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THE EUROPEAN UNION**

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**COPEN 97
EJN 32
EUROJUST 39**

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
9200/1/12 REV 1 COPEN 97 EJN 32 EUROJUST 39

Subject : Replies to questionnaire on quantitative information on the practical operation of the European arrest warrant – Year 2011

Further to the questionnaire set out in 8111/05 COPEN 75 EJN 23 EUROJUST 24, delegations will find in ANNEX a compilation of the replies received with regard to the year 2011 and in ANNEX I and ANNEX II the replies to 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 2011 ?			518		2138	67		531	912	71		26								3089			53	350		198	
																										1	

¹ SE: (97 issued for the purpose of conducting a criminal prosecution and 101 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?			none		1625	8		531	560	none		all								2853			32	33		198	

	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
2.2. How many of these European arrest warrants were transmitted via the SIS?			none		2138	67		531	774	none		none								3158			16	317		198	

	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?			none		none	none	none	none	none	none		none								57			none			not applicable	

	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?			238 2		855 3	31		99 4	297	19		8							930				16	105		69 ⁵	

² CZ: 90 + 16 cases from 2007 + 17 cases from 2008 + 22 cases from 2009 + 93 cases from 2010.

³ DE: No distinction is drawn according to whether the surrenders took place on the basis of a European arrest warrant transmitted in 2011, 2010 or earlier.

⁴ ES: No distinction is drawn according to whether the surrenders took place on the basis of a European arrest warrant transmitted in 2011 or earlier.

⁵ SE: Regardless of when the EAWs were issued, 69 persons were surrendered to Sweden during 2011.

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 2011?			302		14034 ⁶	49		1435	1102	384		51								296			110	88			163	

⁶ DE: In 2011, a total of 14 034 alerts on the basis of a European arrest warrant were issued by Member States connected to the Schengen Information System (not including Germany - see 2.2 above). A total of 177 search requests were received via Interpol from States which use the European arrest warrant but do not participate in the Schengen Information System.

	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?			291 7		1082 ⁸	41		1187	906	1003 ⁹		24								246			108	58		151 10	
5.2. How many have been effectively surrendered?			238 11		979	39 ¹²		889	756	601 13		20								186			79	48		137	

⁷ CZ: 258 + 33 imprisonment.

⁸ DE: This number includes cases in which the requested person was already in German custody either serving a sentence or remanded in custody, so there was no arrest, just superimposed detention where appropriate. In the reporting period, there were 1 161 cases in which a decision was taken on extradition on the basis of a European arrest warrant.

⁹ IE: Numbers arrested - cumulative since 2004.

¹⁰ SE: This figure includes 11 persons who were already deprived of their liberty in Sweden, i.e. 140 were deprived their liberty due to a EAW.

¹¹ CZ: 197. + 1 case from 2007. + 3 cases from 2008. + 7 cases from 2009. + 30 cases from 2010.

¹² EE: 6 of the received EAW's issued for the extension of surrender, in 2 cases the EAW was withdrawn, 1 person released as EAW has not been forwarded in time and 1 person doesn't have connections with Estonia.

¹³ IE: Effectively surrendered - cumulative since 2004.

	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?			139 14		565	37	453	448	307 15	19										111			65	34			70	
5.4. Of those surrendered, how many did not consent to the surrender?			99 16		414	4	436	308	294 17	1										75			14	14			67	

¹⁴ CZ: 121 + 1 case from 2007 + 3 cases from 2008 + 1 case from 2009 + 13 cases from 2010.

¹⁵ IE: Consented - cumulative since 2004.

¹⁶ CZ: 76 + 6 cases from 2009 + 17 cases from 2010.

¹⁷ IE: No consent - cumulative since 2004.

	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?			12		135 18	none		50	73	116 ¹⁹		1								60			25	4			7

¹⁸ DE: In (the other) 47 cases the European arrest warrant was withdrawn.

¹⁹ IE: Surrender refused - cumulative since 2004.

	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
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6.2. Which were the grounds for refusal?			Cf. Annex I		Cf. Annex I			Cf. Annex I	Cf. Annex I	Cf. Annex I										Cf. Annex I			Cf. Annex I			Cf. Annex I	
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	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)?			40		15,1 days	8		14	9 days	4 weeks ²⁰		10-15 days								17 days			1-54 days	31 days		approximately 14 days	

²⁰ IE: Currently 4 weeks for a case in which the subject immediately consents to surrender on arrest.

	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)?			64		37 days ²¹	11		45	25 days	5,5 months ²²		35-40 days								21 days			22 days - 3 months 25 days	61			approximately 63 days	

²¹ DE: In the abovementioned proceedings in which the requested person is in custody in Germany either serving a sentence or remanded in custody, the relevant period is counted only from the moment the person is detained solely for the purposes of extradition.

²² IE: For a typical case.

	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?			9		20	none		15	9	310 ²³		none								3		6	1			3	

²³ IE: Statistics available from 2007 only. Time limits - cumulative since 2007.

	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
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8.2. In how many of those cases was Eurojust informed?			2		none ²⁴	none		none	²⁵	310 ²⁶		none								1		none	1				3
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²⁴ DE: Pursuant to Section 83 c paragraph 4 of the German Law on International Legal Assistance in Criminal Matters, Eurojust must only be informed in exceptional circumstances. None of the cases concerned exceptional circumstances.

²⁵ FR: The Ministry of Justice has not been informed of these cases and hence has not been able to inform Eurojust thereof.

²⁶ IE: Time limits - notification to Eurojust. - Cumulative since 2007.

	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
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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?			3		468 ²⁷	none		154	12	none		none								22			16					1			none	
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DE: If surrender is performed by land, the federal system in Germany means that the law enforcement authorities of all *Länder* through the territory of which the requested person is to travel to be involved. This leads to delays. As a rule, however, the 10-day time limit is only slightly exceeded. The majority of surrenders were to Poland. The timely taking over of requested persons by the Polish authorities is not always guaranteed.

	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
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9.2. In how many of those cases was the person released, according to Article 23(5) of the Framework Decision?			none			none		none	²⁸	none		none								none			none				none	
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²⁸ FR: This figure is not known by the Ministry of Justice.

	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?			48 ²⁹		81 ³⁰	24		25	96	180 ³¹		none								94			7	25 ³²			17	

²⁹ CZ: 42 nationals + 6 residents.

³⁰ DE: 65 arrest warrants were executed against German nationals and 16 arrest warrants were executed against persons resident in Germany. In 26 cases, German nationals were surrendered.

³¹ IE: Nationals - cumulative since 2004.

³² SK: The judicial authorities of the Slovak Republic executed EAWs with regard to Slovak nationals in 25 cases. The Slovak Republic does not investigate the residence of arrested persons.

	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?			38 33		42 ³⁴	24		24	7	none		none								51				3	no statistics available		9	

³³ CZ: 33 nationals + 5 residents.

³⁴ DE: 26 cases concerning German nationals, 16 cases concerning foreign nationals, see 10.1.

	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?			none		none	none		18	statistics not available			none								4			4	No statistics available			35	

³⁵ SE: Data related to the number of requested guarantees as provided for in Article 5 (1) are not available. Sweden does not require a guarantee as provided for in Article 5 (2).

	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
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12. Is there any other information regarding the operation of the European arrest warrant that you would like to give?			Cf. Annex II		Cf. Annex II	no		no	Cf. Annex II	Cf. Annex II		no								Cf. Annex II			no			no	
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Replies to question 6.2

"Which were the grounds for refusal?"

GERMANY

- The requested person was not in Germany: 7
- The European arrest warrant did not satisfy the formal requirements: 6
- The offence was not liable to a maximum custodial sentence of at least 12 months under the law of the requested Member State: 1
- The requested person had already been convicted of the same offence in another Member State by a judgment having the force of *res judicata*: 1
- Execution was requested on the basis of a judgment *in absentia* without the admissible conditions pursuant to Article 5 of the Framework Decision having been fulfilled: 18
- Prosecution or enforcement of the sentence was statute-barred under German law: 19
- There was no double criminality for an offence not included in the list in Article 2(2) of the Framework Decision: 9
- Extradition would have violated European public policy (*ordre public*): 1
- The requested person was being prosecuted in Germany for the same offence: 1
- It cannot be presumed that the requesting State would grant a similar request from Germany (non-reciprocity): 1
- An alien who had his habitual residence in Germany did not consent to extradition for the purposes of execution of the sentence: 22
- A German national did not consent to extradition for the purposes of execution of the sentence: 44
- The instigation of criminal proceedings for the same offence as that on which the request was based had been refused, or criminal proceedings which had already been instigated for the same offence as that on which the request was based had been abandoned: 2
- An extradition request from a third State had been given priority: 3

SLOVAK REPUBLIC

- withdrawal of EAW by the issuing state
- the act on which the European arrest warrant is based does not constitute an offence under the law of the Slovak Republic

IRELAND

- Correspondence could not be established
- Issuing state could not provide guarantee of retrial
- Cumulative sentence on multiple offences where correspondence could not be established for one offence
- Invalid warrant (not signed by judicial authority)
- *Non refoulement*. Subject granted asylum from requesting state.
- Article 26 of the Framework Decision. The Court decided that, as the subject had been held in custody in this jurisdiction for the same time period as that to which he had been sentenced, there was no longer an outstanding sentence to be served and the warrant was void.
- Identification
- Health
- Extraterritoriality

CZECH REPUBLIC

(5) Act does not constitute an offence under the CZ law.

(1) Czech national - act committed before 1.11.2004.

(11) Person is prosecuted for the same act as that on which the EAW is based.

(4) Requested person is the national and the EAW has been issued for the purposes of execution of a custodial sentence.

SPAIN

Criminal prosecution is statute-barred, double criminality, ne bis in idem, the person was being prosecuted in Germany for the same offence, a Spanish national did not consent to surrender for the purposes of execution of the sentence.

SWEDEN

- The statutes of limitation in Swedish law (2).
- The arrest warrant concerned a custodial sentence and the wanted person was a Swedish national that demanded that the sanction should be enforced in Sweden (3).
- Not a crime according to Swedish law/Dual criminality could not be established (1).
- The court did not accept that the material provided from the issuing authority (inter alia the extract from the relevant laws) meant that the person in question was guaranteed the right to a new trial (1).

POLAND

- the requested person has been finally judged by a Member State in respect of the same acts provided that, where there has been a sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State (art. 3 (2) EAW Framework Decision);
- parallel prosecutions conducted in Poland, concerning the same person against whom the EAW was issued, and the same acts (art. 4 (2) of the EAW Framework Decision);
- the offence was committed on the territory of Poland according to Polish law (art. 4 (7)(a) of the EAW Framework Decision);
- the European arrest warrant has been issued for the purposes of execution of a custodial sentence or detention order, where the requested person is staying in, or is a national or a resident of the executing Poland and Poland undertakes to execute the sentence or detention order in accordance with Polish law (art. 4 (6) of the EAW Framework Decision);

- a person who is the subject of a European arrest warrant is a national or resident of Poland and the condition that the person be returned in order to serve the custodial sentence or detention order was not met (art. 5(3) of the EAW Framework Decision);
- the European arrest warrant was issued for a purpose other than conducting a criminal prosecution or executing a custodial sentence or detention order (art. 1(1) of the EAW Framework Decision *a contrario*).

SLOVENIA

Paragraph 4 of the Article 4 of the Framework Decision (lapse of time); withdrawal (revocation) of the EAW; paragraph 2 of the article 3 of the Framework Decision, paragraph 4 of the article 2 of the Framework Decision (double criminality), paragraph 6 of the article 4 of the Framework Decision, issuing state did not provide additional information, incorrect identity of the person.

FRANCE

The French judicial authorities have refused the execution of 73 European arrest warrant for the following reasons :

- the original of the European arrest warrant was not provided (when the fax does not allow to certify the authenticity of the European arrest warrant);
- the summary of the facts regarding the person concerned was insufficient;
- the execution of the foreign sentence in France concerning a French national (article 4, paragraph 6 of the Framework Decision);
- lack of reply to a demand for supplementary information;
- the ne bis in idem principle;
- error regarding the person;
- non-punishability of the facts under French law when it concerns facts that do not feature on the list of 32 offences of the Framework Decision;
- withdrawal by the issuing Member State.

Replies to question 12

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

GERMANY

The figures given are based on a statistical survey covering cases in which surrender took place in 2011 and for which the competent judicial authority of the relevant *Land* submitted the relevant report to the Federal Office of Justice by 15 January 2012.

Experience has shown that reports on extradition proceedings concluded in 2011 are sometimes, in isolated cases, not submitted until after 15 January 2012. Those cases will be included in the statistics for 2012.

IRELAND

The statistics given below relate to the number of European arrest warrants rather than to the number of persons. In some instances more than one warrant may have been received and executed in respect of a person.

CZECH REPUBLIC

28 cases were included in different way (e.g. withdrawal of an EAW, person was located on the territory of another Member State, EAW was cancelled, etc.).

In 19 cases the surrender was postponed.

In 7 cases the consent was given with the prosecution for other offences.

In 39 cases the procedure have not been yet closed.

POLAND

Some courts raised issues with the practical operation of the EAW system. The concerns were following:

- the EAW procedure is sometimes needlessly lengthy due to the fact that courts have to wait a long time for the delivery of the original of the EAW or have to request information whether the surrendered person invoked the principle of speciality the issuing State;
- the courts of other Member States very frequently demand the presentation of additional information, in particular indication of specific evidence, thereby breaching the letter and the spirit of the EAW provisions;
- some executing Member States infringe art. 26 of the EAW Framework Decision by not providing information on the length of detention of the surrendered person;
- scheduled flights to some cities in other Member States are rare, which can lead to lengthening the EAW proceedings by several days.

SLOVENIA

The proportionality issue - courts have estimated that in some cases the issuing authority did not use any alternatives to issuing an EAW, such as using less constraining instrument of mutual legal assistance, which could actually prevent issuance of the EAW.

FRANCE

These statistics are only indicative to the extent that, in accordance with the Framework Decision on the European arrest warrant, the Ministry of Justice does not centralise all the EAW files and on the contrary encourages the direct transmission between judicial authorities.