



Council of the
European Union

Brussels, 27 March 2017
(OR. en)

11843/06
DCL 1

CRIMORG 129
COPEN 84
EJN 19
EUROJUST 35

DECLASSIFICATION

of document: ST 11843/06 RESTREINT UE/EU RESTRICTED

dated: 24 July 2006

new status: Public

Subject: 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 IRELAND

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

RESTREINT UE



COUNCIL OF
THE EUROPEAN UNION

Brussels, 24 July 2006

11843/06

RESTREINT UE

CRIMORG	129
COPEN	84
EJN	19
EUROJUST	35

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 IRELAND

DECLASSIFIED

RESTREINT UE

TABLE OF CONTENTS

1. INTRODUCTION	3
2. AGENCIES AND LEGAL BASIS	4
3. ORGANISATION AND PRACTICES - AS ISSUING MEMBER STATE	7
4. ORGANISATION AND PRACTICES - AS EXECUTING MEMBER STATE.....	18
5. TRAINING PROVISIONS	36
6. DEFENCE PERSPECTIVES	37
7. CONCLUSIONS	38
8. RECOMMENDATIONS.....	50
<u>ANNEXES</u>	
ANNEX A: Programme of visits	54
ANNEX B: List of persons interviewed	55
ANNEX C: List of abbreviations.....	56
ANNEX D: Template form of undertaking	57
ANNEX E: Court form, Order 98, rule.4 – consent to be surrendered.....	58
ANNEX F: Statistics provided pursuant to the evaluation exercise	59
ANNEX G: Schedule of Ireland's statutory grounds of refusal	64
ANNEX H: Summary of Supreme Court decision in the case of Rodnov, 1 June 2006.....	65
ANNEX I: Comments of the Irish Authorities appended to expert report pursuant to Article 7 paragraph 1 of Joint Action 97/827/JHA	66

RESTREINT UE

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 Belgian 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 2005.

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 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. Ireland is the first Member State to be evaluated during the fourth round of evaluation.

1.6. The experts charged with undertaking this evaluation were: Thomas LAMIROY (Federal Magistrate, Belgium), Mrs Imbi MARKUS (Head of International cooperation unit, Ministry of Justice, Estonia) and Brian GIBBINS (Lawyer CPS policy directorate, United Kingdom). Two observers were also present: Mr. Pavel Zeman (Eurojust) and Mr. Sebastien Combeaud (Commission), together with the General Secretariat of the Council.

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

RESTREINT UE

1.7. This report was prepared by the expert team with the assistance of the Council Secretariat, based upon findings arising from the evaluation visit of 21 - 23 March 2006, and upon Ireland's detailed and helpful responses to the evaluation questionnaire and a written request for further information.

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 Ireland both in its role as issuing and executing Member State, to assess relevant training provisions and the views of the defence, before moving on to conclude and to make such recommendations as they felt were appropriate to enhance the means by which the EAW and its corresponding surrender provisions may be further streamlined and improved.

2. THE AUTHORITIES AND THE LEGAL BASIS

2.1 THE AUTHORITIES

The following authorities are engaged in aspects of the consideration, issue and execution of the EAW, each of the parties is located in Dublin:

- The Central Authority, (CA), who is the Minister for Justice, Equality and Law Reform. The functions of the Minister are carried out by the Mutual Assistance and Extradition Division of the Department of Justice, Equality and Law Reform. This Division is headed by a lawyer who, in respect of his functions regarding the EAW, is assisted by 2 other non-legally qualified officials.
- The Office of the Director of Public Prosecution ("the ODPP") - being the independent prosecution authority in Ireland¹. The two Divisions within the Office of the ODPP which are directly charged with activities pertaining to the EAW, are:

¹ Other prosecution agencies exist within Ireland, however the conduct of prosecutions arising from EAWs are exclusively the responsibility of the ODPP.

RESTREINT UE

- The EAW Unit of the ODPP Solicitors Division - staffed by 1 dedicated lawyer, together with administrative support.
- The Directing Division of the ODPP - staffed by 22 lawyers, together with administrative support.

- The Office of the Attorney General (“the AG”) - which, as an Office, is constitutionally and statutorily competent to provide legal advice to the Government across all portfolios. The AG attends Cabinet meetings but is not part of the Government. For the purposes of the EAW this Office is not a Judicial Authority under Irish law. The provision of advice pertaining to the EAW is undertaken by a Unit Head who is a senior lawyer, assisted by 4 other lawyers who deal with the provision of advice pertaining to a range of files, including: the EAW, MLA, Police and Prisons. The AG also retains independent counsel in respect of matters of particular complexity or importance. In respect of the provision of legal advice on the EAW, the CA is the client of the AG.

- The Office of the Chief State Solicitor (“the CSS”) - An operational unit within the Office of the AG, being charged with the provision of legal (litigation) services to the Government. The various services of the CSS are diverse; however those functions pertaining to the EAW are undertaken by a senior operational lawyer together with administrative assistance. Independent counsel may be reserved as required.

- The Extradition Unit of the Gárda Síochána (The Irish Police Force). The dedicated element of this specialised unit comprises of 3 Detective Sergeants and one uniformed Gárda. The unit is part of the broader MLA unit (with which it co-locates) and falls under the ultimate operational command of a Superintendent and Chief Superintendent in the normal way. All Gárdai throughout Ireland’s single police organisation are empowered to conduct an arrest on the basis of an EAW.

RESTREINT UE

- The High Court (being the Judicial Authority "the JA") - Which adjudicates upon all endorsements and surrenders of EAW's¹. The High Court sits at the Four Courts in Dublin where all EAW hearings are listed. EAW hearings are block listed each Tuesday, although ad hoc hearings may be listed as required with little formality. In cases of particular urgency, the allocated High Court Judge may hear endorsement applications at his home address. The High Court also hears applications for writs of Habeas Corpus and for Judicial reviews of the decision to detain or surrender requested persons. The expert team was not able to meet a judicial representative but the High Court Registrar provided valuable insight into the functioning of the High Court.
- The Supreme Court - Hears appeals on points of Law (of the requested person and/or of the State) from the High Court and statutory appeals from Corpus and Judicial review findings. The Supreme Court waiting list is in the region of 14 months, however in any matter (and all appeals relating to EAW procedures) a party may apply for priority and may anticipate that the matter would be listed for hearing within three weeks. To date the judgements of the Supreme Court may have been reserved for up to 2 months, the expert team have however been advised that, pursuant to a practice direction of 27 April 2006, EAW appeals are to be the subject of an expedited appeals procedure to ensure compliance with Ireland's domestic legislation². The Supreme Court is also based in the Four Courts in Dublin.

2.2 THE LEGAL BASIS

- The European Arrest Warrant Act 2003 ("the EAW Act") - Ireland's implementing legislation which entered into force on 01 January 04.
- The Criminal Justice (Terrorist Offences) Act 2005 ("the CJ(TO) Act") - Amending legislation giving effect to measures intended to enhance the general law. This amending Act entered into force on 8 March 2005.

¹ Although in all cases an EAW may, as a matter of law, be *issued* by the District, Circuit or Special Criminal Courts, per section 33 EAW Act, as amended.

² Although, given that this practice direction post dated the evaluation visit, its practical impact could not be assessed at this time.

RESTREINT UE

- The Transfer of Sentenced Persons Act 1995 - By which Ireland gave effect to the Council of Europe Convention on the transfer of Sentenced Persons.
- A series of 8 Statutory Instruments - by which the Minister for Foreign Affairs has designated Member States to which the surrender procedures contained in the Framework Decision on the European Arrest Warrant apply.¹
- Part II of the Extradition Act 1965 ("the EA") - which Ireland applies in order to accommodate the declarations made by France, Austria and Italy pursuant to Article 32 of the Framework Decision. Namely by preserving the pre-existing extradition arrangements in relation to offences committed before the dates so notified².
- Member States may also refer for assistance to Ireland's "fiche française", the latest edition of which was published in January 2006.

3. ORGANISATION AND PRACTICES - ISSUING MEMBER STATE ROLE³

In the context of its activities as an issuing state Ireland has, at the time of the evaluation visit, submitted 31 EAW requests in total, to three Member States namely the UK (29), NL (1), and ES (1).

3.1. THE DECISION TO ISSUE

The decision to apply for an EAW is made by police officers working within the Extradition Unit of the Gárda Síochána. This unit has considerable expertise in this area, with 2 of its 4 officers having spent 10 and 3 years respectively in the areas of extradition and MLA prior to the introduction of the EAW⁴.

¹ 4, 130, 206, 400, 449 and 532 of 2004: 27 and 240 of 2005.

² EAW rules will not be applied in respect of offences committed before 01.01.1993 (FR) and 07.08.2002 (AT and IT).

³ At the time of the evaluation visit, Ireland had submitted 31 EAW requests to three Member States: the UK (29), NL (1), and ES (1).

⁴ The Extradition Unit of the Gárda Síochána itself having been established some 15 years ago.

RESTREINT UE

Core information is provided to the unit by operational Gárdai conducting investigations and prosecutions throughout the Republic of Ireland. It acts as a 24/7 “one stop shop” in the provision of advice and assistance to all those operational units in respect of the preparation of a file of information necessary to support an application to the High Court for the issue of an EAW (in practice all EAW applications are made to the High Court, notwithstanding the wider statutory provision). The Extradition Unit will additionally advise local police as to the proportionality of seeking an EAW and will, in the case of minor criminality, advise the local police to defer the application pending the suspects potential return without compunction.

Should a person suitable for extradition (that is to say one who is wanted for a criminal offence and who is believed to be outside the jurisdiction) be acknowledged as a person in respect of whom such an application should be made, a dedicated Officer from the Extradition Unit (who remains allocated to the case throughout) creates a file setting out, inter alia:^{1 2}

- The partially completed EAW form: detailing sections (a) identity, (b) decision on which warrant based, and (c) nature of the offence, in respect only of the description of circumstances and degree of participation of the requested person.³
- A draft affidavit asserting the belief that the requested person is outside of Ireland,
- An evidential package (sufficient for a subsequent domestic prosecution),
- An unexecuted domestic warrant for the request of the requested person⁴,

This file is transmitted by post to the EAW Unit of the ODPP. In practice the paper transmission is accompanied by an electronic form of notice containing the draft EAW, to minimise drafting delays in respect of the subsequent perfection of the EAW by the EAW unit of the ODPP.

¹ S.33 (1)(b)(i) EAW ACT, as amended - a sentence punishable on conviction of not less than 12 months imprisonment (ii) a term of imprisonment of not less than 4 months has been imposed and the person is required to serve all or part of that term

² Ireland will not seek the surrender of persons in respect of accessory offences.

³ In the form annexed to Framework Decision 2002/584/JHA.

⁴ The Gárda Síochána apply for precursor warrants in the District Courts. In superior Courts, the DPP will make the application.

RESTREINT UE

On receipt, the police file is registered and reviewed by the ODPP lawyer within the unit who prepares a further note on the case, setting out inter alia:

- Any matters that may fall within the Article 32 declarations made by France, Austria and Italy,
- Dual criminality issues where applicable (NB not in respect of the 32 offences covered by the abolition of the control of dual criminality as particularised in Article 2, paragraph 2 of the FD), and
- Anticipated requirements of the executing Member State (i.e. guarantees).

The file will then be transmitted to a counterpart lawyer within the Directing Division of the ODPP. The Directing Division lawyer considers the papers and provides a written note detailing the appropriate domestic charges that should be preferred and directing that an EAW should/should not be sought.

In coming to a view as to the appropriateness of an application for an EAW, the Directing Division Lawyer is bound to take into consideration the following domestic factors:

- Any delay in prosecuting the case,
- The admissibility of the available evidence and evidential strength,
- Domestic public policy considerations,

On receipt of a positive advice, the EAW unit of the ODPP prepares a completed draft EAW for presentation to the Judicial Authority for consideration and issue.

RESTREINT UE

3.2. VERIFYING THE POSSIBLE EXISTENCE OF MULTIPLE REQUESTS

The four officers of the Extradition Unit of the *Gárda Síochána* are the conduit for all incoming and outgoing requests for EAW's (within the *Gárda*) and may conduct a search of their internal "PULSE" database (Police Using Latest Systems Effectively) at any time, in particular to verify whether additional EAW's have been issued by Ireland. Such verification is not mandatory (although the team were advised by the *Gárda Síochána* that it was practice to do so in all cases) and no formal guidelines exist to set out at what stage of the process such a search may be appropriate (e.g. prior to submission of the police file or the review by the Directing Division of the ODPP).

At this time Ireland does not participate in the Schengen Information System ("SIS") and is therefore not in a position to issue or to review Article 95 alerts.

The *Gárda* will however discover the existence of external EAWs when it liaises with the Interpol desk as part of the blue notice procedure undertaken prior to the preparation of the initial file submitted to the EAW Unit of the ODPP. The existence of a SIS alert or external EAW is no bar to the Irish authorities proceeding with their own EAWs.

3.3. THE COMPLETION OF THE FORMS/COURT PAPERS

EAWs issued by the Irish JA may be in respect of one or more offence and in all instances specialty applies.^{1 2 3}

There are no written internal best practice guides for the drafting exercise performed by either the *Gárda Síochána* or the EAW unit of the ODPP, although the centralisation of the procedure has led to a substantial concentration of expertise. The Irish authorities reported that only two EAW applications have been rejected by their own JA on first application, each of which was subsequently remedied.

¹ EAW Act, as amended S33(4).

² Namely the rule that provides that the requested person may be proceeded against in the issuing state only for the offences for which they were surrendered by the executing state.

³ Per S.80 of the CJ (TO) Act.

RESTREINT UE

3.4. THE APPLICATION PARTIES/PROCESS

On receipt of a direction to proceed, the EAW Unit of the ODPP will e-mail the Irish JA and request that a Court file is opened and that a hearing be listed. In non-urgent matters the Court lists all applications at the end of the next available EAW weekly block list¹

High Court applications are ex-parte, although not in camera². The lawyer for the EAW Unit of the ODPP attends the hearing, normally supported by an officer from the EAW Unit of the Garda Síochána, and hands: the draft EAW, the domestic warrant and a supporting affidavit to the Judge's Registrar who in turn submits them to the Judge for consideration.

This consideration is in general silent, however should the Judge consider that clarification is required, he will make such enquiries of the ODPP as appropriate. Any oral reference to the requested person (or written reference in the published court list) will, pursuant to agreed practice, be conducted in an anonymous manner, that is to say by the persons initials only.

The EAW Unit of the ODPP has a room with computer facilities set aside at the Court so that redrafting can be undertaken immediately if required, although the premises of the ODPP itself are a mere 400 meters from the Four Courts.

Where the EAW is granted, the Judge will sign the Warrant and cause it to be sealed with the Court stamp prior to handing it down to the ODPP applicant who provides a copy to the Garda for information purposes (and to enable them to input the existence of the EAW on to their domestic PULSE database which is accessible by all police officers).³ The original is then sent to the CA. In the event of a requested person being encountered on Irish soil, the domestic warrant will be recognised and enforced, and an application made to withdraw the EAW.

¹ Court business being organised so that all non-urgent EAW business is considered on Tuesday of each week.

² Although ex-parte, the public and press galleries remain accessible to the public.

³ PULSE being a stand alone desktop application rather than a portable roadside system.

RESTREINT UE

Although no dedicated statistics are maintained relating to the duration of the entirety of the issuing process the ODPP and Garda Síochána felt that a period of 1 - 6 months was the normal range from receipt of initial notification from the EAW Unit of the Garda Síochána to the Court hearing. The majority of this time being taken up with perfecting the domestic warrants in support of the ultimate EAW application.

3.5. TRANSLATION OF THE EAW

In all cases the suspected domicile of the requested person has been established prior to the application process and the EAW unit of the Garda Síochána therefore transmits the copy EAW to external agencies to translate the EAW into the appropriate additional language prior to submitting that translation to the CA for transmission.

Should there be any uncertainty as to the linguistic requirements of the executing Member State, the Garda Síochána will consult either: the web site of the General Secretariat of the Council, the EJN atlas or the Irish national member of Eurojust for practical assistance.

3.6. TRANSMISSION OF THE EAW

Irish legislation does not mandate the mode of transmission for outgoing EAWs, it does however prescribe that in all instances the CA must act as the conduit for transmission of the completed EAW¹.

As part of the transmission process the Irish CA performs a non-statutory and cursory verification of the EAW (for example ensuring that attachments such as photographs and fingerprints are attached where referred to) following which it transmits the EAW and any translations required, via fax to the transmitting authority of the executing Member State (be that the CA or the JA).

Transmission by e-mail is not utilised by reason of practice rather than statutory prohibition².

¹ S34 EAW Act as amended.

² By virtue of the fact that the original EAW received by the CA bears upon it a court stamp.

RESTREINT UE

3.7. ISSUES RAISED IN RELATION TO EXECUTING MEMBER STATES AND COMMUNICATION CHANNELS RELIED UPON

Ireland considers that the following issues of note have arisen in respect of 4 of the 31 EAWs it has issued:

- Case 1 - The UK sought clarification as to whether the requested person, the subject of several EAWs, was sought in respect of a conviction or a prosecution case.
Outcome - The EAWs were clarified and redrafted and a fresh application made to the High Court (see also 3.11).
- Case 2- The UK sought a written undertaking confirming that comparable medical/psychological facilities were available within the Irish Prison service.
Outcome - This undertaking was provided in the terms requested and an order for surrender was made pursuant to the original EAW. The requested person has not been surrendered by virtue of ongoing domestic criminal proceedings.
- Case 3 - The UK refused to execute an EAW for an offence that had recently come to the attention of the Irish authorities but which itself dated back some 20 years. Additional humanitarian factors relied upon were; a permanent residence in the UK for 17 years, and 5 children living with the requested person, one of whom had Downs Syndrome and a heart condition and needed her constant attention.
Outcome - Following this refusal the file, in respect of which there were evidential difficulties in any event, was discontinued by the Irish authorities.
- Case 4 - The Dutch authorities are currently considering an Irish request for the surrender of a Dutch National. The Dutch Authorities have requested an undertaking pursuant to Article 5 paragraph 3 of the FD¹.
Outcome - Resolution of this issue is pending although given the exclusive reliance by the Irish authorities on the Transfer of Sentenced Persons Act by which own nationals may be returned, an undertaking in strict compliance with Article 5.3 will not be possible.

¹ Namely a guarantee of return to serve any sentence imposed.

RESTREINT UE

In each instance telephone and electronic lines of communication between CAs were relied upon, in addition to direct police to police channels. In all instances communications were in English and were deemed by Ireland as being entirely adequate and sufficiently timely for the proper progression of the cases.

Ireland, as issuing state, has encountered no difficulties in respect of executing Member State concerns pertaining to specialty, onward surrender/extradition.

3.8. REQUESTS FOR FURTHER INFORMATION MADE BY EXECUTING MEMBER STATES

Since 29 of the 31 EAWs have issued have been to the UK, it is therefore understandable that informal direct police-to-police, as well as CA-to-CA channels have evolved. Regular telephone and electronic communications flow between the Irish CA, the EAW Unit of the Garda Síochána, the ODPP and the UK's Crown Prosecution Service and the Serious Organised Crime Agency (SOCA).

It is envisaged that a meeting will be arranged between the authorities of the UK and Ireland in the near future to further enhance contact between the relevant parties, thereby improving channels of communication and leading to a more effective resolution of future issues.

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

Ireland ratified the Council of Europe Convention on the Transfer of Sentenced Persons which it implemented by means of the Transfer of Sentenced Persons Acts 1995, as amended¹.

Section 4 of this Act provides Ireland with its sole basis for transfers out of the State of requested persons. It provides, inter alia, as follows:

(1) A person on whom a sentence has been imposed in a State who wishes to be transferred out of the State to another Convention State, in order to serve the sentence, or balance of the sentence so imposed, may apply in writing to the Minister (for Justice, equality and Law Reform) for such a transfer.

¹ Which entered into force on 08 March 2005.

RESTREINT UE

(3) Subject to subsection (4) of this section, the Minister (for Justice, Equality and Law Reform) may grant an application under subsection (1) of this section, if the Minister is satisfied that the following requirements have been fulfilled: ...

(a)... (d)

(e) that the acts or omissions constituting the offence concerned would, if done or made in the administering state, constitute an offence under the law of that state; and ...

(f).

3.10. YOUTH SURRENDERS AND CORRESPONDING GUARANTEES

The age of criminal majority in Ireland is fourteen. In respect of children between the ages of seven and fourteen there is a reputable presumption that they are '*doli incapax*' and incapable of committing a criminal offence. It is however open to the State to seek to establish, in suitable cases, that they were capable of criminal responsibility at the time of the alleged offence, in which case they may be prosecuted for that offence.

Amendments to the legislation regarding criminal responsibility are in hand and, should they be enacted, children under the age of twelve will not be open to prosecution. The presumption of '*doli incapax*' will be abolished in respect of children over the age of twelve. However, no EAWs have been issued by Ireland in respect of the surrender of minors.

3.11. EVOLVING BEST PRACTICES

It was noted that in addition to satisfying minor ad hoc drafting requests made by the UK, Ireland has voluntarily and effectively adopted a substantive drafting change to all UK bound warrants.¹

Additionally, where the Extradition Unit of the Gárda Síochána are in possession of intelligence which may be of operational use to the officers of an executing Member State (for example suspicion that a requested person has a propensity towards carrying bladed /other weapons, a history of violence towards the police, or knowledge of HIV/AIDS) they will convey this immediately, in a police-to-police manner, to the executing force directly (predominantly this involves liaison with the Extradition and International Assistance Unit at New Scotland Yard).

¹ Section 2 (5) (a) of the UK's Extradition Act 2005, requires, inter alia, that an EAW declares that the requested person be "unlawfully at large".

RESTREINT UE

3.12. GENERAL COMMUNICATIONS WITH THE EXECUTING MEMBER STATE

Given the pattern of traffic of outgoing requests, the centralised nature of the UK's (EAW) organisation, together with the commonality of language, the expert team were unsurprised to discover that Ireland's CA and the Extradition Unit of the Gárda Síochána categorise the level of information that it receives regarding the status of ongoing requests as entirely adequate.

Communication channels utilised thus far by Ireland and executing Member States include:

- In respect of the UK - UKCA directly liaising with the Irish CA by e-mail and telephone to advise of the fact of the arrest of the requested person, the dates of each aspect of the court process and the currency of any appeal process.
- In respect of ES - Interpol provided all arrest and surrender details via the Irish Interpol desk.
- In respect of NL - The single Dutch case remains outstanding, and negotiations between the 2 Central Authorities remain ongoing, telephone and written communication channels are being utilised but the principal issue is one of substance rather than communication.

In each instance the Irish CA cascades all information to the relevant domestic agency.

3.13. THE MECHANICS OF THE SURRENDER/TEMPORARY SURENDER

In all cases the CA/JA of the executing State will advise the Irish CA of the fact of the arrest.¹ The Irish CA will then e-mail the Extradition Unit of the Gárda Síochána to advise them of that fact. Thereafter all logistical aspects of the surrender are organised and undertaken by the Gárda Síochána.

The Gárda will liaise the stated contact person by the means requested and discuss risk assessment and collection criteria. Normally a member of the Extradition Unit and the investigating officer will travel to the executing Member State at a time agreed by the parties and collect the prisoner by air (having advised the airline, so that isolated security screening and pre-boarding may take place).

¹ Notwithstanding this the Interpol desks of both States may additionally have advised each other of the fact of surrender.

RESTREINT UE

Only one airline has thus far refused to carry a prisoner without a current passport and in that case an alternative carrier was located at short notice.

In those cases where a violent prisoner is being transported sea transportation is preferred so that the prisoner may be secured in the brigg.

Once the prisoner has arrived in Ireland he is arrested by his escort on the face of the domestic warrant and is processed in accordance with normal domestic procedures.

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

At the time of the evaluation the Irish authorities had had no direct experience of property/evidential surrender pursuant to an EAW, although clearly prior MLA experience has been accrued. It is envisaged that the escorting officers would take possession of the property/evidence at the time of the prisoner being taken into custody and that any evidential statements required as part of the trial process would be created at a later stage using MLA channels.

Ireland on one occasion only requested that evidence, namely a computer, be seized from the suspect's home address. Despite that request not having been complied with ¹ (the requested person having been arrested at his work), the subsequent guilty plea meant that there was no negative impact on the criminal process.

3.15. CONFLICT OF EAWS/EXTRADITION REQUESTS/ONWARD SURRENDER

Again the Irish authorities have no direct experience of such conflicts.

3.16. EXPENSES

Ireland reported that its experience concerning the treatment of expenses has been in keeping with the letter and the spirit of Article 30 of the FD. No contrary experiences have been encountered with any of its EAW partners.

¹ By virtue of the proximity of the machine to the location of the arrest of the requested person.

RESTREINT UE

3.17. MISCELLANEOUS COMMENTS

As between the UK and Ireland, the view was expressed by the Irish authorities that the EAW is a more cumbersome tool than the previous regime, i.e. U.K. Backing of Warrants (Republic of Ireland) Act 1965. The court process conducted pursuant to that legislation stipulated that only 3 documents were required to be produced, namely; the domestic warrant and 2 certificates which were signed by the Clerk to the Court. The United Kingdom authorities acted on foot of those documents and the warrants were endorsed for execution in the UK. The endorsed Irish warrant would be executed by the relevant UK police force and the subject was ordered to be delivered to Ireland, provided the offence on the warrant corresponded with an offence in the United Kingdom. Thus the documents were, from a court perspective, quite simple and the issues relatively limited.

The experts and the ODPP agreed however that the pre-court stage could in practice be a laborious and detailed exercise.

4. ORGANISATION AND PRACTICES - EXECUTING MEMBER STATE ROLE.

In respect of its activities as an executing Member State, Ireland has received 110 EAWs since 2004, of these 55 EAWs have been endorsed, 40 arrests have been made and 12 surrenders have taken place (of which 5 have been Irish nationals).¹

4.1. RECEIPT PROCEDURES

Clear statutory provision allows for the transmission of incoming EAWs' by or on behalf of the issuing JA to the Irish CA directly or, via "any of the methods specified in paragraphs 2 (EJN) and 3 (Interpol) of Article 10 of the FD"^{2 3}. Comparable statutory measures exist in respect of the transmission of undertakings to Ireland.

Notwithstanding the express statutory provision referred to above, Ireland does not accept EAWs from Interpol sources. It is its view that a transmission to the Irish Interpol desk, which is subsequently forwarded to the CA, may be construed as not being "transmitted (directly)...to the CA" for the purposes of the Act. Ireland will accept an Interpol transmission only in circumstances where Interpol is a designated issuing authority and transmitted the EAW directly to the Irish CA.

¹ Receipts for Calendar Year 2004 = 28, Calendar Year 2005 = 67 EAWs received, Year to 1 March 2006 = 15 EAWs received.

² S12(3)(a) of the EAW Act, as amended.

³ S12(3)(b) of the EAW Act, as amended.

RESTREINT UE

This point, which has resulted in a substantial practice change for issuing Member States, is not the subject of a judicial finding, although the experts were advised that the High Court has ruled in earlier cases that the EAW Act as amended is to be construed as a penal statute and therefore be subjected to a strict rather than a purposive interpretation.

Linguistically the receipt procedures dictate that incoming EAWs must be in writing in either Irish or English or, where it is in another language, it must be accompanied by a translation in either Irish or English¹. The translation must contain a declaration that it is a translation of the EAW, but need not be further certified in respect of accuracy.

In keeping with the FD there is statutory provision for the acceptance by the CA of faxed copies of the EAW (and translations thereof) and/or undertakings (and translations thereof).^{2 3} In each instance however the copy document must be certified by an authorised officer of the issuing state as being a true copy⁴.

The CA and the High Court reserve discretionary powers to require the service of originals or true copies (in the context of the EAW Act, as amended, a legible fax of an EAW is construed to be a true copy) by a means agreed with the issuing JA.⁵ The experts note that thus far the CA has exercised this discretionary power in each and every instance, although faxed receipt of a document, the original of which is endorsed as being a true copy, will suffice for these purposes.

The experts note that there is current uncertainty among the Irish authorities, stemming from an untested advice of counsel, as to the legal basis for their ability to accept e-mailed EAWs⁶. In consequence, since September of 2005, e-mailed receipts (which had up to that point been endorsed by the High Court without issue) have not been accepted by the CA. Consideration is being given to further legislative change to put the matter beyond peradventure.

¹ S12(1) of the EAW Act, as amended.

² S12(4) of the EAW Act, as amended.

³ S12(5) of the EAW Act, as amended.

⁴ S12(7) of the EAW Act, as amended.

⁵ S12(6) of the EAW, as amended.

⁶ Separate although similar generic prohibitions surround electronically submitted documentation that is required to be produced before the court for probative evidential matters.

RESTREINT UE

It is therefore the CA's clear preference that all incoming EAWs should be transmitted by fax and, practically speaking, any that are not or that are transmitted to non-competent Governmental bodies are required to be re-transmitted in keeping with the practice of direct transmission.

On receipt of a faxed EAW, administrative staff at the CA create a file for the matter, stamp the documents as having been received and make an entry in the CAs computerised database so that statistical and workflow data may be ascribed to the file.

4.2. THE FORM OF THE WARRANT AND REVIEW PROCEDURES.

The executing JA in Ireland is the High Court and, pursuant to an application made by or on behalf of the CA, the High Court may endorse the EAW, thereby authorising the arrest of the requested person by any Gárda Síochána in any part of the State.¹ This endorsement procedure is mandatory and, although in line with Ireland's domestic legislation, was not a function foreseen by the FD.²

Irish implementing legislation requires that this endorsement application be made "as soon as may be", a legal phraseology that is distinguished from "forthwith" or "immediately".³ The CA has interpreted this provision as providing them with temporal flexibility to seek to review and perfect the EAW, although it considers there is no discretion to delay the endorsement hearing where the EAW is deemed to be in good order.

The Act provides that an EAW "shall, insofar as is practicable, be in the form set out in the annex to the FD"⁴. Some statutory flexibility is provided by subsection (2) which provides that "where it is not practicable for the EAW to be in the form referred to in subsection (1), it shall include such information additional to the information specified in subsection (1), as would be required to be provided were it in that form".

¹ S13(3) EAW Act, as amended.

² S13(1) EAW Act, as amended.

³ S13(1) EAW Act, as amended.

⁴ Section 11(1) of the EAW Act, as amended.

RESTREINT UE

However, it is the experience of the CA that the High Court in Ireland requires that the form be completed both accurately and in its entirety,¹ that is to say irrespective of whether or not a particular piece of information is material to the instant case. Given this requirement and the level of scrutiny applied by the Court to the EAW, the CA undertakes a thorough scrutiny (referred to as an "administrative verification") of all EAWs prior to initiating the court process necessary to progress the request.

As part of this process all EAWs are currently referred to the Offices of the AG and the CSS for consideration².

Lawyers from these offices review the file independently for their client (the CA). However they coordinate internally to formulate, if practicable, a single response to the CA. The CA in turn makes efforts to set out, in a single document addressed to the issuing JA/transmitting CA, those matters that in its view need to be put in order prior to the submission of the draft EAW to the High Court for endorsement.

The expert team are of the firm opinion that the CA's function in this regard is to perfect the EAW prior to scrutiny by the JA so as to minimise the likelihood of wasting Court time or to create, in their view, potentially unfavourable precedents. Following active discussion between the team and the CA on this point, the expert team recognise that their own perceptions differ from those of the Irish Authorities, whose view is that these enquiries are to ensure "compliance rather than perfection".

The expert team found that as a matter of practice the following layers of consideration comprised the administrative verification process, that is to say prior to the matter being submitted for consideration by the executing JA itself:

- A cursory review by the CA to establish such matters as; the presence of a signature by the issuing JA, whether attachments such as photographs etc were in fact present/legible (using the form itself as a checklist),

¹ Ireland has for instance encountered instances of issuing Member States creating a translated version of all/part of the EAW form rather than relying on the approved Council versions available on line.

² Located at different sites in Dublin.

RESTREINT UE

- A detailed non-statutory review by the AG , dealing with matters such as; the quality of the paperwork, correspondence of (Non Article 2 paragraph 2 list) offences and other infirmities on the face of the papers,¹
- A further review by the CSS dealing with information directed towards the practice of the application/case presentation itself,
- A further potential review by counsel retained by the CSS (should they be so retained), immediately prior to the application.

The expert team accepted that, wherever practicable, the AG's advice would seek to encompass the views of the CSS and counsel within a single document to the CA and, from there, a unified request would (again where practicable) be transmitted to the issuing MS. They noted however that this was not undertaken in all cases and that the statistics, as presently maintained by the CA, meant that it was impossible to quantify in how many instances this declared target was/was not achieved.

The expert team were advised that 88 of the 110 applications for surrender made to date have resulted in the initial EAWs being redrafted by the issuing Member State².

The CA and AG accept that in extreme circumstances and when, in their view, an application was so deficient that it was “doomed to failure” in the High Court, the draft EAW would not be submitted to Court for endorsement. In such circumstances those decisions would be taken by the CA on the advice of the AG, with no reference being made to the Irish JA.

An average of 88 days was taken per case for the administrative verification process to be completed (that is to say from the receipt of the initial EAW, to the reviews by the Irish authorities leading to the formulation and transmission of request(s), concluding with the provision of satisfactory and full responses by the issuing JA). Again the expert team noted that the statistics, as currently maintained by the CA, meant that it was not possible to apportion the time spent on each of the various elements of the administrative verification process.

¹ It was noted that on one occasion the AG's Office had advised an issuing JA (on an informal basis) that they believed that errors of classification of "list offences" had occurred, e.g. rape being classified as sexual exploitation.

² Although in 29 of these cases the CA had requested that the existing EAW should be amended rather than be redrafted.

RESTREINT UE

All of the 88 redrafts were prior to the endorsement hearing and arose by virtue of the advice provided to the CA by the AG. The requests may be broadly classified as follows:

- Failure to provide undertakings. Under Ireland's initial implementing legislation¹ each and every incoming EAW was required to be accompanied by written undertakings from the executing JA that a decision to charge the requested person had been made, that specialty was to apply and that onward surrender was to be prohibited without prior authorisation. As of 8 March 2005, the Criminal Justice (Terrorist Offences) Act 2005 removed the necessity for these prior undertakings.
- Failure to submit the EAW in the format of (or sufficiently proximate to) the form contained in the Annex to the Framework Decision.
- The need to establish the correspondence of offences which were not the subject to the Article 2.2 list of offences exempted from the double criminality regime.
- Identification issues, indistinct photographs, ambiguous descriptive details etc.
- Clarification on sentencing *in absentia*/retrial issues.
- Typographical errors of various types.

Once outstanding matters have been resolved to the satisfaction of the CA and its advisors, the draft EAW will be submitted to the High Court for the purposes of the endorsement application itself².

In all instances the detail of the receipt of the EAW is transmitted by e mail from the CA to the Garda Extradition Unit, so that tracing enquiries can be commenced (via PULSE). This notification is made on receipt of the initial EAW and is not held up pending the hearing of the endorsement application.

¹ S11(3) EAW Act 2003.

² Pursuant to S13(1) of the EAW Act, as amended.

RESTREINT UE

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

The High Court and the CA are empowered to request and receive additional documentation or information within such periods as they may specify¹ (although in many instances to date such requests for further information have in fact been made by the CA in advance of the matter being presented to the JA). Thus far Ireland is of the view that it has received responses to all of its requests under these powers in a timely fashion (that is to say the delivery of acceptable replies in a language and form that has, in Ireland's view, not had a negative impact upon the court process/timetable). The experts found this assertion difficult to reconcile with the fact that 80% of EAW receipts had in fact been re-drafted by issuing Member States.

In principle Ireland's CA will transmit any such requests to issuing Member States in the English language although it has the capacity to outsource request translations in other languages if so required.

The CA may present the warrant for endorsement in advance of a requested person's arrival in the jurisdiction based upon intelligence that that person is believed to be arriving. There is therefore no requirement that the requested person be a resident of Ireland at the time of application.

It is however the CA's preference that the EAW bears upon its face, or has annexed to it, some evidential or intelligence-based assertion as to the whereabouts of the requested person. The CA will, as a matter of course, seek clarification of this point prior to proceeding to apply for High Court endorsement.

Interviews with the Gárda Extradition Unit revealed that in all cases they will independently verify addresses prior to seeking to arrest. The police investigations are thorough and, in general, have historically revealed out of date or incorrect addresses for a large number of requested persons. The experts were of the view that the Gárda themselves (being the body that conduct the arrests) place less reliance on the provision of an address on the face of the EAW than does the CA (whose remit, as envisaged in the FD, was merely to act as a transmitting body).

¹ SS. 20(1)(2) of the EAW Act as amended.

RESTREINT UE

4.4. THE ENDORSEMENT HEARING

When the CA is content that the EAW is in good order, it will request the CSS to telephone the Registrar in charge of the EAW list at the JA and have the matter listed for hearing the following Tuesday (save in case of urgency). Little in the way of additional formality is required and Court time for endorsement hearings is readily available.

The application is conducted by counsel instructed by the CSS, or, exceptionally by a CSS lawyer. A member of the Garda Extradition Unit is usually present to assist with further oral information if required.

The endorsing High Court Judge (the JA) will see the warrant for the first time when it is handed to him during the hearing. The Judge reads the warrant and, on being satisfied with the application, will authorise the Court Registrar to endorse the original language version of the EAW with the following words, *"This warrant is endorsed for execution pursuant to the order of the High Court"*. The Registrar then applies the Court seal and hands the endorsed EAW to the Gárda.

As the experts note in section 3 of this report, all EAW hearings are block listed on an ex-parte basis but are not heard in camera. Therefore, should further information be required in support of the endorsement hearing the parties rely on anonymous references (i.e. the use of initials).

4.5. INVESTIGATIONS CONCERNING THE LOCATION OF THE REQUESTED PERSON

Following endorsement, the Extradition Unit of the Gárda Síochána will (within 24 hours) make further enquiries to confirm the current whereabouts of the requested person. Thereafter, together with local officers, it will undertake a risk assessment of that person for the purposes of the arrest.

The expert team were satisfied (based on presentations and several historical case study demonstrations) that the information sources available to the Extradition Unit of the Gárda were highly efficient and proportionate to the task in hand.

The electronic search measures undertaken by the Unit can, subject to operational priorities, be undertaken in just one hour.

RESTREINT UE

It is of course understood that Ireland does not participate in SIS and has not legislated to arrest on the basis of Interpol alerts. However, the expert team also noted that, notwithstanding this, the Interpol desk and the Extradition Unit of the Gárda (who are located in the same complex of buildings) undertake similar electronic search exercises in respect of Interpol alerts. In respect of a successful hit, the Interpol desk will advise the appropriate Member State that it should issue an EAW and direct it to the Irish CA for consideration prior to endorsement.

4.6. CIRCULATION PROCEDURES

The existence of an endorsed EAW is noted on the Police PULSE database which is accessed compulsorily by all officers having had contacts with the public, although this access is retrospective to the contact itself. It is however the firm policy of the Extradition Unit of the Gárda that a (and if at all possible “the”) designated Officer be present during every EAW arrest and so unscheduled arrests are not sought.

Additional supportive police resources are called upon at the discretion of the Unit, e.g. the; National Surveillance Unit, the National Criminal Intelligence Unit, the Air Support Unit etc.

Should police resources fail to locate the requested person the Gárda will resort to media campaigns to seek further information on the targets whereabouts. In such instances all members of the Gárda EAW unit are put on standby at the time of the televised broadcast.

4.7. ARREST PROCEDURES/FIRST HEARING

All arrests are immediately accompanied by the requested person being advised of a number of matters, namely: ¹

- that he or she may consent to being surrendered to the issuing state;
- the right to obtain or be provided with legal advice and legal representation concerning all matters relating to the EAW;
- the right to obtain or be provided with the services of an interpreter (where appropriate).

¹ S.13(4) of the EAW Act, as amended.

RESTREINT UE

Following the arrest the Police may search the surrounding area (room) for evidence but there is no EAW specific power to conduct a complete search of the premises used by the requested person or premises associated with them (e.g. a home address if they are arrested at work).

The requested person is then taken to the closest police station authorised to take prisoners and once there will be afforded interpretation services as necessary and legal advice if requested¹.

The CA are advised of the fact of the arrest and seek immediately to advise the issuing CA or JA (whose contact details are recorded on the EAW) by telephone and e-mail of the fact of the arrest. Where the Gárda are aware of their police counterparts notification is also made on a police-to-police basis. The Irish CA is always used as the official channel.

The person must then be brought before the High Court (in Dublin) "as soon as may" be after arrest.² The arresting Gárd will then be asked by the Court to identify the person brought before it. The Court reiterates the person's rights, namely the right to legal advice, the right to an interpreter and the right to consent to surrender, considers applications for legal aid for continued representation and certifies that the provision for interpretation should continue as it deems fit.

Should consent to surrender be forthcoming (regardless of whether or not such consent was given to the arresting officer), the requested person will be required, in court, to sign a form of consent and this information will immediately conveyed by the Gárda to the CA.³ Notwithstanding this consensual surrender decision, and absent an application made by the requested person to waive, a 10-day postponement of surrender will be ordered to allow the requested person to consider revoking his consent⁴.

In cases where consent is not forthcoming, the Judge will set down a date within 21 days from arrest, to undertake the substantive surrender hearing.⁵ The JA reserves the right to adjourn that hearing should the parties not be in a position to proceed. In practice such adjournments, although often resisted by the CSS, are granted irrespective of the imminence of FD time limits set down in Articles 17 (making of the final surrender decision) and 23 (physical surrender).

¹ The Gárda are not empowered to take photographs or fingerprints from a person arrested on the foot of an EAW.

² S. 13 (5) of the EAW Act, as amended.

³ See annex E.

⁴ S.15 (3) of the EAW Act, as amended.

⁵ S. 14(7) of the EAW Act, as amended.

RESTREINT UE

At the conclusion of the first hearing the Judge will proceed to hear the application of counsel instructed by the CSS (on behalf of the CA) should one be made, that bail should be withheld. The experts were provided with anecdotal evidence that requested persons were remanded in custody in approximately 30% of cases (although in only 1 instance has surrender in fact been prevented by a person absconding). In all instances the Gárda are asked by the CSS as to their view of; the flight risk presented by the person, the likelihood that evidence or witnesses will be interfered with, and the likelihood that the requested person will commit a further serious offence if admitted to bail, prior to a decision being reached as to the appropriateness of an application to oppose a person's fundamental right for bail. These considerations mirror those in domestic proceedings.

4.8. THE SURRENDER DECISION

Substantive surrender hearings are listed as part of Ireland's "block list" procedure. In general, contested hearings will last for approximately 2 hours before a decision can be reached by the Judge.

In respect of contested hearings, should the JA order surrender, then that order may not take effect *"until the expiration of 15 days beginning on the date of making the order."*¹ The expert team noted that in such cases (as opposed to consent cases) a second tier time limit was de facto imposed, by virtue of the fact that a person shall be surrendered not later than 10 days after *"the expiration of the period specified in subsection (3)"*². The Irish authorities held to the view that no breach of Article 23 of the FD was occasioned by these sequential statutory provisions because, until the expiry of the initial 10 day period for a requested person to consider the merits of lodging an appeal, the surrender decision was not deemed to be a "final decision" to which the FD related.

¹ S.16(3) of the EAW Act, as amended.

² S.16(5) of the EAW Act, as amended.

RESTREINT UE

4.9. REFUSALS TO SURRENDER

The Irish High Court has refused surrender in four cases:

Identification:

- Case 1 – Belgium. There was confusion with regard to the subject's correct name. The surname and first name which appeared on the EAW were inverted on subsequent undertakings. The High Court decided that it could not be sure that the person before it was indeed the person referred to in the warrant. Additionally there was a degree of confusion as to the sufficiency of the two guarantees which were provided by Belgium at the request of Ireland.¹ The High Court therefore ordered the person's release².
- Case 2 – United Kingdom. Difficulties as to the identity of the subject arose from a poor quality photograph which accompanied the EAW. The subject claimed that the photograph attached to the EAW was not a photograph of him. The quality of the photograph was such that it could not be categorically proven that it was the subject. As this was the only identifying evidence accompanying the EAW, the High Court ruled that it could not be certain that the person before it was the person referred to in the EAW. A further complicating factor in this case was that the date of birth stated on the EAW was for a person 20 years older than the person arrested. Because of these factors the High Court ordered the person's release.

Health of the Subject:

- Case 3 - United Kingdom. In this case the High Court ruled that surrender of the elderly subject, who was in poor (terminal) health and suffered from a heart condition, would infringe his constitutionally protected rights.

¹ A guarantee was requested and provided in respect of Article 5 paragraph 1 of the FD which at the time of the hearing was deemed to be insufficient by the Irish JA.

² The expert team have subsequently been advised that a second warrant is now ready for presentation to the Irish executing JA for endorsement purposes.

RESTREINT UE

Decision to charge the Subject:

- Case 4 – Lithuania. Here the High Court held that information contained at paragraph (d) of the EAW form rebutted the presumption provided for under Section 21A(2) of the EAW Act 2003, as amended, (i.e. that a decision has already been taken to charge the person and to try him for the offence). It was felt that the warrant on its face rebutted the general presumption that a decision had been taken to charge and try the person for the offences listed on the EAW¹.

Failures to submit for endorsement: The experts noted also that there were two cases in which the Central Authority, following legal advice from the Office of the AG, did not seek endorsement of the EAW by the executing JA, by virtue of the issuing member state failing to respond to a request from the CA for additional information/documents from the issuing Member State.

The experts noted that no request has thus far been refused on the specific basis of any of the mandatory or discretionary grounds set out in Articles 3 and 4 of the FD.

4.10. APPEALS PROCEDURES AND THE IMPACT ON TIME-LIMITS

Irrespective of initial consent, surrender will be postponed where there is a complaint under Article 40.4.2 of the Constitution or infrequently an application for Judicial Review (both of which fall under the jurisdiction of the High Court) or an appeal on a point of law to the Supreme Court.

4.10.1 Application for leave for a writ of Habeas Corpus (Article 40.4.2 of the Constitution), seeking a declaration that a person is being held unlawfully, are made ex-parte, the CSS being advised thereafter. It is worthy of note that such an application may be brought at any time by the requested person whilst within the territorial jurisdiction of Ireland. Notionally therefore such an application could frustrate a pre-organised surrender from taking place. A substantive inter-parties hearing date is usually fixed at the High Court within a single working day. The decision may then be appealed to the Supreme Court by either party.

¹ The expert team have subsequently been advised that the Irish authorities provided a copy of the refusal judgement to the issuing JA who, after due consideration, issued a second EAW which has now been endorsed by the Irish JA and is before the courts in respect of the surrender process itself.

RESTREINT UE

The time taken for the High Court to deal with an habeas cases and Judicial reviews is dependent on many factors. These may include the state of preparedness of both sides for hearing of the case and whether extra information was requested by the Court. The experts noted that a claim for Judicial review must be lodged promptly, but in any event within three or six months of the date of the decision challenged (dependant on the relief sought) however this limit could be extended by leave of the Court if deemed appropriate. There was liberty to apply for a writ of Habeas corpus at any time prior to the surrender being undertaken.

4.10.2 A Judicial Review is a request to the High Court to examine the exercise of a power by a person or body (in this instance of the role of the executive authorities), asserting that the exercise of that power was ultra vires, unconstitutional or otherwise unfair. An applicant seeks leave to review on an ex-parte basis and, subject to leave being granted, the applicant serves (inter alia) notice and grounds on the respondent. A directions hearing is listed followed by a substantive hearing. The decision may subsequently be appealed to the Supreme Court by either party. In practice this relief has been sought on just one occasion, that application was unsuccessful and caused no delay to the surrender timetable.

4.10.3 Appeals from a decision of the High Court to the Supreme Court on a point of law will, in general terms, not be heard for 14 months. In cases of urgency (and as a matter of course in all EAW matters) the CSS will apply for priority and the matter may in consequence be heard in just 3 weeks. Notwithstanding the hearing of the matter written judgement is normally reserved for some 2 months, presenting clear difficulties in complying with the FD time limits.

The High Court is empowered to direct the Central Authority to inform the issuing judicial authority, and "where appropriate" Eurojust, where the court has not within 60 days and 90 days respectively after arrest, made an order for surrender¹. Availability of Court time has led to these time limits being breached in 15/55 cases thus far. No comparable statistical data existed in respect of those EAWs received but not endorsed.

¹ S. 16 (10)(11) of the EAW Act, as amended.

RESTREINT UE

To facilitate this function the Court registrar keeps a paper record system detailing the timing of the making of the ultimate surrender decision and will direct the CA (by e-mail) to make the required notifications to Eurojust. It was accepted with regret that, through oversight, only 3 of the 15 breaches recorded had indeed been so notified.

The team noted that because of the practice of recording time limits from endorsement and arrest, much of the pre-endorsement timescales were not actively monitored from a statistical or work flow perspective.

4.11. OWN NATIONAL AND YOUTH ARREST AND SURRENDER ISSUES

Ireland has received 33 EAW requests in the case of own nationals, resulting in the surrender of 5 persons. It has no additional requirements in this regard, i.e. the nationality of a subject has no impact on decisions to surrender by the High Court. Ireland does not require that Irish citizens be returned to serve their sentences in the State as a precondition for surrender.

The Council of Europe Convention on the Transfer of Sentenced Persons may be relied upon by an Irish national imprisoned in another EU member state, at their initiative.

Ireland has not received any EAWs requesting the surrender of minors.

4.12. SPECIALTY

The basic rule in Ireland is that a person may be proceeded against only in respect of the offence for which he/she has been surrendered (i.e., specialty applies)¹. However if the other offence is not punishable by a custodial sentence or the criminal proceedings do not give rise to the application of a measure restricting personal liberty then a derogation from the 'specialty' rule may be given by Ireland's executing JA.

¹ It is also established practice that a person extradited for one offence could be convicted of an alternative but lesser offence within the same group of offences, e.g., murder/manslaughter. The European Arrest Warrant Act 2003, as amended, provides that persons surrendered to and by Ireland may be convicted of an alternative but lesser offence without breaching the specialty rule.

RESTREINT UE

Prior to 5 March 2005 every EAW needed to be accompanied by written undertakings asserting that the rule of specialty would be complied with. This precondition no longer exists; instead a reputable statutory presumption that the rule will be adhered to has been substituted. To date no requested person has successfully argued this point (that is to say demonstrated on the balance of probabilities that the issuing Member State would act in breach of the specialty rule).

It is the view of the Irish authorities that accessory surrender i.e. permitting surrender for a lesser offence, which does not meet the minimum gravity requirements and which is punishable by custodial sentence, is not permissible by virtue of Article 2.1 of the FD.

4.13. ONWARD SURRENDER/EXTRADITION

As with specialty, Ireland's implementing legislation originally required that prerequisite undertakings be provided to guarantee that there would be no onward surrender or onward extradition by the issuing Member State.¹

Parallel measures (the creation of reputable presumptions) have been adopted in respect of these guarantees also. Surrender will therefore proceed unless the High Court is satisfied on the balance of probabilities that the issuing state will surrender or extradite the subject onwards.²

The legislative amendments removing these pre-conditions were implemented following recognition by Ireland that certain Member States were, by virtue of their internal organisation, unable to issue prior undertakings as Ireland had envisaged.

4.14. AD HOC ISSUES SURROUNDING UNDERTAKINGS

Prior undertakings concerning in absentia convictions required by the original implementing legislation also proved to be problematic to a number of issuing Member States. Ireland therefore took the initiative not only to remove this prerequisite but to draft and circulate a template undertaking, in a form acceptable to the Irish JA, to issuing Member States where this requirement still presents itself³.

¹ SS23 and 24 EAW Act, as amended.

² This rule is subject to the exceptions set out in the Framework Decision, namely that the High Court may consent to onward surrender or extradition it requested, subject to its being satisfied that surrender or extradition would be possible in respect of the offence concerned if the subject were in this jurisdiction.

³ See Annex D.

RESTREINT UE

4.15. ARTICLE 32 EXPERIENCES

Ireland has made provision for the statements made by France, Austria and Italy pursuant to Article 32 of the FD and, subject to these temporal surrender arrangements, all Member State are now governed exclusively by the EAW Act. Ireland is therefore unable to process extradition requests from any Member States which, by virtue of constitutional or Supreme Court bars, are unable to issue EAWs.¹

No statutory provision exists to cater for other Member States which have made a declaration without having been expressly authorised by the FD to do so (i.e. the Czech Republic, Luxembourg and Slovenia). Surrender to these Member State is therefore impossible.

4.16. TEMPORARY/CONDITIONAL SURRENDER

Express statutory provision is made in accordance with the FD permitting Ireland to surrender requested persons on both temporary and conditional bases.^{2 3 4}

To date, these powers remain unexercised and therefore untested.

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

Again, once the CA has advised the issuing Member State of the fact of the surrender order, the Garda Síochána are responsible for the practical planning and the execution of all surrenders.

The Garda await contact from the issuing state and then provide detail of whether Ireland's 15-day surrender moratorium has been waived by the requested person. Provisional arrangements are put in place and risk assessment details are provided.

¹ S4 EAW Act 2003, as amended.

² S19 EAW Act as amended.

³ Physical surrender being postponed after the surrender decision has been made, to facilitate the service of a sentence/criminal process in the executing Member State.

⁴ A physical surrender pending the ultimate decision to surrender.

RESTREINT UE

Subject to appeals, on the day initially appointed the Garda will collect the person from custody and deliver him to police holding cells, usually at the airport. Again the carrier is advised that a prisoner is in transit so that suitable arrangements can be put in place. Issuing Member State officers attend the transit location (airport) and take the prisoner into custody before pre-boarding him.

4.18. THE MECHANICS OF THE SURRENDER OF REQUESTED PROPERTY/TIMELIMITS/GUARANTEES

As in the case of receipts of requested persons, property/evidence is handed over at the time of delivery of the prisoner, with evidential statements following thereafter as required.

4.19. CONFLICT OF EAWs/EXTRADITION REQUESTS

On receipt of: (1) multiple EAWs in respect of the same requested person, or (2) conflicting EAW and extradition requests, the Irish CA must refer the matter to the High Court so that the issue of prioritisation may be adjudicated on by Ireland's JA in line with the Article 16 of the FD.¹

In such cases the Court will have regard to all of the circumstances, especially the relative seriousness of the offences, the place of their commission, the respective dates of the European arrest warrants/extradition requests, and whether the warrants were issued for purposes of prosecution or for execution of a custodial sentence or detention order.

In the case of an EAW and a request from the International Criminal Court for the same person, the latter will in general take precedence.

Again, at this time these issues have not arisen in practice.

4.20. EXPENSES

In the case of provision of interpreters, it is incumbent on the Garda Síochána to arrange for a interpreter on the arrival of the requested person in the Garda station. These costs are met by the Garda Síochána.

¹ S30 EAW Act, as amended.

RESTREINT UE

The Garda also arranges for the same interpreter to attend at the first Court appearance to ensure that the hearing progresses effectively. If necessary, the judge hearing the case certifies that an interpreter is required and arrangements and payments are at that time taken over by the Courts Service.

No practical problems have been experienced in this area to date.

All surrender-based expenses seem to have been undertaken in accordance with the letter and spirit of the FD.

5. TRAINING PROVISION

In-house training is delivered locally by the CA, ODPP, CSS and Garda Síochána. This training is ongoing. Its objects are to provide an understanding of the FD and the implementing legislation, to assist in the consideration and drafting of EAWs. Each course is specific to the relevant agency and is complemented by seminar attendance where suitable programmes are identified.

Further, the Office of the Attorney General, the Office of the AG and the Department of Justice, Equality and Law Reform have organised an EU Criminal Law Education programme. This programme is ongoing and the next module will deal with comparative law. In the context of its work on EAWs received and verified, the Central Authority has built up a considerable amount of knowledge about the systems in other Member States. This knowledge is shared with other agencies at the bi-monthly meetings. In addition, further knowledge is obtained through discussions at the CCM and within the EJM.

The expert team were advised that financial support is provided to allow staff members to attend such events.

In addition to training which has the EAW as its core objective, the CA also funds and provides study leave for staff diplomas in the area of Public Administration. Each such request is considered on its merits.

RESTREINT UE

The expert team have subsequently been advised that the Department of Justice, Equality and Law Reform have launched a new scheme to enable and fund officials to attend full time legal degree courses. The measures introduced include block release on full pay for one year, paying in advance for second and subsequent years of certain law courses (first year fees are fully refunded following successful completion of the year), and provision of grants to the Department's library to ensure that relevant legal textbooks will be made available to all students.

Linguistically the expert team noted that staff members of the CA had some ability in Spanish and German, and there was a degree of oral French spoken across the departments. Practically it is understood that one staff member applied to undertake a French language course in Paris and that that application was granted.

6 DEFENCE PERSPECTIVES

The defence play no role in EAW litigation where Ireland acts as an issuing State.

In respect of Ireland's activities as executing State, the evaluation team canvassed the views of senior and junior counsel with practices in the area of the EAW. Their view was that the former regime was highly technical but, over a number of years, the Court had evolved a well-developed jurisprudence in the area.

It was their view that the time limits prescribed by the FD and by Ireland's implementing legislation were, given the avenues of appeal, no more than aspirational targets, which consequently added little practical value.

The view was further expressed that the 21-day limit (from arrest) in which the final surrender decision should be reached, was honoured more by its breach than observance. In support of this view the expert team were advised that the Supreme Court, in dismissing one appellant's claim to be released on the expiry of the 90-day limit, had recently held that the surrender decision time limits provided by the Act were in fact to be construed as indicative rather than mandatory.¹

¹ DUNDON - v -The Governor of Cloverhill Prison [2005] IESC 83.

RESTREINT UE

Disquiet was also expressed with the time taken generally for the payment of fees under the Attorney General's legal aid scheme (which deals with payments under all EAW, Habeas Corpus and Judicial review proceedings). The expert team noted however that counsel submitted their fee notes to their instructing solicitors and were then forced to wait for the submission, by their solicitors, of a single unified bill of costs to the AG's Office. The Irish authorities were of the view that the bulk of any such delay rested with defence solicitors being late with the submission of this unified bill, counsel accepted that that may well be the case.

The expert team noted that there was parity between the quantum of fees paid to counsel acting for the State and for the requested person.

Counsel were exceptionally complementary regarding the quality of the judiciary and linguistic interpretation.

7. CONCLUSIONS

7.1 General conclusions

7.1.1 The expert team could not help but be impressed by the dedication and competence of the individuals who contributed to this very detailed evaluation and wish to acknowledge the contribution that their openness and frankness added to the evaluation itself.

7.1.2 It was evident to the evaluation team that the EAW system is viewed by the Irish authorities as a beneficial development to its predecessor regime and that staffing levels, together with 24/7 rotas in appropriate departments, are sufficiently flexible to deal with the increasing volumes thus far experienced¹.

7.1.3 Additionally, the Irish authorities have created, published and, importantly, kept updated a comprehensive and helpful guide to Irish EAW procedures for the benefit of other Member States.²

¹ The Extradition Unit of the Garda Síochána was recently increased from 2 to 4 dedicated officers as a direct consequence of the increased volumes experienced in the first quarter of 2006. See also annex F.

² Updated Fiche français - January 2006.

RESTREINT UE

7.1.4 The operation of the EAW in Ireland is complemented by good levels of linguistic interpretation and a legal aid system which provides unfettered choice and professionalism to the requested person.¹

7.2 Conclusions in respect of Ireland's activities as an issuing Member State.

7.2.1 Issues

7.2.1.1 Timetable to issue of EAW

One of the mandatory requirements for the issue of an EAW is the submission to the issuing JA of an unexecuted domestic warrant; either a "bench warrant" in the case of a conviction case or a "first instance warrant" in respect of prosecution cases. The complexity of several of the cases undertaken to date has been such that, to ensure that the accuracy of these precursor warrants were accurate, a great deal of liaison has been required between the Office of the DPP and the Extradition Unit of the Garda Síochána. It is acknowledged that the degree of contact and the quality of advice between the two bodies has resulted in 100% of warrants sought being granted by the issuing JA. However the expert team noted that delays of up to 2 months in seeking the EAW were said to be commonplace (although formal record keeping was not undertaken in respect of this aspect of the process) and a consequent risk of the requested person going to ground could therefore arise.

7.2.1.2 ODPP staffing levels

The degree of competence evident within the Office of the DPP is very high. Moreover, the team were impressed by the foresight of the Office which, to ensure continuity and consistency of service, ensured that a replacement lawyer was in place fully 6 months prior to the departure (on notice) of the original incumbent. Notwithstanding this, and given the pre-eminence of this post in the issue process, it was felt that a single lawyer, irrespective of the quality of administrative support available, would be extremely pressed should volumes increase far beyond current levels.

¹ Subject to means testing.

RESTREINT UE

7.2.1.3 Return of own nationals

Reliance on the Transfer of Sentenced Persons Act for the return of own nationals under the surrender procedures of the EAW Act places the right of initiative exclusively on the requested person (save for cases of mental incapacity). The Minister may not compel such a person to return to any particular Member State to continue serving a sentence. Given this, the Irish authorities are clearly unable to give an undertaking, should one be required by the issuing Member State, pursuant to Article 5 paragraph 3 of the FD. A requested person, being a national of the executing Member State requiring such an undertaking is therefore in a position to render null and void the efforts of both States to have him surrendered.

The expert team was advised that the legislature is to consider further amendments to Ireland's processes in this regard, so that such undertakings may be provided in an acceptable format to executing Member States.

The team also noted with concern that, by virtue of section 4(3)(e) of that Act, Ireland has, in respect of such returns, reintroduced the double criminality regime in respect of all categories of offences. This is a practice clearly contrary to the fundamental principles embodied in the Article 2 paragraph 2 list.

7.2.2 Good practices

7.2.2.1 Practical approach

The "one stop shop" nature of the Extradition Unit of the *Gárda Síochána* is to be commended, as is the common sense advice which they provide to their operational colleagues. This advice deals not only with steering the application process in general, but extends to an objective evaluation of the merits of the application itself. One example given was that the Unit would (and has) actively dissuaded requests from the field being made for the issue of EAWs on matters of 25€ shopliftings. The Directing Division review is a more formal test which could otherwise be brought to bear on such disproportionate applications at a later stage, but valuable resources are saved by the sensible pre-emptive action of the *Gárda*.

RESTREINT UE

7.2.2.2 Internal communications

The bodies involved in all elements of the issue of EAWs were unencumbered by the need to adopt formalised lines of communication. The team particularly noted the excellent degree of liaison between the *Gárda Síochána*, the Office of the DPP and the EAW Registrar at the High Court. This network enabled matters to be added to the Judge's list at exceptionally short notice if necessary.

7.2.2.3 External communications/risk assessments

Aided by the fact that 94% of Ireland's EAW requests are currently targeted to the UK, excellent channels of communication have been established. Of particular note was the practice of communicating a risk assessment in respect of requested persons to assist executing Member State colleagues in all cases where caution would be prudent (e.g. by virtue of a foreseeable risk of violence or contagion).

7.2.2.4 Flexibility

Ireland's willingness to amend its draft EAW template to suit the particular requirements of the UK was clearly a step taken in the spirit of the FD. No statutory or other formalities were required prior to this pragmatic measure being put in place. One may however wonder how this sits with the formal approach adopted when Ireland acts as executing State (see 7.3.1.4 below).

7.3 Conclusions in respect of Ireland's activities as an executing Member State

7.3.1 Issues

7.3.1.1 Awareness of potential SIS impacts

None of the agencies participating in this evaluation visit were found to have undertaken a coordinated inter-agency impact assessment of the potential changes, in terms of practice and volumes, that ultimate accession to SIS (only some 2-3 years from now) might bring. The expert team is of the view that lack of coordinated activity in this area and at this time might compromise Ireland's ability to foresee and thus react to matters which otherwise could be entirely manageable.

RESTREINT UE

In respect of this point the expert team have subsequently been advised that the relevant agencies (the Gardaí, the Central Authority and the Office of the Attorney General) have recently commenced a procedure to undertake planning for the adoption of SIS II¹. The first meeting took place in May of 2006 and further meetings are planned.

7.3.1.2 Modes of receipt

Receipts via Interpol, notwithstanding express statutory approval, are not undertaken in practice by Ireland. The expert team are of the view that the use of this mode of transmission would, in addition to putting the authority of the transmitting source beyond question², enhance Ireland's ability to respond more efficiently to the requirements of issuing Member States.

Whereas the team applaud Ireland's willingness to seek further statutory amendment to their legislation to put the matter beyond question, they were surprised that an appropriate test case had not been selected to clarify this important issue, thereby saving legislative time and adding to the Court's jurisprudence in this developing area.

The experts noted a similarly cautious approach in respect of Ireland's general refusal to accept e-mailed EAWs, based on the advice of counsel. Once more statutory clarifications are being proposed without recourse to an appropriate test case being taken.

7.3.1.3 Pre-arrest

The expert team was impressed by the Garda's use of new technology, in particular the PULSE database. However, it was felt that additional benefit could be derived from a system being implemented whereby mobile officers could have real time access to data available on the PULSE system rather than having to wait until they return to a police terminal.

¹ The Irish Authorities have confirmed that planning meetings have commenced between members of these agencies, with the aim of identifying issues which may arise and putting in place procedures for the adoption of SIS II.

² The experts observed that one aspect not tested by the administrative verification process (see 7.3.1.3.) is the certification/verification of the issuing authority itself, a factor which would automatically be put beyond question were Interpol to be utilised as foreseen.

RESTREINT UE

7.3.1.4 Pre-endorsement procedures

The experts have serious concerns as regards the CA's designation of its roles as being solely those of transmission and of "administrative verification" (which of itself exceeds the roles envisaged in Articles 7 paragraph 2, 10 paragraph 5 and 15 paragraph 2 of the FD).

They took the view that the role that the CA had assumed was far more interventionist (and in all probability was considered by foreign JAs as such). The process could be more accurately described as verification of full compliance with the FD, as was amply demonstrated by the fact that it had caused 88 of the 110 (that is to say 80%) of the EAWs transmitted to it to be redrafted prior to proceeding to the endorsement stage,¹ a factor which must contribute to the fact that only 12 persons have been effectively surrendered by Ireland since 1 January 2004. In respect of all live files currently being considered by the CA, 31 cases were held pending receipt of further information from the issuing Member States.

The consequence of this stance is that 31 persons sought for, or convicted of a range of serious offences, were believed to be at liberty on Irish soil pending the completion of the process of administrative verification.

The CA seeks advice from the Office of the AG (encompassing advice from the Office of the CSS and counsel if instructed) in every case thus bringing up to four levels of scrutiny to bear on all incoming EAWs irrespective of the level of complexity of the file. This is prior to the matter being placed before the JA for consideration.

The expert team accepted without reservation that the parties involved sought to perfect the application exclusively for the benefit of the ultimate surrender but found this role to be outside the scope of the FD which attributes this role to the JA (Article 7 and Article 15 paragraph 2) and is alien to the concept of mutual recognition. It places too great a responsibility on the CA and the AG who are clearly not JA's under the Irish system.

¹ The expert team have been notified that legislative changes are under consideration to clarify the role of the CA in this regard so that technical flaws present in EAWs will not render the instrument to be considered as fatally flawed.

RESTREINT UE

The experts accept that the rationale for this procedure is to maximise the use of valuable court time and to avoid setting poor precedents, but were of the view that the result seemed to amount, de facto, to an extension of the strictures endured under the pre-existing extradition system. Perversely, this abundance of caution also reduces the ability of the JA to develop to its new role as a court of first instance and to evolve an extensive body of precedent to guide future decisions and practices.

It was accepted that the Irish authorities see this approach as the best way in which the EAW procedures may be managed within the Irish legal system, the expert team note in particular the Supreme Court Judgement in Rodinov, 1 June 2006, a summary of which is set out at Appendix H¹ (NB The judgement of the Supreme Court was ex tempore. This summary was therefore prepared by the Irish authorities from counsel for the State's note on the case). However the expert team considered it questionable whether, as currently operated, the system itself is reconcilable with the concept of the "judicialisation" of the process as contemplated by the FD.

The level of scrutiny is such that on one occasion the Article 2 list itself was subject to comment. On that occasion the UK was invited to reconsider whether an offence, initially described as a case of sexual exploitation, should be more accurately classified as rape (it is worthy of note that in that instance the UK accepted that the EAW should be redrafted). The experts concern however is more generic in that the Article 2 list was subjected to scrutiny at all and a question transmitted to the issuing State. However meritorious it was an individual case that must not be allowed to be developed as a precedent.

The team noted with concern that on two occasions the CA had, without recourse to the executing JA, taken the view that an EAW was so deficient on its face that no applications were made to put them before the Court for endorsement. Whatever the practical reality of these cases, a CA may not usurp the decision-making powers reserved to its own JA. Indeed the CA's own legal basis for adopting this course was not clear to the expert team.

¹ This judgement having been handed down after the conclusion of the evaluation visit itself.

RESTREINT UE

It was also noted that no statistics were readily available at the time of the onsite visit (indicating that the process was not actively monitored) to assess the average time taken to perfect an EAW for endorsement. An analysis of the statistics provided shortly thereafter demonstrated: 1) that only 55 of the 110 EAWs received have thus far been endorsed and 2) that the time taken to obtain the endorsement ranged from just a matter of hours (in an urgent and well co-ordinated case between Ireland and the UK) to over 12 months in 2 other cases, with an average time of 88 days being experienced between receipt and endorsement.¹ In effect therefore the endorsement process was found to be lengthier than the balance of the arrest and surrender process itself, the latter aspect being more closely monitored by statistics.

7.3.1.5 The endorsement stage

The expert team accept that the endorsement process is wholly in keeping with the requirements of Ireland's implementing legislation; however provision for such a system was not foreseen by the FD.

In the view of the experts, taken together with the pre-endorsement phase, the endorsement phase creates substantial delays in what should be a straightforward issue of mutual recognition between JAs.

The expert team noted that the Irish authorities specifically cite the last sentence of recital 12 of the FD in support of this aspect of their process ("This Framework Decision does not prevent a Member State from applying its *constitutional rules relating to due process*, freedom of association, freedom of the press and freedom of expression in other media."), however they were not persuaded that the recital was an appropriate legal basis for the introduction of a process which, taken together with its precursor checks, does not sit well with the mandatory imperative set out in Article 1, paragraph 1 of the FD².

¹ See annex F.

² Namely that, MSs shall execute any EAW on the basis of the principle of mutual recognition and in accordance with the provisions of this FD.

RESTREINT UE

7.3.1.6 Arrest

The powers of arrest following endorsement were judged to be wholly adequate. However, the *Gárda Síochána* must rely on domestic powers to search the premises of/or associated with the requested person. These practical hurdles, together with an absence of a power (present in domestic cases) to photograph or fingerprint a person arrested on the basis of an EAW are tools that would, in appropriate circumstances, assist the effective administration of surrender and subsequent criminal process.

7.3.1.7 Rules of procedure

The expert team noted that, as provided for in domestic proceedings, the requested person/defendant has a constitutional right to cross examine any witness in person. Although, as a matter of fact, this right has been exercised sparingly to date, there is clear potential (particularly if the nature of human rights based challenges develops) for both delay and resource implications for foreign judicial authorities and the like.

The experts also noted that, although surrender hearings were uniformly set down for hearing within 21 days of arrest, the court was, in the view of the defence practitioners interviewed, inclined to accede to requests that the surrender hearing be adjourned. This practise placed unnecessary pressure on FD time limits.

7.3.1.8 Grounds for refusal

Given the level of "administrative verification" conducted by the CA, the Court did not yet appear to have been afforded the opportunity to develop extensive jurisprudence in this area. The team were of the view that the Court's role in this regard is particularly important because several of Ireland's grounds for refusal are broad and untested. For instance, the team noted that the legislation cited¹, as catchall grounds for refusal, the FD itself (and the recitals thereto). This did not sit well with the declaration that the legislation was a strictly construed penal statute.

¹ SS15(1)(c) and 16(1)(e) of the EAW ACT, as amended.

RESTREINT UE

7.3.1.9 Appeals system/time limits

A requested person has a broad range of avenues of appeal and challenge available to him/her and it is Ireland's experience that all available avenues will be exhausted prior to surrender in less than 4% of all cases, however non exhaustive appeal applications are more frequent. The experts recognised Ireland's constitutional responsibilities, but wondered if there could be some means of limiting and consolidating all potential challenges (also perhaps considering if the leave stage should remain ex-parte).

Foremost in the minds of the experts was the fact that, notwithstanding the indicative nature ascribed to EAW time limits by the Supreme Court, Ireland's time limit obligations may easily be frustrated by a vexatious requested person, even at the eleventh hour, for no proper purpose and without just cause.

7.3.1.10 Defence costs

The expert team noted that there was some uncertainty as to the root cause of the undoubted delays present in the payment of certain of counsels fee notes and would encourage the parties concerned to enter into a dialog on this issue, to resolve this administrative weakness. The team accept that the available cross-section of the Defence Bar for the purposes of this evaluation was small, but nevertheless the feeling at the Defence Bar was that they were financially disadvantaged as against their State-funded colleagues. Such sentiment, if left unaddressed, may ultimately weaken the choice and quality of counsel currently working in this field.

7.3.1.11 Persistence of certain issues identified

The expert team noted that certain of the concerns set out in this report formed the basis of similar recommendations made to Ireland in respect of the first round of Mutual Evaluation ("the MLA report") delivered in 1999¹. The MLA report is generally a positive one; however the expert team assembled on that occasion set out various concerns, certain of which may be summarised in the following terms:

- 5.2.1 - Ireland, in its anxiety to instigate correct procedures, had created a seemingly disproportionate number of steps, and that after 2 years of practice, a streamlining based on current experiences was due.

¹ Document 9079/99 refers.

RESTREINT UE

- 5.2.2 - The CA should consider, on a case by case basis, whether or not advice should be sought from the Office of the CSS, rather than automatically referring all matters to them for review (given the excellent lines of communication that were present even at that time it was felt that advice could be obtained at very short notice if merited).
- 5.2.3 - Reference for advice should be directed initially to the Office of the CSS who would, on a case-by-case basis, consider whether further input was required by the Office of the AG.
- 5.2.10 - Statistical record keeping could be improved to examine, inter alia, the lapsed time in respect of the execution of requests

Each of these recommendations was accepted by Ireland and yet, in the view of this expert team, reflections of the same issues, albeit in a different context, may be observed in today's findings.

7.3.1.12 Training

Whereas the training provision in respect of domestic law and practice was deemed by the expert team as being adequate, they noted that awareness and understanding of other Member States' systems could be improved.

7.3.2 Good Practice

7.3.2.1 Protection of the rights of the requested person

The rights of the requested person within the proceedings are comfortably safeguarded by being read over to them at the time of arrest and again at the endorsement/first hearing of the matter. All consents were required to be made in writing in the presence of the Court Registrar and were the subject of revocation at the insistence of the individual.

7.3.2.2 Specialisation

By virtue of the small number of agencies and persons charged with progressing Ireland's application of the EAW, a high degree of specialisation and therefore consistency has developed. The expert team found that each of the participants was aware, not only of his or her role, but where that role fitted within the overall process. The degree of specialisation also enabled individuals to be able to rapidly route issues to the most appropriate source as and when they arose.

RESTREINT UE

The provision of 24/7 contact numbers by the CA, the AG, the Office of the CSS, the Office of the DPP, the Gárda Síochána and the High Court (coupled with an expectation that they would be used), was a practice to be commended. This facility had enabled, in one notable case of urgency, an incoming EAW to be endorsed by the High Court at 18.30 on the day of receipt, in order to facilitate the arrest later that evening of a requested person at Dublin International Airport. Seven days thereafter, consent having been given and waiver of time provided, that individual was surrendered.

7.3.2.3 Liaison

The experts also commend Ireland's recent practice of providing an example of an acceptable undertaking to issuing Member States (where such undertakings are required) in respect of the particular detail required to satisfy its JA. The provision of such written examples reduces uncertainty and the likelihood that a deficient document will be transmitted in error and the process delayed.

The informal day-to-day contact with relevant authorities in the United Kingdom along with more formalised bilateral meetings has clearly been of considerable assistance as between Ireland and the United Kingdom.

7.3.2.4 Use of technology

Ireland has embraced the use of effective cross-referenced databases (predominantly the police PULSE system). Notwithstanding the layered procedural nature of its legal processes, Ireland uses this technology effectively at the pre-endorsement stage to verify information provided by the issuing JAs, in readiness for rapid post-endorsement arrests.

7.3.2.5 Willingness to seek legislative change

The expert team noted Ireland's willingness to review its legislation where the practices arising proved unwieldy or unworkable. The bi-monthly case work meetings between the Gárda Síochána, the CA, the AG and the CSS add real value; one such review led to the acceptance of the requirement for Ireland's existing amending legislation.

RESTREINT UE

The team welcomed the consideration currently being given by Ireland to the matters arising from perceived weaknesses in the proper functioning of the EAW practices, these considerations include:

- The receipt of EAWs by e-mail and via Interpol;
- Ensuring that minor drafting/technical deficiencies are not fatal to EAWs being actioned;
- Measures to ensure that Ireland can provide undertakings as may be required pursuant to Article 5 paragraph 3 of the FD.

8. RECOMMENDATIONS

8.1 RECOMMENDATIONS FOR IRELAND

8.1.1 As issuing Member State.

Recommendation 1 - To monitor the work flow of the various phases of the issue of EAWs so that any delays which may arise during the process may be more easily observed and rectified. (See 7.2.1.1)

Recommendation 2 - To assess whether increased staffing levels in the EAW Unit and possibly the Directing Division of the ODPP would lead to a corresponding decrease in the time taken to perfect applications for EAWs, particularly in respect of the provision of advice and assistance pertaining to the detail of domestic precursor warrants. (See 7.2.1.2)

8.1.2 As executing Member State

Recommendations 3 - To undertake a coordinated inter-agency analysis of the potential volumetric and procedural impacts that accession to SIS may involve. (See 7.3.1.1)

Recommendation 4 - To ensure legislative clarity in respect of a positive assertion that Interpol and e-mail channels may be utilised for the purposes of transmitting EAWs to Ireland (under consideration). (See 7.3.1.2)

Recommendation 5 - To consider implementing systems to ensure that mobile officers are given real time access to data contained on the PULSE system. (See 7.3.1.3)

RESTREINT UE

Recommendation 6 - To restrict the mandate of the CA so as to bring it into strict compliance with the role perceived in Articles 7 paragraph 2, 10 paragraph 5 and 15 paragraph 2 of the FD. (See 7.3.1.4)

Recommendation 7 - To reassess whether the endorsement process is necessary, sufficiently rapid and compatible with the Framework Decision and, to the extent that it is not, to consider ways and means to bring the procedures into line with the Framework Decision while respecting the Irish constitutional system. (See 7.3.1.5)

Recommendation 8 - To consider broadening the powers of the Gárda Síochána so as to provide them with discretionary powers to photograph and fingerprint requested persons on arrest. (See 7.3.1.6)

Recommendation 9 - To consider whether the creation of a further practice note would be of assistance in particularising those circumstances in which the JA might consider it appropriate to grant an application, by the defence or by the State, to adjourn the commencement of the surrender hearing (beyond 21 days from arrest). (See 7.3.1.7)

Recommendation 10 - To undertake a review of practice and procedures for initial surrender hearings in order to explore how they may be streamlined and brought more closely into line with the spirit of the Framework Decision and with principles of mutual trust between judicial authorities. (See 7.3.1.7)

Recommendation 11 - To ensure that only grounds for refusal permitted under the Framework Decision and not administrative, typographical or other comparable errors on the face of the EAW are the basis for a refusal of surrender and to limit requests for redrafts or reissue of new EAWs to what is absolutely necessary. (See 7.3.1.8)

Recommendation 12 - To undertake a review of the appeal and judicial review remedies available to requested persons, in order to explore how those rights may be streamlined and brought more closely into line with the time limits set out in the FD and to ensure adequate notification of any breaches to Eurojust. (See 7.3.1.9)

RESTREINT UE

Recommendation 13 - To examine whether practical measures can be put in place to accelerate payments made to defence counsel in respect of properly submitted fees notes. (See 7.3.1.10)

Recommendation 14 - To ensure that statistical records in respect of all aspects of the EAW process (i.e. from receipt) are maintained and reviewed at the bi-monthly inter agency meetings so that matters arising may be identified and remedied on a regular basis. (See 7.3.1.3)

Recommendation 15 - To ensure that Irish authorities involved in EAW processing are familiar with the operation of the EAW in other Member States and in particular with the constraints on foreign judicial authorities as regards their ability to amend or reissue existing EAWs. (See 7.3.1.12)

8.2 RECOMMENDATIONS FOR CERTAIN OTHER MEMBER STATES

Recommendation 16 - In respect of those Member States (including Ireland) who rely upon the Transfer of Sentenced Persons regime or the like for the surrender of own nationals, that those States consider between themselves whether an agreed form of undertaking (for example that they would not seek to impede the return of an own national/prisoner, should that individual wish to return to his country of origin) would suffice to satisfy any undertakings required pursuant to Article 5 paragraph 3 of the FD. (See 7.2.1.3)

Recommendation 17 - To consider whether the operational efficiency of their EAW systems would be enhanced by the establishment of 24/7 rotas in key agencies. (See 7.3.2.2)

Recommendation 18 - To consider how operationally valuable risk assessment data may be packaged, translated and communicated to agencies charged with the arrest and transportation of requested and surrendered persons. (See 7.2.2.3 and recommendation 22)

Recommendation 19 - To create template forms of standard undertakings and to transmit those forms electronically to the General Secretariat of the Council of the EU, for translation and publication on its EAW web pages. (See 7.3.2.3)

RESTREINT UE

Recommendation 20 - To ensure that the EAW shall contain the information set out in accordance with the form contained in the annex to the FD (and the official translations thereof) and to review the ways and means by which translation of the content of EAWs and corresponding undertakings meet the requirements of the executing Member State. (See 4.2)

8.3 RECOMMENDATIONS TO THE EUROPEAN UNION:

Recommendation 21 - To create a new legal basis for the return of own nationals of issuing Member States. Such legislative change should, inter alia:

- Make adequate allowance for the provision of undertakings, as envisaged by Article 5 paragraph 3 of the FD (under consideration);
- Safeguard the abolition of double criminality as enshrined by the Article 2 paragraph 2 list of offences. (See 7.2.1.3)

Recommendation 22 - To consider how operationally valuable risk assessment data relevant for arrest and bail may be packaged, translated and communicated to agencies charged with the arrest and transportation of Requested and Surrendered Persons. (See 7.2.2.3)

Recommendation 23 - At an appropriate moment consider a common approach to accessory offences. (See 4.12)

DECLASSIFIED

RESTREINT UE

ANNEX A

PROGRAMME OF VISITS

21 March 2006

Time	Agency	Venue
10.00-12.30	Central Authority, Criminal Law Reform Division, Prisons Policy Division (Outgoing and Incoming EAWs)	Department of Justice, Equality and Law Reform, Shelbourne Road 10.00-17.30
12.30-14.00	<i>Lunch</i>	
14.00-17.00	Central Authority, Criminal Law Reform Division, Prisons Policy Division (Outgoing and Incoming EAWs)	
20.00	<i>Dinner hosted by the Department of Justice, Equality and Law Reform</i>	

22 March 2006

Time	Agency	Venue
9.30-12.30	Attorney General, Chief State Solicitor, Central Authority (Incoming EAWs)	Office of the Attorney General Merrion Street 9.30-16.00
13.00-14.30	<i>Lunch</i>	Four Courts, 16.30 – 19.30
14.30-16.30	Attorney General, Chief State Solicitor, Central Authority (Incoming EAWs)	
16.30-18.00	Mr. David Naenan, Extradition Registrar of the High Court, Courts Service	
18.00-19.30	Defence Counsel x 2	

23 March 2006

Time	Agency	Venue
8.30-11.00	Gárda Extradition Unit, (Outgoing and Incoming EAWs)	Gárda Headquarters (8.30-11.00)
11.30-12.30	Director of Public Prosecutions, Gárda Extradition Unit (Outgoing EAWs)	Office of the Chief Prosecution Solicitor, Abbey Street (11.30-13.00)
13.00-15.00	Final meeting of all delegates	

LIST OF PERSONS INTERVIEWED

Central Authority:

Martin Power
Anne Farrell
Peter Frisby

Department of Justice, Equity and Law Reform

Batt Whelton, Criminal Law Reform Division. Department of Justice, Equality and Law Reform
Mary Burke, Prisons Policy Division. Department of Justice, Equality and Law Reform

Attorney General's Office

Caitlín Ní Fhlaitheartaigh
Antoine MacDonncha
Clíodhna O'Hara

Chief State Solicitor's Office

Kevin Matthews
Charles Wallace

Office of the DPP

Frank Cassidy
Seamus Cassidy
Anne McCormack

Gárda Síochána

Supt. John Shanahan
Det. Sgt. Martin O'Neill
Det. Sgt. Tony Lenihan
Sgt. Tom Malone
Gárda Francis Gormley

Court Registrars

David Neenan
Kevin O'Neill

Defence Counsel

Michael O'Higgins SC
Kieran Kelly BL

DECLASSIFIED

RESTREINT UE

ANNEX C

LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

ACRONYM ABBREVIATION TERM	ENGLISH EXPLANATION
AG	Attorney General
CA	Central Authority
CSS	Chief State Solicitor
(O)DPP	(Office of the) Director of Public Prosecutions
EAW	European Arrest Warrant
FD	Framework Decision
JA	Judicial Authority
MDG	Multi Disciplinary Group on Organised Crime
MLA	Mutual Legal Assistance
ODPP	Office of the Director of Public Prosecution
SIS	Schengen Information System

DECLASSIFIED

RESTREINT UE

ANNEX D

TEMPLATE FORM OF UNDERTAKING

I [name], the issuing judicial authority undertake that [name], in relation to the offences in respect of which he has been convicted in absentia, and in respect of which he is surrendered pursuant to the European Arrest Warrant issued on the [date], will:

(i) be retried for those offences or be given the opportunity of a retrial in respect of those offences,

(ii) be notified of the time when, and place at which any retrial in respect of the offences concerned will take place, and

(iii) be permitted to be present when any such retrial takes place.

Signed:

Name of Officer/Judge:

Issuing Judicial Authority:

Date:

DECLASSIFIED

RESTREINT UE

ANNEX E
The High Court

No. 2

O. 98, r. 4

CONSENT TO BE SURRENDERED THE HIGH COURT

Section 15 of the European Arrest Warrant Act 2003

I,..... [also known as]*.....

of.....

HAVING BEEN BROUGHT BEFORE THE HIGH COURT in pursuance of the above mentioned Act on the day of 2 and

HAVING BEEN INFORMED by the Court that I would not be surrendered, except with my consent, until the expiration of ten days from the date of my committal,

HAVING obtained, or been given the opportunity of obtaining or being provided with professional legal advice and representation

AND HAVING ALSO BEEN INFORMED of my right to make a complaint under the provisions of Article 40.4.2 of the Constitution at any time before my surrender to the issuing State and being aware of the consequences of my consenting to surrender

DO NOW HEREBY CONSENT TO BE SURRENDERED to the State of (the issuing State).

Signed.....

The above was given before

M Justice At the Four Courts Dublin 7

This day of 2 .

Signed.....

Registrar

* Delete if not applicable

RESTREINT UE

ANNEX F

Endorsed EAWs date received / arrest / surrender

	Date received	Endorsed	Arrested/ Current Status	Surrendered on consent/order/following complaint under Article 40.4.2/Appeal to SC/Judicial review
1*	30/1/2004	2/2/2004	11/2/2004	Order 14/4/2004 surrendered 23/12/2005
2	9/3/2004	19/4/2005	22/4/2005	By consent 13/4/2005 Sought assurances on Treatment. Surrendered 6/6/2005
3*	29/3/2004	21/11/2004	22/11/2004	Order 27/5/2005 Surrender 20/12/2005
4.	11/5/2004	16/6/2004	17/6/2004	Refused by HC
5	4/6/2004	17/6/2004	4/7/2004	Consent 4/7/2004. Surrendered 5/7/2004
6	21/6/2004	5/7/2005	26/7/2005	
7	29/9/2004	17/10/2004	19/10./2004	Refused by HC
8	29/9/2004	19/10/2004	Being sought	
9	4/11/2004	4/11/2004	5/11/2004	Consent 17/11/04 surrendered 26/11/2004
10	10/11/2004	14/6/2005	Being sought	
11	24/11/2004	14/6/2005	14/7/2005, Absconded on bail	
12	30/12/2004	5/7/2004	Being sought	
13*	10/1/2005	17/6/2005	6/7/2005	Order 23/8/2005 surrendered 28/12/2005
14	1/2/2005	15/8/2005	6/9/2005	
15*	11/2/2005	5/4/2005	15/4/2005	
16	14/2/2005	14/2/2005	17/2/2006	

RESTREINT UE

17	15/3/2005	10/6/2005	Being sought	
18	18/3/2005	23/3/2005	12/4/2005	Order made 14/2/2006 /Surrender delayed due to domestic charges
19	5/4/2005	6/4/2005	12/4/2005	Order 26/7/2005 Surrendered 07/09/2005
20	6/4/2005	22/9/2005	Being sought	
21	6/4/2005	16/4/2005	19/4/2005	Refused by HC
22	14/4/2005	22/11/2005	12/12/2005	Order 20/12/2005 Surrendered 05/01/2006
23	6/5/2005	5/8/2005	11/8/2005	Refused by HC
24	8/5/2005	9/5/2005	18/5/2005	Consent 18/5/2005 Surrendered 20/6/2005
25	16/5/2005	8/11/2005	Being sought	
26	18/5/2005	19/8/2005	12/10/2005	Refused by HC
27	2/6/2005	21/2/2006	23/2/2006	
28	16/6/2005	20/12/2005	25/1/2005	
29	26/6/2005	10/10/2005	8/11/2005	
30	29/6/2005	19/8/2005	20/8/2005	
31	22/7/2005	15/11/2005	16/11/2005	Consent 16/11/2005 Surrender delayed due to Domestic charges
32	27/7/2005	31/1/2006	Being sought	
33	09/08/2005	23/12/2005	Being sought	
34	09/08/2005	23/12/2005	Being sought	
35	09/08/2005	23/12/2005	Being sought	
36	11/8/2005	19/8/2005	1/9/2005	Refused by HC
37	5/9/2005	6/9/2005	8/9/2005	Consent 7/8/2005 Surrendered 16/9/2005
38	12/9/2005	13/12/2005	Being sought	
39	16/9/2005	31/1/2006	20/2/2006	
40	4/10/2005	14/2/2006	14/2/2006	Consent 23/3/2006 Surrendered 28/3/2006

RESTREINT UE

41	14/10/2005	31/1/2006	20/2/2006	
42	3/11/2005	4/11/2005	14/12/2005	
43	15/11/2005	17/1/2006	30/1/2006	
44	15/11/2005	24/1/2006	21/2/2006	
45	16/11/2005	17/1/2006	30/1/2006	
46	21/11/2005	24/2/2006	7/2/2006	
47	13/12/2005	21/2/2006	10/3/2006	
48	22/12/2005	17/1/2006	20/1/2006	
49	22/12/2005	14/02/2006	Being sought	
50	13/1/2006	24/1/2006	6/2/3006	Consent 14/2/06 surrendered 20/2/06
51	17/1/2006	24/1/2006	Being sought	
52	24/1/2006	24/1/2006	24/1/2006	Consent 25/1/2006 Surrendered 31/01/2006
53	24/01/2006	28/2/2006	Being sought	
54	30/1/2006	14/2/2006	6/3/2006	
55	23/2/2006	28/2/2006	Being sought	
	Totals	55 endorsed	40 Arrested 1 absconded on bail Some of those being sought are believed to be out the jurisdiction	13 Surrendered 2 Surrenders postponed on Domestic Charges 6 Orders Refused by HC

*Cases indicated with an asterisk are cases which were appealed to the Supreme Court.

A further 15 cases were closed due to withdrawal of EAW/arrest elsewhere.

RESTREINT UE
Number of EAWs executed by year

A. Total EAWs Endorsed by Year

2004	2005	to March 2006	Total
7	29	19	55

B. Arrested by Year

2004	2005	to March 2006	Total
6	18	16	40

C. Total Surrendered by Year

2004	2005	to March 2006	Total
2	7	3	12

DECLASSIFIED

RESTREINT UE

Number of EAWs received by Ireland by Year

Country	2004	2005	To March 2006	Totals
UK	13	41	9	63
Lithuania	5	15	3	23
Belgium	2			2
Hungary	2	1		3
Spain	2			2
France	1	2		3
Latvia	1	2		3
Netherlands	1			1
Portugal	1			1
Denmark		1		1
Estonia		1		1
Italy		1		1
Poland		2	2	4
Slovakia		1		1
Slovenia			1	1
Totals	28	67	15	110

DECLASSIFIED

RESTREINT UE

ANNEX G

PROHIBITIONS ON SURRENDER

Statutory Reference	Précis	Corresponding FD Article
15 + 16	Express reliance on the FD and recitals thereto	FD + Recitals in toto
22	Rule of specialty disapplied	N/A as a ground for refusal
23	Prohibition on subsequent surrender	N/A as a ground for refusal
24	Prohibition on subsequent extradition	N/A as a ground for refusal
37	Fundamental Rights - as set out in the Irish Constitution	Article 1.3 - as set out in Article 6 of the TEU
38	Non correspondence of offences in respect of which double criminality remains	Article 2.4
39	Pardon, amnesty or immunity granted pursuant to the IE constitution/IE domestic legislation OR the law of the issuing Member State	Re law of issuing Member State only. Article 3.1
40	Passage of time from the commission of the offence	Article 4.4 where jurisdiction is shared
41	Double jeopardy	Articles 3.2 and 4.5
42	Proceedings in the state	Article 4.2
43	Age of criminal responsibility	Article 3.3
44	Commission of the offence outside of the issuing State	Article 4.7 b
45	Convictions in absentia	Article 5.1
46	Immunity from prosecution during Office	Article 20.1

Summary of Supreme Court Decision in RODNOV as submitted by the Irish Authorities

In a recent Supreme Court appeal case, Counsel for the appellant argued that the warrant was defective in that it was not drafted in accordance with the Act or the Framework Decision. Counsel argued, *inter alia*, that the warrant was bad on its face because it did not contain thereon the words containing the request for the arrest and detention of the subject. While the Court did have sympathy with this argument, it ultimately held in favour of the State.

During the course of the hearing, the Court, and the Chief Justice in particular, was very critical of the State. The Court was of the view that in the present case there was a want of form to the warrant, which, while not fatal, had provided the Respondent with an arguable case and therefore amounted to a waste of money and of Court time. In effect the Supreme Court was saying that if there had been sufficient scrutiny the defect would have been remedied and the Appellant would have had no case.

It is clear that the Supreme Court expects the Central Authority to play a role in scrutinising warrants to ensure that they are correct in form as well as content. The Central Authority must also ensure that Warrants are clear in the English translations. The Supreme Court believes that it is the role of the Central Authority to ensure that there is clarity before the warrant is brought before the High Court.

The Central Authority has to have regard for the decision of the Supreme Court.

DECLASSIFIED

Ireland's submissions - annexed pursuant to Article 7 paragraph 1 of Joint Action 97/827/JHA

Paragraph 4.2 and Conclusion 7.1.2 The Form of the Warrant and Review Procedures

The Central Authority does not attempt to "review and perfect " an EAW prior to endorsement. Rather, its objective in verifying the warrant and in obtaining the advice of the AG is to ensure that it is in order for presentation to the High Court. The aim of the Central Authority, as advised by the AGO, is compliance, not perfection. Ireland has proceeded on warrants that do not absolutely comply in every detail with the Framework Decision. However, the constitutional right to liberty of a person requires that the form of warrant mandated by law should be substantially complied with and any sloppiness is to be discouraged in this respect. Equally, the High Court judge (JA) would be expected to issue a warrant in accordance with the law. If the law requires certain things in a warrant, the rule of law requires that they be provided. Member States clearly decided that those pieces of information were relevant to a warrant.

The period taken for administrative verification referred to here includes the period taken for the issuing JA to respond to enquiries by the Central Authority. The positive aspect is that an EAW can be sent for endorsement very quickly (1 day) but sometimes it can be considerably longer before the warrant is considered to be in order for endorsement and correspondence with the issuing JA on more than one occasion may be necessary.

Paragraph 7.3.1.11 Persistence of Certain Issues identified

The report on the First Round of Mutual Evaluation (the MLA Report) deals with mutual legal assistance. The issues involved are, in most cases, of a less serious matter than the surrender of a person from one jurisdiction to another, and in the former case the recommendation that the CA and CSSO should deal with the majority of applications has, in fact, been given effect to in this jurisdiction.

RESTREINT UE

The issues involved in EAW cases are more complex and therefore recommendations in relation to mutual assistance practice cannot be assumed to be relevant here.

Recommendation 6: To restrict the mandate of the CA so as to bring it into strict compliance with the role perceived in Articles 7(2), 10(5) and 15(2) of the Framework Decision

The recent decision of the Irish Supreme Court mandated that the role of the Central Authority is to scrutinise warrants to ensure that they are correct in form as well as content before presentation to the High Court. Not to do so may entail additional costs and waste of court time. The Central Authority also must ensure that warrants are clear in the English translations.

The role of the Central Authority vis-à-vis that of the Judicial Authority reflects the nature of the Irish legal system and the independent role of the judiciary and the Courts. Furthermore, under the Irish system the courts have no role in directing investigations or prosecutions. These are matters solely for the Gárda Síochána and the Director of Public Prosecutions respectively. The administrative structure of the courts reflects this division of responsibilities – they are not set up, nor do they have the structures, to carry out the type of functions which the report appears to suggest. These are matters, under the European Arrest Warrant Act, for the Central Authority in the first instance and this is supported by strong dicta from the Supreme Court.

It was explained to the expert team that the Central Authority saw no merit in the argument that a clearly deficient warrant should be presented to the High Court. Where there are obvious flaws in a warrant, it is in the interests of all concerned to have these rectified before the Judicial Authority is requested to endorse the warrant. To do otherwise is to risk the Judicial Authority losing confidence in the Central Authority's ability to ensure that the resources of the court are used properly. The recent Supreme Court case where an oversight in scrutinising a warrant led that court to criticise the Central Authority has vindicated the Central Authority's views on this issue.

RESTREINT UE

There are advantages/reasons for retaining the current system which include the following:

- Article 7.2 of the Framework Decision permits of a CA ‘to assist the competent judicial authority.’ The State notified the Council in respect of the CA as required by Article 7.2. Article 10.5 of the Framework Decision provides as follows:

‘All difficulties concerning **the transmission or the authenticity** of any document needed for the execution of the European arrest warrant shall be dealt with by direct contacts between the judicial authorities involved, or, where appropriate, with **the involvement of the Central Authorities** of the member states’.

This suggests a role for the Central Authority as an alternative to the primary means of resolving difficulties, namely direct contact between judicial authorities.

- Irish High Court judges are not staffed or resourced to make enquiries or requests by direct contact or by direct request in accordance with Articles 10.5 or 15.2. However, Framework Decisions are ‘binding upon Member States as to the result to be achieved but shall leave to the National Authorities a choice of form and methods’ (Article 34 TEU).
- Irish Courts deal with a *lis*. They do not carry out executive or administrative functions suggested by the draft report. The CA is the moving party and must have some proactive role in assembling a presentable case.
- There is a distinct possibility that proceeding with a clearly deficient warrant would result in a rebuke from the Court and an instruction to the CA to bring a warrant to an acceptable level before presenting it in Court.
- Presenting a clearly deficient warrant to the court is likely to result in its rejection and the possibility (although the endorsement hearings are *ex parte*) of a sensitive fugitive being put on notice and absconding
- Court time is very expensive and in short supply

RESTREINT UE

- The application has to be moved by some party and the designated party is the CA which is entitled to have regard to standards in how it behaves. A State party should not make an application before the Courts where they are of the clear view that the application has no chance of success.
- The Attorney General takes a serious approach to his constitutional role and could not advise proceeding to court on a deficient warrant. As guardian of the Constitution of Ireland, the Attorney General has a duty to ensure that the constitutional rights of persons, *inter alia*, to liberty and to due process are stringently observed and vindicated. The courts clearly also have a duty and a role in this regard. However, the function and duty of the courts in this regard is not merely reserved for that body alone.
- The reference to ‘review and perfect’ is a value-charged use of language and the aim of the Central authority, as advised by the Office of the Attorney General, is compliance not perfection. Ireland has proceeded on warrants that do not absolutely comply in every detail with the Framework Decision. Furthermore, the constitutional right to liberty of a person requires that the form of warrant mandated by law should be substantially complied with and that sloppiness is to be discouraged in this respect. Equally, the High Court Judge (JA) would be expected to issue a warrant in accordance with the law. Who can say that a missing piece of information is not material to a case. If the law requires certain things in a warrant, surely the rule of law requires that they be provided. Member States decided that these pieces of information were relevant, otherwise why include them in the Framework Decision. A recent High Court judgement indicates a substantial compliance test. Ireland proceeds with warrants where the essential requirements of the warrant are present. However, warrants indicative of a lack of care could, under Irish Constitutional law, be looked upon adversely by the courts where the liberty of the person is at stake.
- It does not logically follow from the fact that the DPP is willing to amend the EAW template to suit the requirements of the UK (which arguably is not entitled to have peculiar requirements in its EAW form) that this is inconsistent with Ireland adopting a formal approach, complying with the Framework Decision itself, as executing State.

RESTREINT UE

- The authors make a significant quantum leap in asserting that 88 out of 110 EAWs have to be redrafted and that that contributed to only 12 persons being surrendered. This is conflating two issues. A request for redrafting is to ensure a successful application.

Recommendation 7: To reassess whether the endorsement process is necessary, sufficiently rapid and compatible with the Framework Decision and, to the extent that it is not, to consider ways and means to bring the procedures into line with the Framework Decision while respecting the Irish Constitutional System

The Draft Report fails to take sufficient account of the 12th recital of the Framework Decision in referring to Section 37 of the Act.

The last paragraph of the 12th recital of the Framework Decision states that:

‘This Framework Decision does not prevent a Member State from applying its constitutional rules relating to due process, freedom of association, freedom of the press and freedom of expression in other media.’

The reference to applying the constitutional rules of due process was added at the behest of Ireland and, in this respect, the checking of a warrant by Irish Courts before execution was envisaged by the State. Section 37 of the European Arrest Warrant Act 2003, as amended, makes specific provision for the refusal of surrender if that surrender would constitute a contravention of any provision of the Constitution.

Section 37 of the European Arrest Warrant Act 2003, as amended, states:-

“(1) A person shall not be surrendered under this Act if-

- (a) his or her surrender would be incompatible with the State’s obligations under-
 - (i) the Convention [European Convention on Human Rights], or
 - (ii) the Protocols to the Convention,
- (b) his or her surrender would constitute a contravention of any provision of the Constitution...”

RESTREINT UE

A person's constitutional rights must be considered at all times and not merely at the point of surrender. This of itself lends weight to the necessity for and importance of the endorsement process.

By its very nature, the execution of an endorsed EAW by the Garda Síochána places the constitutional right to liberty of the individual at stake. Accordingly it is of utmost importance that the arrest by the Garda Síochána is carried out on foot of a valid warrant. The endorsement process is the most significant step in ensuring that the warrant is, in fact, valid. As a corollary it is paramount that the State should therefore not initiate a process that is fatally flawed.

An aspect of the Attorney General's role as guardian of the public interest is his function in relation to the protection of the constitution and vindication of constitutional rights. This is brought to bear in reviewing EAWs and subsequently advising the Central Authority. In particular it should be noted that:

- If the endorsement phase were to be abandoned technical flaws that might otherwise be addressed would not be picked up until surrender proceedings
- The State would lose the opportunity to identify problems to the High Court Judge (JA) at this stage
- The Court has a duty to uphold the Constitution. Therefore an early involvement through endorsement is the best protection for the State.
- There is also a risk that arresting a person and subjecting them to the surrender process on foot of a flawed warrant could be viewed by the courts as an abuse of process.

The Attorney General takes his constitutional role in protecting the public interest seriously. Advising that a warrant should not proceed to court due to a deficiency, which might otherwise be viewed as an abuse of process, is consistent with that approach. Where the constitutional right to liberty of a person is at stake and, consonant with the view of the courts that the process of extradition derives from a penal statutory code involving penal sanctions on an individual and must therefore be strictly construed, strict regard must be had to the essential requirement that fundamental rights and due process be observed.

RESTREINT UE

Recommendation 11: *To ensure that only grounds for refusal permitted under the Framework Decision and not administrative, typographical or other comparable errors on the face of the EAW are the basis for the refusal of surrender and to limit requests for redrafts or reissue of new EAWs to what is absolutely necessary.*

As previously stated the European Arrest Warrant Act 2003, as amended, is a penal statute and thus will be strictly construed by the State in favour of the person whose constitutional rights are affected.

There would be a considerable difficulty with an absolute restriction on so-called “administrative, typographical and other comparable evidence” being a basis for refusal.

Ireland proceeds with warrants where the essential requirements of the warrant are present, but it has to be recognised that warrants indicative of a lack of care could, under Irish Constitutional law, be looked upon adversely by the courts where the liberty of the person is at stake.

DECLASSIFIED