applicable international instruments, is preferable.

4.14 CONFLICT OF EAWS/EXTRADITION REQUESTS

No such cases have, as of yet, occurred. The relevant provisions are in line with the Framework Decision.

4.15 EXPENSES

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

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4.16 MISCELLANEOUS COMMENTS

Accessory offences

Slovak legislation does not allow for accessory surrender. In this connection, two cases were reported in which the Slovak courts partially refused to execute an EAW on this ground. As already stated, the Slovak authorities note the difficulties that arise from the lacuna in the Framework Decision in this regard; they are of the view that action should be taken at European level to regulate this issue.

Flagging of alerts

The SIRENE office may not, on its own, add a restrictive validity flag to an Article 95 alert. This may only be done following explicit instructions from the GPO¹. Pursuant to the law, the flagging of an alert prevents the person concerned being arrested, so that only a search for his whereabouts can be carried out on the basis of the flagged alert.

According to the explanations provided by the officers interviewed, further to an agreement between the GPO and the SIRENE office, the system functions in practice as follows. The SIRENE office checks every new EAW-based alert entered in the system on the basis of certain criteria identified by the GPO, namely the following : i) in the case of prosecution EAWs, that the offence be punishable in the issuing Member State with at least one year of imprisonment, ii) in the case of conviction EAWs, that the length of the sentence be at least four months, iii) that the requested person's age be at least 14 years, and iv) where a double criminality check is not excluded, that the act underlying the EAW does not constitute an offence under Slovak law. If any of these criteria is not met, or there are doubts about dual criminality, the alert is forwarded by secure web-mail, together with a translation into Slovak of the relevant parts of it, to the International Division of the General Prosecutors' Office, which decides on the flagging.

Under to the implementing law, the GPO may order a validity flag to be added if the alert is contrary to the law, international commitments, or "*important interests of the Slovak Republic*"². After the visit, the expert team remained unclear as to how this provision should be interpreted.

¹ Section 15(1) of the implementing law.

² Ibid.

5. TRAINING PROVISION

Training for judges and prosecutors

The Judicial Academy provides training for judges, prosecutors and judicial staff. It was established in 2004 as an independent institution with nation-wide competence. Training provided by the Judicial Academy is organised in: i) preparatory training for candidate judges and prosecutors (which includes a 1/2-day session on judicial cooperation), and ii) ongoing training. The Judicial Academy also collaborates (by drafting the programme and providing lecturers) with local courts in organising training activities for judges from the region concerned.

According to the information provided, training was organised for staff involved at all levels in EAW procedures before the implementing law came into effect and thereafter. More recently, a number of activities relating to the EAW were organised by the Judicial Academy in 2007 and 2008, namely two seminars in 2007 (on international cooperation and on judicial cooperation in criminal matters), and four more activities in 2008. One of the activities that the Judicial Academy hosted in (May) 2008 was a high level workshop with the participation of judges of the Supreme Court, representatives from the General Prosecutors' Office and the MoJ, where a number of EAW-related issues were discussed. The outcome of this meeting was/is expected to be disseminated through case-law of the Supreme Court, instructions by the GPO and information letters from the MoJ.

Eurojust organised a seminar on the EAW in Bratislava in 2005, with the participation of Slovak judges and prosecutors.

As to language training, the Judicial Academy organises 5-day courses in English, German and French (basic, intermediate and advanced levels) every three months.

Training of lawyers

It was explained to the expert team that trainee lawyers are required to attend a number of seminars organised by the Bar Association, including a 2-hour lecture on international cooperation in criminal matters, which is primarily focused on the EAW.

6. DEFENCE PERSPECTIVES

Under the implementing law¹, in proceedings concerning the execution of an EAW the requested person must be represented by a defence counsel². The requested person is entitled to receive legal assistance throughout the whole procedure, i.e. from the moment he is arrested. In that connection, it was explained to the expert team that this issue is governed by general procedural rules: following arrest, the police invites the requested person to choose a lawyer on his own, and if he does not do so, one will be appointed ex officio. If the person is not in a position to pay the costs of the defence, these are born by the State.

The right to be assisted by an interpreter and a translator in EAW proceedings is explicitly stipulated in the implementing law³.

The expert team had the opportunity of meeting four representatives of the Bar Association (which covers the whole territory of the Slovak Republic). While noting that the experience gained to date is rather limited, they stated that no problematic issues had been raised in relation to the practical application of the implementing law so far. In their view there was no reason to criticise the performance of judicial authorities in EAW cases.

7. CONCLUSIONS

The evaluation team acknowledges the professional attitude of the persons involved in the organisation of the visit and the quality of the experts the team had the opportunity to meet, as well as the hospitality of the Slovak authorities. The objectives of the evaluation visit were essentially achieved, although the tight agenda arranged with the Council's Secretariat sometimes led to difficulties. The evaluation team also notes that a number of relevant documents expressly mentioned in the replies to the EAW questionnaire and/or the interviews (e.g. the general instructions issued by the GPO on EAW matters) were not provided, and therefore their impact on practices regarding the implementation of the EAW in the Slovak Republic could not be assessed.

¹ Section 19(1).

² According to the information provided, an amendment to the law is envisaged with a view to granting the requested person the right to defend himself under certain conditions.

³ Section 19(2) of the implementing law.

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7.1. GENERAL CONCLUSIONS

Implementing legislation

7.1.1. In general, the Slovak implementing law does not raise major issues as regards its compliance with the Framework Decision. However, divergences can be observed: this is the case with the provisions on the scope of the EAW, and with some rules of the Framework Decision on specific issues, which have not been transposed (e.g. as to the regime applicable to requests for consent to subsequent surrender).

The expert team also notes that in some parts (mainly in part one, on basic provisions) the implementing law almost literally reproduces the wording of the Framework Decision, which occasionally may lead to confusion. While acknowledging the legislator's efforts to be in line with the Framework Decision, the expert team is of the view that the implementing law would be clearer if formulated as binding exclusively on Slovak authorities.

Procedures

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

Practical implementation

7.1.3. The practical implementation of the EAW in the Slovak Republic seems to be simple and clear, and, although perfectible in respect of some points that will be developed below, it does not raise major concerns.

7.1.4. The International and European Law Departments within the MoJ and the GPO play a valuable role as sources of information and facilitators in this area, and contribute actively to the harmonisation of practices in a number of ways. A number of instructions have been issued by the GPO and information letters have been disseminated by the MoJ based on the experience gained. Standard forms were being prepared at the time of the evaluation visit for the use of practitioners. Training sessions for judges and prosecutors are organised on a regular basis in cooperation with the Judicial Academy. Instruments (intranet, databases) have been developed in order to facilitate the work of practitioners and ensure compliance with the law and general principles.

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7.1.5. There are no written comprehensive guidelines adapted to the Slovak system to assist the authorities involved in processing EAW cases. In the view of the expert team, the system could advantageously be completed by producing a compilation of all instructions/information letters issued so far, and publishing a comprehensive handbook on the practical application of the EAW adapted to the particularities of the Slovak system.

7.1.6. While the active role of the EJM in these matters was acknowledged in the replies to the EAW questionnaire, during the evaluation visit it was noted that neither the MoJ's nor the GPO's website provides a link to the EJM website. It should be also noted that at the time of the evaluation visit the Slovak section of the EAW Atlas was not yet available on the EJM website.

7.1.7. Similarly, the experts noted that not all Slovak judicial authorities, in their activities as both issuing and executing authorities, seem to consider the potential role of Eurojust in facilitating exchange of information between judicial authorities and solving problems (see 3.6 and 4.4).

7.1.8. Although language training is organised by the Judicial Academy on a regular basis, it appeared during the interviews that language skills are not widespread. In the view of the expert team, further steps should be taken in this direction.

7.1.9. During the evaluation visit, the Slovak authorities repeatedly stressed the need to fill the lacuna existing in the Framework Decision as regards accessory surrender, to abolish the speciality rule in relations between Member States, to establish unified common time limits for the provision of language-compliant EAWs and to set up a specific language regime for requests for additional information. In the view of the expert team, the European Union's working parties should give further consideration to these issues.

7.2. CONCLUSIONS IN RESPECT OF THE SLOVAK REPUBLIC'S ACTIVITIES AS AN ISSUING MEMBER STATE.

7.2.1 Issues

7.2.1.1. Procedure for issuing an EAW

In pre-trial proceedings, a district prosecutor may submit a request to the court for the issuing of an EAW only with the approval of the corresponding RPO and of the GPO¹. In the view of the expert team, this need for a double check contributes to lengthening the procedure.

7.2.1.2. Scope of conviction EAWs

Pursuant to the implementing law, a conviction EAW may be issued where the sentence is of at least four months, provided that the underlying offence carries a maximum penalty of at least one year's imprisonment. Moreover, multiple sentences or remaining multiple sentences must be added up².

The option of limiting the issuing of conviction EAWs based on the potential penalty assigned to the underlying offence as described above does not seem to be problematic (if interpreted as applying to the Slovak Republic when acting as issuing State), although it does not follow from the Framework Decision.

The expert team notes that the implementing law imposes an obligation to add up the outstanding sentences passed against the requested person, which may lead to difficulties with other Member States where any of the accumulated sentences does not in itself reach the 4-month threshold. Furthermore, this approach is not consistent with the impossibility of accessory surrender in the Slovak system.³

7.2.1.3. Proportionality

During the meeting with prosecutors at the GPO, the experts were informed that an application to issue an EAW is only submitted in "serious cases". Moreover, it was explained to the team that, before submitting such an application, the prosecutor checks whether other less constraining measures/forms of assistance could more appropriately be used.

¹ See chapter 3.1 above.

² See chapter 3.1 above.

³ See chapters 3.16 and 4.15 above.

No explanation was given, however, as to the legal basis for such a practice (for instance, the expert team did not get a clear idea of whether Section 492 of the CCP¹ applies to EAWs in connection with Section 1(2) of the implementing law), nor as to the existence of any guidance or criteria to be used in assessing whether a case merits an EAW.

7.2.2 Good Practices

7.2.2.1 Database on the rule of speciality

Following problems experienced in a serious case where the rule of speciality had been disregarded, the MoJ decided to create a database on extraditions and EAWs, which enables users to ascertain whether the rule of speciality applies or not. All district courts and RCs can access this database via the Intranet. Updated information extracted from this database is also transmitted regularly to the GPO by e-mail. According to the information provided by the officials of the MoJ interviewed, the possibility of extending access to the database to all prosecution offices (which has not been feasible to date, owing to technical problems) is currently being explored.

¹ It reads: "(1) *The court shall not issue an international warrant of arrest, if*

- a) imposition of only a sentence other than a prison sentence is anticipated or if a prison sentence shorter than 4 months is anticipated,*
- b) the prison sentence, or its remainder, to be enforced is shorter than 4 months,*
- c) by the extradition, the Slovak Republic would incur expenses or suffer consequences incommensurate to the public interest in the criminal prosecution, or the enforcement of the sentence, or to the person to be extradited (sic in the translation provided),*
- d) taking into account the age, social status or family circumstances of the person whose extradition is sought, he would be inadequately severely punished by his extradition in proportion to the level of gravity and the consequences of the criminal offence.*

(2) *If some of the facts stated in paragraph 1 occur after issuing of the international warrant of arrest, the court may revoke it".*

7.3. CONCLUSIONS IN RESPECT OF THE SLOVAK REPUBLIC'S ACTIVITIES AS AN EXECUTING MEMBER STATE.

7.3.1. Issues

7.3.1.1. Scope of the EAW

The transposition of Articles 2(1) and 2(4) of the Framework Decision into Slovak law is questionable, since additional requirements are imposed. Under the implementing law, in both prosecution and conviction cases an EAW may be executed if the offence underlying it is punishable under the "*executing Member State*" law by a custodial sentence of a maximum of at least one year¹, which does not conform to the Framework Decision.

7.3.1.2. Deadline for the receipt of the EAW

The wording of Section 17(4)a) of the implementing law might be confusing for other Member States². According to this provision, inspired by the European Convention on Extradition, the requested person may be released if the executing judicial authority does not receive the EAW together with a translation into Slovak within 18 days of the arrest. The experts were however told that, in practice, no person is released on this basis before the expiry of a 40-day period following the arrest, which corresponds to the time limit laid down by that provision for the court to be provided with the original EAW together with its corresponding translation into Slovak. In the view of the expert team these time limits should be unified.

7.3.1.3. Mandatory detention in the case of listed offences

Pursuant to the implementing law, the requested person must "automatically" be placed in custody if the EAW has been issued in respect of one of the offences listed in the Framework Decision, whereas detention in other cases depends on the existence of a risk of the requested person absconding³.

When answering the question about the reasons for making detention mandatory in the case of listed offences, the Slovak authorities referred to the seriousness of the listed offences and negative experiences with Member States that apply alternatives to custody.

¹ See chapter 4.6 above.

² See chapter 4.1 above.

³ See chapter 4.3 above.

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The expert team considers it questionable that detention should be mandatory. In principle, there is no need to order detention where other, less constraining, measures suffice to prevent the requested person absconding, or where there is no reason to fear that he may abscond. More lenient measures could be envisaged in suitable cases; in this connection, an appropriate system that takes into consideration the requirements of the Framework Decision could be one where there is a presumption of detention. In addition, the practical implementation of the provision imposing mandatory custody may give rise to issues and difficulties of interpretation, e.g. in the case that a decision is taken to postpone the surrender because the requested person is under prosecution in the Slovak Republic and there are no grounds in the domestic proceedings for pre-trial custody.

7.3.1.4. Flagging of alerts¹

A "safety clause" was introduced in 2007 in Section 15(1) of the implementing law, according to which the GPO, when performing the preliminary examination of Article 95 alerts, will decide to flag an alert if it *"does not comply with important interests of the Slovak Republic"*, with the consequence that the requested person may not be arrested in that case.

When answering the question raised by the experts whether this provision *de facto* introduces an additional ground for refusal², the Slovak authorities noted that, to date, this exception had never been used.

As no explanation was given of how this amendment should be interpreted and/or of its background, the exact meaning and the use which could be made of the exception remain unknown. In the view of the expert team this provision, for which no basis can be found in the Framework Decision, is highly questionable.

7.3.1.5. Ground for refusal based on territoriality

According to the implementing law, the ground for refusal based on territoriality is mandatory, and therefore the execution of the EAW must be refused if even a part of the offence has been committed in the territory of the Slovak Republic.

¹ See chapter 4.15 above.

² In connection with Section 18 (4)b) of the implementing law. See chapter 4.5 above.

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This can create conflicts of jurisdiction and lead to situations where the case is not handled by the jurisdiction best placed to prosecute, particularly in relation to certain forms of crime. The argument is extensive to the ground relating to the existence of domestic proceedings for the same act as that on which the EAW is based, which has also been upgraded to a mandatory ground for refusal in the Slovak implementing legislation.

During the evaluation visit, it was stated that an amendment to the law was being prepared in this regard. The expert team welcomes such an initiative.

7.3.1.6. Requests for additional information by the deciding court

Pursuant to the implementing law, if the court deems it necessary to be provided with additional information to make a decision on the execution of the EAW, such information may only be obtained from the issuing authority through the public prosecutor¹.

In the view of the expert team direct contacts between all the judicial authorities involved in processing of EAWs should be promoted, also to avoid unnecessary delays.

7.3.1.7. Decision on the rule of speciality - additional consent and consent to subsequent surrender

There are no provisions in the implementing law describing the regime applicable in cases where a request for consent to prosecute for an offence other than that for which the requested person was surrendered is submitted by the issuing Member State. This is also the case with the requests for consent to subsequent surrender.

7.3.1.8. Temporary surrender

The implementing law does not take into account temporary surrender as an alternative to the postponement of the surrender, in cases where a decision has been made to execute the EAW and domestic proceedings are pending in the Slovak Republic against the requested person.

The Slovak representatives pointed out that the lack of a relevant provision does not prevent use being made of this possibility. However, the expert's view is that provisions providing for temporary surrender would be more reliable and increase the possibility of surrender.

¹ See chapter 4.4 above.

7.3.2. Good practices

7.3.2.1. Standard forms

The expert team was informed that a series of standard forms including "check lists" were in preparation to be distributed to judges and prosecutors for providing information to their counterparts in the other Member State, e.g. on the existence of a final decision on the EAW and time spent by the requested person in detention, and processing of files. The expert team considers this kind of initiative very useful to facilitate the work of practitioners and the harmonisation of practices, while preventing the risk of inaccuracy or incorrect application of the law.

8. RECOMMENDATIONS

8.1. RECOMMENDATIONS TO THE SLOVAK REPUBLIC

GENERAL

Recommendation 1.- Consider rewording the implementing law to ensure greater clarity (see 7.1.1).

Recommendation 2.- Consider drafting an easy-to-use ('user- friendly'), comprehensive manual, including best practices, for judges and prosecutors (see 7.1.5).

Recommendation 3.- Take measures to ensure that information on the Slovak Republic is available in the EAW-Atlas (see 7.1.6).

Recommendation 4.- Further promote the use of the European Judicial Network in EAW cases by facilitating access of practitioners to the information provided on the EJN website (see 7.1.6).

Recommendation 5.- Further promote among practitioners the use of Eurojust as a means to facilitate exchange of information and provide assistance in resolving difficulties, both when issuing and executing EAWs (see 7.1.7).

Recommendation 6.- Consider providing more facilities for practitioners to improve their language skills (see 7.1.8).

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AS ISSUING MEMBER STATE

Recommendation 7.- Consider simplifying the procedure for issuing an EAW in pre-trial proceedings (see 7.2.1.1).

Recommendation 8.- Consider introducing a specific provision on the issue of proportionality or drawing up a list of indications that can be used by practitioners as a basis for a proportionality test when issuing an EAW (7.2.1.3).

AS EXECUTING MEMBER STATE

Recommendation 9.- Bring Sections 4(5) of the implementing law in line with the Framework Decision (see 7.3.1.1)

Recommendation 10.- Consider setting up clear provisions on the time limits for the receipt of (language-compliant) EAWs (see 7.3.1.2).

Recommendation 11.- Consider amending Section 17 of the implementing law as regards the necessity of mandatory detention in the case of listed offences (see 7.3.1.3).

Recommendation 12.- Remove the reference to "important interests of the Slovak Republic" from Article 15(1) of the implementing law (see 7.3.1.4).

Recommendation 13.- Consider converting the ground for refusal based on territoriality into an optional ground for refusal (see 7.3.1.5).

Recommendation 14.- Include specific provisions on additional consent and consent to subsequent surrender in the implementing law so as to conform to the Framework Decision (see 7.3.1.7).

Recommendation 15.- Consider including in the implementing law a specific provision on temporary surrender in line with the Framework Decision (see 7.3.1.8).

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8.2. RECOMMENDATIONS TO CERTAIN OTHER MEMBER STATES

Recommendation 16.- Consider creating a database on the rule of speciality accessible to all competent authorities (see 7.2.2.1).

Recommendation 17.- Produce standard forms for standard information to other Member States (see 7.3.2.1).

Recommendation 18.- Produce a comprehensive handbook tailor-made for national procedures on EAW (see 7.1.5).

8.3. RECOMMENDATIONS TO THE EUROPEAN UNION

Recommendation 19.- Address the issue of how Article 8(1)(c) of the Framework Decision should be interpreted in connection with those systems where the EAW may be issued directly without a need for any other supporting decision (see 4.4).

Recommendation 20.- Seek to reach a common approach on the issue of accessory surrender (see 7.1.9).

Recommendation 21.- Discuss at the appropriate level the benefits of abrogating the speciality rule within the European Union (see 7.1.9).

Recommendation 22.- Address at the appropriate level to what extent Article 29 of the Framework Decision should be applied in light of other Framework Decisions, notably those on the European Evidence Warrant, freezing orders and confiscation of crime-related proceeds, instrumentalities and property (see 4.13).

Recommendation 23.- Seek to reach a common approach on how Article 2(1) of the Framework Decision should be interpreted as regards the rule on four months minimum, as well as in relation to protective measures with no specific duration assigned (see 7.2.1.2).

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ANNEX A

PROGRAMME FOR VISIT

Tuesday 11 November

08:30 – 08:40	Welcome of the evaluation mission by the Deputy Minister of Justice
08:45 - 10:30	Initial meeting at the Ministry of Justice
11:00 - 12:00	Meeting at the Slovak Bar Association
12:30 - 13:30	Lunch
14:00 - 15:00	Meeting at the Supreme Court of the Slovak Republic in Bratislava
15:30 - 17:30	Meeting at the SIRENE/INTERPOL Bureaux
Evening	Official Dinner hosted by the Secretary of State

Wednesday 12 November

09:00 – 12:00	Meeting at the General Prosecutor's Office /prosecutors of relevant departments of the General Prosecutor's Office, prosecutors from the Regional Prosecution Office in Bratislava and prosecutors from District Prosecution Offices in other areas of Slovakia
12:30 – 13:30	Lunch
15:00 – 17:00	Meeting with judges of the Regional Court in Trenčín.
17:30 – 18:30	Meeting with the representatives of the Judicial Academy, Omšenie
19:00	Dinner hosted by the Judicial Academy, Omšenie

Thursday 13 November

09:00 – 12:00	Closing Meeting at the Ministry of Justice
12:00 – 12:30	Reception by the Secretary of State – briefing on the preliminary findings of the evaluation visit

LIST OF PERSONS INTERVIEWED

Supreme Court

JUDr. Harald Stiffel - President of the Penal College
JUDr Milan Lipovský
JUDr Pete Szabo
JUDr Jozef Kandra
JUDr Pavol Toman
JUDr Peter Paluda

National Bureau of Interpol Bratislava

Mgr Rastislav Sásik - Director of the National Bureau of Interpol Bratislava
JUDr Janette Halášová

National Bureau of Sirene Bratislava

Ing Peter Lörincz - Director of the National Bureau of Interpol Bratislava
Veronika Turáková
Soňa Grauzlová

Slovak Bar Association

JUDr Štefan Detvai - President of the Slovak Bar Association
JUDr Andrej Popovec
JUDr Katarína Marečková
JUDr Darina Michalková

Meeting at the GPO

JUDr Dobroslav Trnka - Prosecutor General
JUDr Jozef Szabó
JUDr Alica Kováčová

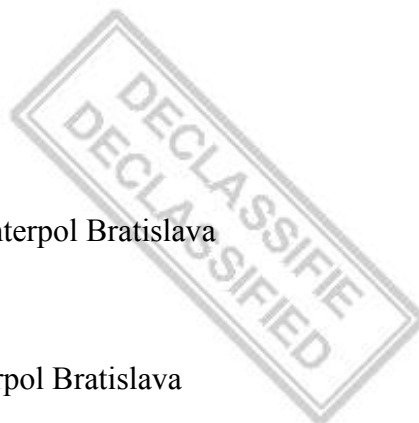
JUDr Jolana Madejová
JUDr Anna Ondrejová
JUDr Michaela Horváthová

JUDr Mário Ernest
JUDr Stanislav Jakubčík
JUDr Závašová
JUDr Jarmila Šikrová

Meeting at the RC Trenčín

JUDr Jozef Kutiš - President of the RC Trenčín
JUDr Rastislav Vranka
JUDr Dušan Ecker

JUDr Jozef Mészáros
JUDr Stanislav Hajiček
JUDr Eva Tóthová



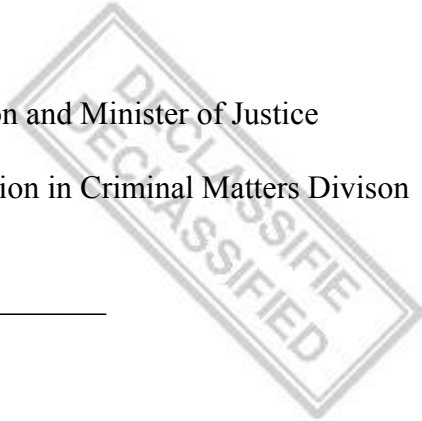
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JUDr Marián Mandúch
JUDr Rakovská
JUDr Michal Antal
JUDr Monika Jankovská

Judicial Adadamy
JUDr Mário Potúček

Ministry of Justice of the Slovak Republic

JUDr Štefan Harabín - Deputy Prime Minister for legislation and Minister of Justice
JUDr Anna Vitteková - State Secretary
Mgr Branislav Boháčik - Director of the Judicial Co-operation in Criminal Matters Divison
Mgr Dagmar Fillová



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ANNEX C

LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

ACRONYM ABBREVIATION TERM	ENGLISH EXPLANATION
CCP	Code of Criminal Procedure
EAW	European arrest warrant
GPO	General Prosecutor's Office
Interpol NCB	Interpol National Central Bureau
MoJ	Ministry of Justice
RC	Regional Court
RPO	Regional Prosecutor's Office
SIS	Schengen Information System
