



DIE BUNDESMINISTERIN
FÜR JUSTIZ

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XXIV. GP.-NR

1693 IAB

15. Juni 2009

zu 1677 IJ

An die

Frau Präsidentin des Nationalrates

Wien

zur Zahl 1677/J-NR/2009

Der Abgeordnete zum Nationalrat Mag. Johann Maier und GenossInnen haben an mich eine schriftliche Anfrage betreffend „Europäischer Haftbefehl – Übergabeverfahren – Anwendung durch Mitgliedstaaten bzw. Österreich in den Jahren 2007 und 2008“ gerichtet.

Ich beantworte diese Anfrage wie folgt:

Zu 1:

Der Europäische Haftbefehl hat sich in den Jahren 2007 und 2008 im Verhältnis zu den Mitgliedstaaten der Europäischen Union bewährt. Der unmittelbare Verkehr zwischen der Ausstellungs- und der Vollstreckungsbehörde und die vorgegebenen Entscheidungsfristen haben den Auslieferungsverkehr zwischen den Mitgliedstaaten beschleunigt. Das dadurch erreichte Niveau konnte weitgehend gehalten werden. Die positive Beurteilung des Europäischen Haftbefehls hat sich nicht geändert.

Zu 2:

Probleme in der Anwendung des Europäischen Haftbefehls bestehen weiterhin in jenen Mitgliedstaaten der Europäischen Union, die dem „common-law“-System angehören, weil in diesen Staaten besondere formelle und inhaltliche Anforderungen an einen Europäischen Haftbefehl gestellt werden, bei deren Fehlen die Vollstreckung abgelehnt wird.

Manche Mitgliedstaaten stellen auch formell zulässige Europäische Haftbefehle wegen Taten aus, die als geringfügig betrachtet werden können. Die Verhängung

der Übergabehaft erweist sich als unverhältnismäßig. Das Übergabeverfahren findet in solchen Fällen in Österreich regelmäßig ohne Haft statt.

Die 4. Runde der gegenseitigen Evaluierung über „die praktische Anwendung des Europäischen Haftbefehls und der entsprechenden Übergabeverfahren zwischen den Mitgliedstaaten“, wurde abgeschlossen. Die Landesberichte wurden veröffentlicht, soweit der betroffene Mitgliedstaat dem zugestimmt hat.

Zu 3:

Seit dem Jahr 2004 wird aufgrund eines einheitlichen Fragebogens vom Generalsekretariat des Rates der Europäischen Union eine europaweite Jahresstatistik über die Anwendung des Europäischen Haftbefehls erstellt. Diese Statistik ist als Ratsdokument öffentlich zugänglich. Darüber hinausgehende Angaben werden nicht erhoben. Da die Daten für das Jahr 2008 noch nicht vollständig sind, wurden sie bislang nicht veröffentlicht.

Die für das Jahr 2007 veröffentlichte englischsprachige Statistik in der aktuellen dritten Revision (eine deutsche Übersetzung ist leider nicht verfügbar) schließe ich der Anfragebeantwortung bei.

Anzahl der bisher von allen Mitgliedstaaten erlassenen Europäischen Haftbefehle

| Mitgliedstaat | 2007 | 2008 |
|-----------------------|------|------|
| Belgien | | |
| Bulgarien | | |
| Tschechische Republik | 435 | |
| Dänemark | 39 | |
| Deutschland | 1785 | |
| Estland | 31 | |
| Griechenland | 83 | |
| Spanien | 588 | |
| Frankreich | 1028 | |
| Irland | 35 | |
| Italien | | |
| Zypern | 20 | |
| Lettland | 97 | |
| Litauen | 316 | |
| Luxemburg | 44 | |
| Ungarn | 373 | |
| Malta | 3 | |
| Niederlande | 403 | |
| Österreich | 495 | 461 |
| Polen | 3473 | |
| Portugal | 117 | |
| Rumänien | 856 | |
| Slowenien | 54 | |
| Slowakei | 208 | |
| Finnland | 84 | |

| | | |
|------------------------|--------------|------------|
| Schweden | 170 | |
| Vereinigtes Königreich | 185 | |
| | | |
| Summe | 10922 | 461 |

Zu 4 und 5:

Statistiken über die Staatsbürgerschaft der mit Europäischen Haftbefehlen gesuchten Personen und über die zugrundeliegenden strafbaren Handlungen werden nicht geführt.

Zu 6:

Anzahl der auf Grund Europäischer Haftbefehle in den Mitgliedstaaten festgenommenen Personen

| Mitgliedstaat | 2007 | 2008 |
|------------------------|-------------|-------------|
| Belgien | | |
| Bulgarien | | |
| Tschechische Republik | 115 | |
| Dänemark | 12 | |
| Deutschland | 714 | |
| Estland | 45 | |
| Griechenland | 106 | |
| Spanien | 929 | |
| Frankreich | 372 | |
| Irland | 97 | |
| Italien | | |
| Zypern | 7 | |
| Lettland | 14 | |
| Litauen | 18 | |
| Luxemburg | 17 | |
| Ungarn | 86 | |
| Malta | 6 | |
| Niederlande | 407 | |
| Österreich | 169 | 177 |
| Polen | 155 | |
| Portugal | 74 | |
| Rumänien | 231 | |
| Slowenien | 36 | |
| Slowakei | 58 | |
| Finnland | 10 | |
| Schweden | 37 | |
| Vereinigtes Königreich | 504 | |
| | | |
| Summe | 4219 | 177 |

Daten, auf Grund welcher Europäischen Haftbefehle die Festnahmen in den Mitgliedstaaten erfolgt sind, liegen nicht vor.

Zu 7:

Statistiken über die Zahl der im Ausland auf Grund Europäischer Haftbefehle festgenommenen österreichischen Staatsbürger werden weder im Bundesministerium für Justiz noch von den Mitgliedstaaten der Europäischen Union geführt.

Zu 8 und 9:

Auf Grund Europäischer Haftbefehle wurden in Österreich im Jahre 2007 insgesamt 169 Personen und im Jahre 2008 insgesamt 177 Personen festgenommen. Die höhere Zahl der übergebenen Personen ergibt sich aus dem Umstand, dass Europäische Haftbefehle auch gegen Personen vollstreckt worden sind, die sich bereits in Österreich wegen hier begangener strafbarer Handlungen in Untersuchungs- oder Strafhaft befunden haben.

Anzahl und Staatsangehörigkeit der von Österreich an Mitgliedstaaten übergebenen Personen

| Mitgliedstaat | 2007 | 2008 |
|-----------------------|---|---|
| Belgien | 6 (Vereinigtes Königreich 2, Bulgarien 1 Polen 1 Rumänien 2) | 3 (Rumänien 2 Türkei 1) |
| Bulgarien | | 2 (Bulgarien 2) |
| Tschechische Republik | 6 (Deutschland 1 Mazedonien 1 Moldau 1 Slowakei 1 Tschechische Republik 1 Staatenlos 1) | 8 (Tschechische Republik 7 Slowakei 1) |
| Dänemark | | |
| Deutschland | 79 (Bulgarien 1 Deutschland 42 Österreich 1 Frankreich 1 Italien 3 Kroatien 4 Mazedonien 1 Nigeria 1 Polen 4 Rumänien 11 Schweiz 1 Serbien 5 Slowakei 1 Türkei 2 Staatenlos 1) | 62 (Albanien 2 Bosnien 1 Bulgarien 3 Deutschland 27 Italien 2 Kenia 1 Kosovo 1 Polen 4 Rumänien 9 Russland 1 Schweiz 1 Serbien 8 Ungarn 2) |
| Estland | | |
| Griechenland | | 1 (Rumänien 1) |
| Spanien | 7 (Albanien 2 Chile 1) | 3 (Portugal 2 Rumänien 1) |

5

| | | |
|------------------------|--|---|
| | Guinea 1 Iran 1 Rumänien 2) | |
| Frankreich | 6 (Bulgarien 2 Italien 1 Rumänien 3) | 8 (Bulgarien 1 Israel 1 Rumänien 5 Serbien 1) |
| Irland | | |
| Italien | 9 (Italien 3 Rumänien 5 Slowakei 1) | 7 (Albanien 1 Dominikanische Republik 1 Italien 1 Mazedonien 1 Rumänien 3) |
| Zypern | | |
| Lettland | | |
| Litauen | 2 (Litauen 2) | 1 (Litauen 1) |
| Luxemburg | | 1 (Kosovo 1) |
| Ungarn | 24 (Griechenland 1 Rumänien 2 Schweden 1 Serbien 1 Ungarn 19) | 30 (Italien 1 Ungarn 29) |
| Malta | | |
| Niederlande | 2 (Bosnien 1 Rumänien 1) | 4 (Niederlande 2 Rumänien 1 Tschechische Republik 1) |
| Österreich | | |
| Polen | 16 (Polen 16) | 24 (Polen 24) |
| Portugal | | |
| Rumänien | 18 (Rumänien 18) | 24 (Staatenlos 1 Rumänien 22 Vereinigtes Königreich 1) |
| Slowenien | 5 (Slowenien 5) | 3 (Slowenien 3) |
| Slowakei | 2 (Slowakei 2) | 4 (Slowakei 4) |
| Finnland | 1 (Vereinigtes Königreich 1) | |
| Schweden | | |
| Vereinigtes Königreich | | |
| Summe | 183 | 185 |

Zu 10:

Im Jahr 2007 hat ein österreichischer Staatsbürger von der Möglichkeit nach § 5 Abs. 6 EU-JZG Gebrauch gemacht und auf sein Recht verzichtet, nicht übergeben zu werden. Im Jahr 2008 hat kein österreichischer Staatsbürger von dieser Möglichkeit Gebrauch gemacht.

Zu 11 und 12:

Im Jahr 2007 wurden in Österreich 495 und im Jahr 2008 461 Europäische Haftbefehle erlassen.

Daten hinsichtlich der den österreichischen Europäischen Haftbefehlen zugrunde liegenden Handlungen und der Staatsangehörigkeit der gesuchten Personen wurden nicht erhoben. Eine Nacherhebung dieser Daten für die im Jahre 2008 erlassenen 461 Europäischen Haftbefehle ist innerhalb der für die Beantwortung dieser Anfrage zur Verfügung stehenden Zeit nicht durchführbar.

Zu 13:

An Österreich wurden im Jahre 2007 insgesamt 47 Personen und im Jahre 2008 insgesamt 28 Personen übergeben.

| Vollstreckungsmitgliedstaat | 2007 | 2008 |
|------------------------------------|-------------|-------------|
| Belgien | | |
| Bulgarien | 1 | |
| Tschechische Republik | | |
| Dänemark | 1 | |
| Deutschland | 18 | 10 |
| Estland | | |
| Griechenland | 2 | |
| Spanien | 3 | |
| Frankreich | 3 | |
| Irland | | |
| Italien | 6 | 4 |
| Zypern | | |
| Lettland | | |
| Litauen | | 1 |
| Luxemburg | | |
| Ungarn | 5 | 2 |
| Malta | | |
| Niederlande | 2 | |
| Österreich | | |
| Polen | 1 | 2 |
| Portugal | 1 | 1 |
| Rumänien | 2 | 6 |
| Slowenien | 1 | 1 |
| Slowakei | | |
| Finnland | | |
| Schweden | 1 | |
| Vereinigtes Königreich | | 1 |
| Summe | 47 | 28 |

Zu 14:

Die tschechische Präsidentschaft hat die Ergebnisse der 4. Runde der gegenseitigen Evaluierung über die praktische Anwendung des Europäischen Haftbefehls in einem

Abschlussbericht zusammengefasst. Der Bericht enthält insgesamt 21 Empfehlungen, die sich die Mitgliedstaaten, EUROJUST, das Europäische Justizielle Netz sowie an den Rat bzw. seine vorbereitenden Organe richten. Die Mitgliedstaaten sollen bis Mitte des Jahres 2011 über die aufgrund der an sie gerichteten Empfehlungen gesetzten Maßnahmen berichten.

Der Abschlussbericht – an dessen Überarbeitung sich Österreich in den untergeordneten EU-Gremien sehr aktiv beteiligt hat – wurde vom Rat für Justiz und Inneres am 5. Juni 2008 angenommen.

Zu 15 und 16:

Die Evaluierung des Europäischen Haftbefehls im Rahmen der vierten gegenseitigen Evaluierungsrunde hat keinen Bedarf für eine geänderte Statistik festgestellt. Neue und erweiterte statistische Anforderungen müssen von allen Mitgliedstaaten angenommen und können nur langfristig umgesetzt werden.

15. Juni 2009



(Mag. Claudia Bandion-Ortner)



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 20 January 2008

**10330/3/08
REV 3**

**COPEN 116
EJN 44
EUROJUST 58**

REVISED INFORMATION NOTE

From : General Secretariat
To : Working Party on Cooperation in Criminal Matters (Experts on the European Arrest Warrant)
No. prev. doc. : 8111/05 COPEN 75 EJN 23 EUROJUST 24, 10330/08 COPEN 116 EJN 44 EUROJUST 58
Subject : Replies to questionnaire on quantitative information on the practical operation of the European arrest warrant – Year 2007

Further to the questionnaire set out in 8111/05 COPEN 75 EJN 23 EUROJUST 24 (see also CM 1309/08), delegations will find in the ANNEX I a compilation of the replies received with regard to the year 2007 and in the ANNEX II replies to the questions 6.2. and 12.

Questions to Member States as issuing States:

| | BE | BG | CZ | DK | DE | EE | EL | ES | FR | IE | IT | CY | LV | LT | LU | HU | MT | NL | AT | PL | PT | RO | SI | SK | FI | SE | UK |
|--|----|----|-----|----|------|----|----|-----|------|----|----|----|-----------------|------------------|----|-----|----|------------------|-----|------|-----|-----|----|------------------|----|------------------|-----|
| 1. How many European arrest warrants have been issued in 2007? | | | 435 | 39 | 1785 | 31 | 83 | 588 | 1028 | 35 | | 20 | 97 ¹ | 316 ² | 44 | 373 | 3 | 403 ³ | 495 | 3473 | 117 | 856 | 54 | 208 ⁴ | 84 | 170 ⁵ | 185 |

¹ LV: 42 were transmitted directly, 97 put into SIS.

² LT: 225 EAW were issued by the Prosecutor General's Office in prosecution cases and 91 EAWs were issued by the Ministry of Justice in conviction matters.

³ NL: Although the data provided relate to the period of 1 January until 31 December 2007, this does not mean that those data do always relate to cases that started in 2007 and/or ended in 2007.

⁴ SK: 19 of them were cancelled.

⁵ SE: 64 arrest warrants issued for the purpose of conducting a criminal prosecution and 106 issued for the purpose of executing a custodial sentence or detention order.

| | BE | BG | CZ | DK | DE | EE | EL | ES | FR | IE | IT | CY | LV | LT | LU | HU | MT | NL | AT | PL | PT | RO | SI | SK | FI | SE | UK |
|---|----|----|----|----|------|----|----|-----|-----|------|----|------------------|------|------------------|----|-----|----|-----|-----|------|-------------------|-----|----|-----|----|-----|----------------|
| 2.1. How many of these European arrest warrants were transmitted via Interpol? | | | 0 | 23 | 1785 | 20 | 74 | 588 | 635 | none | | All | none | 316 | 1 | 328 | 3 | 403 | 495 | 1090 | 10 % | 856 | 53 | 14 | 45 | 164 | 185 |
| 2.2. How many of these European arrest warrants were transmitted via the SIS? | | | 0 | 36 | 1767 | 25 | 68 | 588 | 899 | none | | Not yet in force | none | 641 ⁶ | 24 | 45 | 3 | 403 | 495 | 487 | 80 % ⁷ | - | 4 | 111 | 78 | 164 | 0 ⁸ |

⁶ LT: The answer indicates the number of reports relating to persons wanted for arrest for surrender purposes. Since Lithuania has entered SIS on 1 September 2007, all reports (including those of previous year as well) were transmitted via the SIS.

⁷ PT: However, given that under Circular 4/2004 of the Prosecutor-General judicial authorities send the EAW to National Bureau Sirene and to National Bureau Interpol, some EA Ws transmitted via Interpol may be included in this global percentage.

⁸ UK not part in SIS yet.

| | BE | BG | CZ | DK | DE | EE | EL | ES | FR | IE | IT | CY | LV | LT | LU | HU | MT | NL | AT | PL | PT | RO | SI | SK | FI | SE | UK | |
|---|----|----|----|----|------|------|------|------|------|------|----|------|------|------|----------------|----|----|----|----|----|------|----|----|----|----|----|----------------|---|
| 2.3. How many of these European arrest warrants were transmitted via the VPN of the EJN? | | | 0 | 0 | none | none | none | none | none | none | | None | none | none | 0 ⁹ | 0 | 0 | . | 0 | 25 | none | - | 1 | 0 | 0 | 0 | not applicable | 0 |

⁹ LU: 17 EAWs have been directly transmitted to the competent authorities in the executing MS.

| | BE | BG | CZ | DK | DE | EE | EL | ES | FR | IE | IT | CY | LV | LT | LU | HU | MT | NL | AT | PL | PT | RO | SI | SK | FI | SE | UK |
|--|----|----|------------------|------------------|-----|----|----|----|-----|----|----|-----------------|----|----|----|----|----|------------------|----|-----|----|-----|----|------------------|----|------------------|------------------|
| 3. How many of these arrest warrants resulted in the effective surrender of the person sought? | | | 66 ¹⁰ | 17 ¹¹ | 506 | 14 | 16 | 59 | 345 | 14 | | 4 ¹² | 16 | 60 | 15 | 84 | 1 | 17 ¹³ | 47 | 434 | 45 | 235 | 8 | 71 ¹⁴ | 43 | 22 ¹⁵ | 99 ¹⁶ |

¹⁰ CZ: 34 another cases were concluded in a different way. In 4 cases the execution of EAW was refused - the sentence will be executed in accordance with the domestic law of the executing Member State. In 2 cases the execution of EAW was refused, in 2 cases the execution of EAW was postponed.

¹¹ DK: In addition 3 persons were surrendered as a result of European arrest warrants issued in 2005 and 2006.

¹² CY: In one case the requested person was located and arrested in Cyprus and consequently the EAW was cancelled. In another case the requested person was arrested in Sweden in August 2007, but the proceedings are still pending.

¹³ NL: This figure is not complete.

¹⁴ SK: 46 EAWs issued in 2007 resulted in the effective surrender in 2007, 22 EAWs issued in 2006 resulted in the effective surrender in 2007 and 3 EAWs issued in 2004 resulted in the effective surrender in 2007.

¹⁵ SE: 22 persons were surrendered to Sweden during 2007 regardless of when the EAWs were issued.

¹⁶ UK: Please note that the figure 99 relates to the number of surrenders in the year 2007; however some arrests may have been subject of an EAW from previous years.

Questions to Member States as executing States:

| | BE | BG | CZ | DK | DE | EE | EL | ES | FR | IE | IT | CY | LV | LT | LU | HU | MT | NL | AT | PL | PT | RO | SI | SK | FI | SE | UK |
|---|----|----|-----|------------------|--------------------|----|-----|------|-----|-----|----|----|----|----|----|-----|----|-----------|-----|-----|----|-----|----|----|----|----|------|
| 4. How many European arrest warrants have been received by the judicial authorities of your Member State in 2007? | | | 176 | 28 ¹⁷ | 7248 ¹⁸ | 50 | 153 | 1207 | 504 | 173 | | 37 | 20 | 42 | 21 | 106 | 9 | 482 19 | 243 | 214 | 89 | 274 | 43 | 97 | 12 | 40 | 2534 |

¹⁷ DK: One case was handled pursuant to the surrender procedure between the Nordic countries.

¹⁸ DE: In 2007 DE received via Interpol a total of 3899 "requests for searching a person" by States that apply the European arrest warrant, but do not participate in the SIS. Furthermore, 7248 requests were received on the basis of European arrest warrants that had been transmitted via SIS.

¹⁹ NL: In 16 cases an EAW has been withdrawn in a later stage, even where the person sought had been arrested.

| | BE | BG | CZ | DK | DE | EE | EL | ES | FR | IE | IT | CY | LV | LT | LU | HU | MT | NL | AT | PL | PT | RO | SI | SK | FI | SE | UK |
|--|----|----|-----|------------------|-----|----|-----|-------------------|-----|----|----|----|----|----|----|----|-----------------|-----|-----|-----|-----------------------|-----|----|----|----|------------------|-------------------|
| 5.1. How many persons have been arrested under a European arrest warrant in your country? | | | 115 | 12 ²⁰ | 714 | 45 | 106 | 929 | 372 | 97 | | 7 | 14 | 18 | 17 | 86 | 6 ²¹ | 407 | 169 | 155 | 74 | 231 | 36 | 58 | 10 | 37 ²² | 504 |
| 5.2. How many have been effectively surrendered? | | | 108 | 14 ²³ | 571 | 40 | 70 | 715 ²⁴ | 308 | 49 | | 6 | 14 | 18 | 9 | 78 | 2 ²⁵ | 355 | 183 | 105 | 80 / 89 ²⁶ | 237 | 25 | 53 | 9 | 32 | 328 ²⁷ |

²⁰ DK: In 6 cases the persons were already arrested in connection with Danish investigations and in 1 case the person deposited his passport at the police. In 1 case the person was arrested in Sweden in 4 cases the persons could not be located and in 3 cases the persons were located but not arrested.

²¹ MT: MT had originally 9 requests for arrest under a EAW, however, out of these only 6 were actually arrested due to the fact that 3 were not in Malta.

²² SE: This figure includes 7 persons who were already deprived of their liberty in Sweden, either by serving a custodial sentence or in detention within the scope of a Swedish pre-trial investigation. 1 of the 40 cases concerned extended surrender.

²³ DK: In 4 cases the surrender has been postponed.

²⁴ ES: 715 (out of 937) (including requests relating to the same person).

²⁵ MT: 4 have pending proceedings and surrender has been postponed.

²⁶ PT: 6 surrenders took place in 2008 in relation to EAWs received in 2007.

²⁷ UK: As before 328 figures relates to the number of surrenders for 2007 but that some of these surrenders could relate to EAWs and arrests from previous years dependent on the length of the time between arrest and extradition.

| | BE | BG | CZ | DK | DE | EE | EL | ES | FR | IE | IT | CY | LV | LT | LU | HU | MT | NL | AT | PL | PT | RO | SI | SK | FI | SE | UK | |
|--|----|----|----|----|-----|----|----|-----|-----|----|----|----|----|----|----|----|----|-----|-----|----|-------|-----|----|----|----|----|----|---------------|
| 5.3. Of those surrendered, how many consented to the surrender? | | | 81 | 5 | 325 | 19 | 45 | 332 | 184 | 28 | | 5 | 6 | 16 | 8 | 67 | 2 | 86 | 147 | 54 | 63/74 | 170 | 18 | 19 | 3 | 16 | | ²⁸ |
| 5.4. Of those surrendered, how many did not consent to the surrender? | | | 38 | 9 | 245 | 21 | 25 | 483 | 124 | 21 | | 1 | 8 | 2 | 2 | 11 | 4 | 269 | 36 | 51 | 11/74 | 57 | 7 | 34 | 8 | 24 | | ²⁹ |

²⁸ UK: This information is not available immediately but will be submitted at a later date once collation is completed for the data.

²⁹ UK: This information is not available immediately but will be submitted at a later date once collation is completed for the data.

| | BE | BG | CZ | DK | DE | EE | EL | ES | FR | IE | IT | CY | LV | LT | LU | HU | MT | NL | AT | PL | PT | RO | SI | SK | FI | SE | UK | |
|---|----|----|----|-----------------|-----|----|----|----|----|----|----|----|----|----|----|----|---------|----|----|----|--------|----|----|----|----|----|----|--------------|
| 6.1. In how many cases have the judicial authorities of your Member State refused the execution of a European arrest warrant? | | | 11 | 1 ³⁰ | 108 | 7 | 24 | 26 | 22 | 1 | | 5 | 3 | 2 | 5 | 13 | 0 | 55 | 20 | 32 | 3 / 89 | 37 | 8 | 11 | 0 | 1 | 70 | |
| 6.2. Which were the grounds for refusal? | | | | | | | | 31 | | 32 | | 33 | | 34 | | | N/ A | | | | 35 | | | 36 | | 37 | | Not collated |

³⁰ DK: In 2 cases DK did not surrender the person but took over either the prosecution or the enforcement of a sentence.

³¹ ES: Ne bis in idem, double criminality, criminal prosecution is statute-barred.

³² IE: Multiple warrants listing different offences (currently being appealed).

³³ CY: The issuing states have been informed that the execution of the EAWs was not possible, because they concerned Cypriot nationals and the alleged offences had been committed before the 1 of May 2004.

³⁴ LT: ne bis in idem, double criminality

³⁵ PT: Lack of dual criminality (1), refusal of surrender of national and enforcement of the sentence in Portugal (2)

³⁶ SK: The criminal prosecution or punishment of the requested person was statute-barred / the criminal offence was considered as committed in the territory of the Slovak republic / the offence was not considered as a criminal offence under the laws of the Slovak Republic (where the verification of dual criminality is allowed).

³⁷ SE: The EAW was incomplete and was not completed upon request.

| | BE | BG | CZ | DK | DE | EE | EL | ES | FR | IE | IT | CY | LV | LT | LU | HU | MT | NL | AT | PL | PT | RO | SI | SK | FI | SE | UK |
|--|----|----|----|----------------------|-----------|----|--------------|---------|--------|--------|----|--------------|---------------------|---------|--------------------------|----------------|--------|--------------------------|---------|---------------------------|---------|---------|--------|-----------------|--------------|-----------------------|-----------|
| 7.1. How long does a surrender procedure take in average where the person agreed to the surrender (time between the arrest and the decision on the surrender of the person sought)? | | | 60 | 9 days ³⁸ | 14.3 days | 7 | 10 - 30 days | 12 days | 9 days | 1 week | | 10 - 15 days | Approx. 5 - 10 days | 1 month | 3 - 9 days ³⁹ | Approx. 7 days | 7 days | 3 / 9 days ⁴⁰ | 23 days | from 3 days up to 90 dyss | 16 days | 10 days | 8 DAYS | approx. 27 days | 26 - 35 days | approximately 15 days | Av. 8 day |

³⁸ DK: (5 cases) from either the time of arrest or from the receipt of all necessary information (if later than the time of arrest) to the decision on surrender was made.

³⁹ LU: 3 - 9 days (arrest - effective surrender; in Luxembourg no specific decision if consent).

⁴⁰ NL: In 2007, the average duration of a simplified surrender from persons arrested in the border regions was 3 days and persons from Amsterdam was 9 days.

| | BE | BG | CZ | DK | DE | EE | EL | ES | FR | IE | IT | CY | LV | LT | LU | HU | MT | NL | AT | PL | PT | RO | SI | SK | FI | SE | UK |
|---|----|----|----|-----------------------|-----------|----|--------------|---------|---------|----|----|--------------|---------------------|----------|---------------------|-----------------|---|---------|---------|-----------------------------|---------|---------------|---------|------------------|--------------|-----------------------|---------------|
| 7.2. How long does a surrender procedure take in average where the person did not consent to the surrender (time between the arrest and the decision on the surrender of the person sought)? | | | 83 | 25 days ⁴¹ | 40.4 days | 25 | 10 - 60 days | 38 days | 34 days | - | | 35 - 40 days | Approx. 5 - 10 days | 2 months | 25 days (no appeal) | Approx. 30 days | 30-60 days depending on whether an appeal has been lodged | 74 days | 47 days | from 7 days to over 90 days | 43 days | Up to 50 days | 27 DAYS | approx. 53 days. | 38 - 55 days | approximately 60 days | ⁴² |

⁴¹ DK: (9 cases) from either the time of arrest or from the receipt of all necessary information (if later than the time of arrest) to the decision on surrender was made.
⁴² UK: It is not possible to provide statistic on the average time for extradition where an does not consent as this can only be looked at on a case by case basis. The length of time can vary dramatically from a number of days to months or over a year dependent on the appeals procedure.

| | BE | BG | CZ | DK | DE | EE | EL | ES | FR | IE | IT | CY | LV | LT | LU | HU | MT | NL | AT | PL | PT | RO | SI | SK | FI | SE | UK | |
|--|----|----|----|------|------|------|-------------|----|----|----|----|------|------|------|------|----|-----|----|----|----|----|----|----|----|----|----|----|---------|
| 8.1. In how many cases were the judicial authorities of your Member State not able to respect the 90-days time limit for the decision on the execution of the European arrest warrant according to Article 17(4) of the Framework Decision? | | | 24 | 2 | 27 | none | 1 | 3 | 1 | 31 | | none | none | none | none | 0 | 0 | 1 | 3 | 5 | 3 | 3 | 0 | 1 | 0 | 2 | | N/ A |
| 8.2. In how many of those cases was Eurojust informed? | | | 16 | none | none | none | in one case | - | 1 | 31 | | none | none | none | none | 0 | n/a | 43 | 1 | 0 | 3 | 3 | 0 | 1 | 0 | 2 | | N/ A |

43 NL: Eurojust is informed on a regular basis on the application of the FD EAW in the Netherlands and complications are discussed.

| | BE | BG | CZ | DK | DE | EE | EL | ES | FR | IE | IT | CY | LV | LT | LU | HU | MT | NL | AT | PL | PT | RO | SI | SK | FI | SE | UK | | |
|---|----|----|----|------|------|------|----|------|----|------|----|------|------|------|------|----|-----|----|----|----|------|------|----|----|----|----|----|-----|-----|
| 9.1. In how many cases were the judicial authorities of your Member State not able to respect the 10-days time limit for surrender according to Article 23(2) of the Framework Decision? | | | 5 | 8 | 291 | none | - | 64 | 24 | 5 | | none | none | 2 | none | 0 | n/a | 74 | 10 | 15 | none | none | 1 | 0 | 0 | 0 | 0 | N/A | N/A |
| 9.2. In how many of those cases was the person released, according to Article 23(5) of the Framework Decision? | | | 0 | none | none | none | - | none | 1 | none | | none | none | none | none | 0 | n/a | 0 | 0 | 0 | N/A | none | 1 | 0 | 0 | 0 | 0 | N/A | N/A |

| | BE | BG | CZ | DK | DE | EE | EL | ES | FR | IE | IT | CY | LV | LT | LU | HU | MT | NL | AT | PL | PT | RO | SI | SK | FI | SE | UK | |
|--|----|----|----|----|----|----|------------------|------------------|----|----|----|------|----|----|--------------|----|----|----------------------|----|----|------------------|---------------------|----|----|----|----|----|----|
| 10.1. In how many cases did the judicial authorities of your Member State execute an arrest warrant with regard to a national or resident of your Member State? | | | 5 | 4 | 92 | 36 | 13 ⁴⁴ | 35 ⁴⁵ | 93 | 8 | | none | 14 | 16 | 1 x national | 25 | 5 | 96 + 5 ⁴⁶ | 1 | 83 | 22 ⁴⁷ | In 90% of the cases | 2 | 45 | 1 | | 10 | 48 |

⁴⁴ EL: 13 cases with regard to a Greek national.

⁴⁵ ES: 35 granted; 20 surrenders.

⁴⁶ NL: 96 nationals and 5 persons who are regarded as equivalent to nationals.

⁴⁷ PT: Information only available as concerns nationals.

⁴⁸ UK: This is not known however if a request is received for the extradition of a UK national to another Member State the warrant will be executed.

| | BE | BG | CZ | DK | DE | EE | EL | ES | FR | IE | IT | CY | LV | LT | LU | HU | MT | NL | AT | PL | PT | RO | SI | SK | FI | SE | UK |
|---|----|----|----|----|----|----|----|----|----|------|----|------|----|----|----|----|-----|-----|----|----|---------------|---------------------|----|----|----|----|-----|
| 10.2. In how many of those cases did the judicial authorities of your Member State request a guarantee under Article 5(3) of the Framework Decision? | | | 0 | 1 | 17 | 36 | 5 | 17 | 5 | none | | none | 14 | 49 | 0 | 25 | n/a | 101 | 0 | 55 | not available | In 30% of the cases | 0 | 0 | 1 | 8 | N/A |

⁴⁹ LT: To all citizens of Lithuania.

| | BE | BG | CZ | DK | DE | EE | EL | ES | FR | IE | IT | CY | LV | LT | LU | HU | MT | NL | AT | PL | PT | RO | SI | SK | FI | SE | UK | | |
|--|----|----|----|------|----|------|----|----|----------------|----|----|------|------|------|----|-----|---------------|----|----|----|-----------------------|----|----|----|----|----|-----------------|-----|--------------|
| 11. In how many cases have the judicial authorities of your Member State requested additional guarantees under Article 5(1) or Article 5(2) of the Framework Decision? | | | 1 | none | - | none | - | 2 | no information | - | | none | none | none | 3 | n/a | ⁵⁰ | 0 | 0 | 1 | at least 1 under 5(2) | | 0 | 0 | 0 | 0 | 3 ⁵¹ | N/A | |
| 12. Is there any other information regarding the operation of the European arrest warrant that you would like to give? | | | | | | | | | | | | no | no | no | | | no | | | | | | | | | | | no | |
| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Cf. Annex II |
| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Cf. Annex II |
| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Cf. Annex II |
| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Cf. Annex II |
| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Cf. Annex II |

⁵⁰ NL: Data related to the number of requested guarantees as provided for in Article 5 (1) are not available. The Netherlands does not require a guarantee as provided for in Article 5 (2).

⁵¹ SE: Data related to the number of requested guarantees as provided for in Article 5 (a) are not available. Sweden does not require a guarantee as provided for in Article 5 (2).

ANNEX I

Replies to question 6.2

*"Which were the grounds for refusal?"*ESTONIA

Ground for refusal in three cases was the wrong based description of the crime and proved non connection of the persons with those crimes.

- In one case the arrested person was finally convicted and the imposed punishment was served, but the person was still "wanted" by Interpol.
- One European arrest warrant was issued regarding an Estonian citizen for the execution of imprisonment and the person applied for enforcement of the sentence in Estonia.
- Execution of two received European arrest warrants were refused as the persons were suspected in criminal offence which is punishable less then one year of imprisonment.

LATVIA

- Where the person who is the subject of the European arrest warrant is being prosecuted in the executing State for the same act as that on which the European arrest warrant is based
- The European arrest warrant has been issued for the purpose of execution of custodial sentence, where the requested is a national of the sentence or detention order in accordance with its domestic law.

LUXEMBOURG

- 4 x offences perpetrated before the 8 August 2002
- 1 x absence of dual criminality (offence not covered by the list of 32 offences)

POLAND

- lack of double criminality,
- parallel prosecutions conducted in Poland and other EU Member State, concerning the same person against whom the EAW was issued, and the same acts,
- Polish citizenship of the person against whom EAW concerning execution of the sentence was issued,
- the place of residence or the place of stay on the Polish territory of the person against whom the EAW was issued,
- offences committed on the part of Polish territory,
- ne bis in idem,
- prescription of offences,
- the offence was not covered under FD on EAW,
- the prosecuted person could not be identified according to information given by the issuing state,
- EAW concerned the judgement which was not binding and final and the penalty was conditionally suspended.

FRANCE

I. The net reduction in the number of European arrest warrants issued by the French authorities between 2006 (1552) and 2007 (1028) is due mainly to the completion of the process of changing alerts under Article 95 of the Schengen Convention into European arrest warrants undertaken by the French authorities following the entry into force of the Law of 9 March 2004.

II. French judicial authorities have refused to execute a European arrest warrant in the following cases:

1. persons subject to a European arrest warrant have been prosecuted in France for the same offences as those in respect of which the European arrest warrant was issued;
2. the European arrest warrant has been issued for the purpose of execution of a custodial sentence in respect of a French national and the executing authority undertakes to enforce the sentence or grounds for detention pursuant to national law;
3. the European arrest warrant has been issued for an offence that does not constitute a punishable act under French law;
4. the European arrest warrant is incomplete and there has been no response to the request for additional information;
5. the European arrest warrant has been revoked by the issuing State;
6. the alleged crimes were committed prior to 1 November 1993.

HUNGARY

- prescription: 5 cases
- surrender requested of own national for execution of a sentence: 4 cases
- the arrested person was not identical with the person sought: 1 case
- there were criminal proceedings in course in Hungary for the same offences: 3 cases

GERMANY

- The wanted person is not in Germany: 1
- The European arrest warrant does not meet the formal requirements: 6
- The offence is not punishable under the law of the requesting State by a custodial sentence for a maximum period of at least 12 months: 1
- The remaining custodial sentence to be executed is of less than 4 months: 2

- The wanted person has already been finally convicted of the same offence in another Member State: 1
- Execution is requested on the basis of a judgment rendered in absentia without the authorised conditions pursuant to Article 5(1) of the Framework Decision being met.: 2
- Double criminality is absent in the case of an offence that is not listed in Article 2(2) of the Framework Decision: 2
- Extradition would be a violation of German public order: 4
- Criminal proceedings are being brought in Germany against the wanted person for the same offence: 5
- The institution of criminal proceedings for the same offence has been disallowed or proceedings already instituted have been halted: 6
- An alien customarily resident in Germany has not agreed to extradition for the purpose of enforcement of the penalty: 11
- There is no guarantee that a German national extradited for the purpose of criminal prosecution will be returned to serve his sentence: 2
- In the case of a German national accused of an offence, there is a significant link within the meaning of Article 80(2) of the Law on international legal assistance in criminal matters (IRG): 6
- A German national has not agreed to be extradited for the purpose of execution of sentence abroad: 55

GREECE

Mistaken identity (1 case), sentence executed in Greece in respect of acts different from those for which EAW was issued (1 case), failure of the issuing Member State to provide information requested (1 case), article 11 par. d L. 3251/2004 (2 cases), article 11 par. f (7 cases), article 11 par. g(i) (3 cases), article 11 par. h (4 cases), article 12 par. a (2 cases), article 12 par. b (1 case), article 28 par.1 (1 case), article 24 par.1 (1 case).

ROMANIA

Romanian courts have effectively refused the execution of EAW:

1. Where the persons who is the subject of the European arrest warrant is being/has been prosecuted in Romania for the same act as that on which the European arrest warrant is based;
2. The European arrest warrant has been issued relating to the offence with was not a criminal offence in accordance with Romanian law.
4. Incompleteness of the European arrest warrant.
5. European arrest warrant was revoked by the country that issued it.
6. The person sought was not present on the Romanian territory.
7. Status of limitation.
8. Identity of the person sought.

CZECH REPUBLIC

- (1) Act does not constitute an offence under the CZ law
- (4) Czech national - act committed before 1.11.2004
- (4) person is prosecuted for the same act as that on which the EAW is based
- (2) requested person is a national and ERAW has been issued for purposes of execution of a custodial sentence

AUSTRIA

Retraction/revocation (3), Austrian citizen (2), No arrest warrant despite transmission of alert (4), not legally punishable (3), domestic case (2), abscondment (1), res iudicata (1)

THE NETHERLANDS

The public prosecutor in Amsterdam refused the execution of an EAW for the following reasons:

- Incompleteness of the EAW: 2;
- Art. 2(4): 5 ;
- Art. 4(4): 3;
- Art. 4(6): 6;

- Art. 5 (1),: 1;
- Previous extradition request had been granted for the same offences and there was now a concurrent EAW: 1;
- Human rights clause, lack of an effective remedy: 1;
- The offence carried less than 12 months imprisonment: 7.

The District Court in Amsterdam refused the execution of an EAW for the following reasons:

- Incompleteness of the EAW: 8;
- Art. 2(4): 2, and, in combination with other grounds for refusal: 1;
- Art. 4(5): 1;
- Art. 5(1), Lack of guarantee: 1 and, insufficient guarantee, because it was unclear whether the person would have the right on retrial after his return: 2 ;
- Art. 5(3): lack of guarantee: 2 ;
- EAW withdrawn by the issuing judicial authority: 9;
- The person claimed did not appear in court and it was unknown whether he was still in The Netherlands: 2;
- The person sought had served the remainder of the sentence imposed while being in detention for the purpose of surrender: 1.

SLOVENIA

3 cases lapse of time

2 cases: EAW refused because the offence was committed prior to 7.8.2002 and the claimed person was Slovenian citizen.

1 case: issuing authority did not confirm the identity of the concerned person (see under point 12)

1 case: Article 12 point e) of the European arrest warrant and surrender procedures between Member States Act (the EAW was issued for a criminal offence that is not punishable in domestic criminal legislation)

1 case: did not comply with the conditions from Criminal Procedure Act

DENMARK

The Danish Act on Extradition Section 10 A, subparagraph 2, (principle of double criminality), cf. Article 2, subparagraph 4, in the Council Framework Decision on the European Arrest Warrant and the surrender procedures between Member States. The European Arrest Warrant concerned the omission to pay child support.

ANNEX II

Replies to question 12:

"Is there any other information regarding the operation of the European arrest warrant that you would like to give?"

POLAND

Some courts indicated that the periods described in art. 2 (1) FD on EAW should be much longer than the binding ones. Some other courts raised the difficulties appearing in cooperation with other Member States (e.g. short time required for translating and providing other judicial authorities with additional documents and information, lack of information on the content of other Member States courts' decisions concerning execution of EAW, requiring issuing new EAWs in case of any doubts as for their contents, requiring additional information that is not envisaged in the FD on EAW).

FINLAND

In some cases the EAW-form has not been filled in completely and it has not included all the relevant information; e.g. description of the circumstances of the case.

CZECH REPUBLIC

25 cases were concluded in different way (e.g. withdrawal of EAW, person was located on the territory of another Member State etc.) In 12 cases the surrender was postponed. In 15 cases the consent was given with the prosecution for other offences. In 4 cases the procedure have not been yet closed.

THE NETHERLANDS

Overview of the Member States from whom EAW's were received

| MEMBER STATE | NUMBER | MEMBER STATE | NUMBER |
|----------------|--------|-----------------|--------|
| Belgium | 123 | Latvia | 0 |
| Cyprus | 0 | Lithuania | 8 |
| Danmark | 2 | Luxemburg | 0 |
| Germany | 126 | Malta | 0 |
| Estonia | 1 | Austria | 7 |
| Finland | 2 | Poland | 81 |
| France | 38 | Portugal | 5 |
| Greece | 3 | Slovenia | 0 |
| United Kingdom | 14 | Slovak Republic | 0 |
| Hungary | 19 | Spain | 8 |
| Ireland | 1 | Czech Republic | 2 |
| Italy | 34 | Sweden | 1 |
| Bulgaria | 2 | Rumania | 5 |

SLOVENIA

District court Ljubljana noticed some difficulties regarding establishing identity of concerned person. They recommend indicating in the EAW handbook by what means can be the identity of the concerned person established. In one particular case the EAW was issued for the person to whom the passport was stolen and the theft was reported. The offender has obviously identified him by the stolen passport what was confirmed also by the fact that the enclosed photography of the offender did not correspond to the person arrested. From EAW was legible the residence of the concerned person but issuing state did not make inquiries about actual residence of the concerned person and also did not sent EAW directly to the competent authority in the state where person had permanent residence and employment.