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European Union

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COPEN 186
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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
7196/3/13 REV 3 COPEN 34 EJN 14 EUROJUST 19

Subject: Replies to questionnaire on quantitative information on the practical operation of the European arrest warrant - Year 2012

Further to the questionnaire set out in 8111/05 COPEN 75 EJN 23 EUROJUST 24, delegations will find in ANNEX an updated compilation of the replies received with regard to the year 2012 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 2012?	616		487	117	1984	61		587	1087	88		34		473 ¹	60		11		552	3497	223		48	414	135	239 ²	

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¹ LT: 351 EAWs have been issued for the purposes of conducting a criminal prosecution and 122 EAWs have been issued for the purposes of executing a custodial sentence.

² SE: 97 issued for the purpose of conducting a criminal prosecution and 142 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			67	1660	none		587	762	none		34		268	9		11		421	2416	223		30	46	none	239	

	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?	707 ³			75	1984 ⁴	61		587	860	none		none		457	37		11		552	2877	223		5	368	135	239		

³

BE: The number of EAWs transmitted via the SIS does not correspond with the number provided in the answer to question 1. The fact is, the data are collected from different sources. The number of EAWs transmitted via the SIS is provided by the Belgian SIRENE office. All other data are derived from national databases. Since these data are inserted manually on a case-by-case base, some margin of error is unfortunately inevitable.

⁴

DE: It is generally expected that more European arrest warrants will be transmitted via Interpol than via SIS. This is due to the fact that the German authorities can transmit several international search requests for one person via Interpol. In SIS, however, only one search can be activated per person sought by the German authorities. That this was not the case in 2012 is due to the fact that at the time of the survey, search requests had already been activated in SIS that could not yet be transmitted via Interpol, because the requirements for an Interpol alert (inter alia, the agreement of other authorities) had not yet been fulfilled. In addition, in some cases the search activated in SIS had already led to the arrest of the requested person before an Interpol search had been initiated. After consultation with the competent prosecution authorities, search documentation is never transmitted via Interpol in such cases.

	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 ⁵	none		none		none	none ⁶		none		none		none		none	none	none	none ⁷	

⁵ FR: Data not available.

⁶ LU: EAW by direct transmission to executing authority : 20. EAW via Eurojust : 0.

⁷ SE: 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?	68		186 ⁸	70	1104 ⁹	30		103	322	22		15		131	28		6		151	1103	54 ¹⁰		12	125	59	75 ¹¹	

⁸ CZ: 80 + 1 case from 2007 + 7 cases from 2008 + 8 cases from 2009 + 21 cases from 2010 + 69 cases from 2011.
⁹ DE: No distinction is made between surrenders resulting from a European arrest warrant transmitted in 2012 and those resulting from European arrest warrants transmitted in 2011 or earlier.
¹⁰ PT: During the year 2012, 54 persons were surrendered, 29 of which from the execution of EAWs issued during the same year and 25 due to the execution of pending EAWs. Due to an internal Circular national authorities are advised to insert all EAWs in the SIS system as well as to send them to INTERPOL for diffusion in MS that don't have SIS and to remove the persons concern, in case surrender is granted. The VPN was never enforced.
¹¹ SE: Regardless of when the EAWs were issued, 75 persons were surrendered to Sweden during 2012.

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 2012?	569		270	68 ¹²	12297 ¹³	54		1367	1044	313 ¹⁴		49		117	29 ¹⁵		9		395	319	124		86	114	53	146	

¹²

DK: 8 of these European Arrest Warrants were received from Finland or Sweden and subsequently processed in accordance with the special rules on extradition between the Nordic countries.

¹³

DE: A total of 62 search requests were received via Interpol from States which use the European arrest warrant but do not participate in the Schengen Information System.

¹⁴

IE: The statistics 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.

¹⁵

LU: + requests for extension : 0.

	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?	none		208 ¹⁶	29	1357 ¹⁷	50		1100	880	1258 ¹⁸		23		72	25		5		167	266	121		82	94	44	139 ¹⁹	
5.2. How many have been effectively surrendered?	75		212 ²⁰	35 ²¹	944	48 ²²		843	701	750 ²³		23		69	19		5 ²⁴		224	203	92		69	62	43	130	

CZ: + 35 imprisonment.

DE: No distinction can be made here between actual arrests and mere indications of the whereabouts of a person sought in cases in which an alert has been flagged. The figure indicated includes cases in which the person sought was already either serving a sentence or remanded in custody in Germany, so there was no arrest, just superimposed detention where appropriate. However, it does not include cases in which arrest warrants are transmitted directly to judicial authorities without an alert being issued. In the period under review, a European arrest warrant was the basis for a decision on extradition in 1 104 cases.

IE: Since commencement of EAW.

SE: This figure includes 17 persons who were already deprived of their liberty in Sweden, i.e. 122 were deprived their liberty due to a EAW.

CZ: + 2 cases from 2008 + 3 cases from 2009 + 8 cases from 2010 + 42 cases from 2011.

DK: In addition, 6 persons against whom European Arrest Warrants were issued by Finland or Sweden have been surrendered pursuant to the special rules on extradition between the Nordic countries.

EE: 3 of the received EAW's issued for the extension of surrender, in 1 case the EAW was withdrawn, 1 person released as EAW has not been forwarded in time and 1 person doesn't have connections with Estonia (still wanted).

IE: 750 orders for surrender have been made since commencement of EAW - however please note that a number of European Arrest Warrants may be transmitted by an issuing state for a single individual, therefore while 750 orders have been made, a number of these orders may refer to a single individual.

MT: 4 persons have been effectively surrendered and 1 person is still serving judgement and is due to be effectively surrendered in July, 2013.

	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?	none		125 ²⁵	5 ²⁶	544	46		479	466	352		23		60	14		5		185	122	73		53	39	20	63	
5.4. Of those surrendered, how many did not consent to the surrender?	none		99 ²⁷	30 ²⁸	400	2		364	235	398	9	5 ²⁹				none			39	81	19	15	23	23	67		

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²⁵ CZ: 104 + 3 cases from 2010 + 18 cases from 2011.

²⁶ DK: In addition, 2 of the persons who were surrendered pursuant to the special rules on extradition between the Nordic countries consented to surrender.

²⁷ CZ: 53 + 2 cases from 2008 + 3 cases from 2009 + 5 cases from 2010 + 24 cases from 2011.

²⁸ DK: In addition, 4 of the persons who were surrendered pursuant to the special rules on extradition between the Nordic countries did not consent to surrender.

²⁹ LU: Intermediate situations: - Arrested person who consented to surrender, but where surrender is delayed and not realised before 31.12.2012 : 4. - Arrested person who did not consent to surrender, but where surrender is delayed and not realised before 31.12.2012 : 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
6.1. In how many cases have the judicial authorities of your Member State refused the execution of a European arrest warrant?	10		14	4 ³⁰	122	none	49	65	160		none	3	3	3			none	45	63	9		5	none	3	4		

³⁰ DK: However, see also the answer to question 6.2.

	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	
6.2. Which were the grounds for refusal?	none		Cf. Annex I	Cf. Annex I	Cf. Annex I			Cf. Annex I		Cf. Annex I					Cf. Annex I				Cf. Annex I	Cf. Annex I	Cf. Annex I				Cf. Annex I	Cf. Annex I	Cf. Annex I	

	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)?	4 days		43 days	28 days	15,2 days	7 days		Approximately 13 days	14 days	11 weeks ³¹		10 - 15 days		1 month	3 to 10 days		10 days			17 days	16 days	8 days		5,8 days	27 days	14 days	Approximately 14 days	

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³¹ IE: Currently 11 weeks for a case in which the subject 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)?	26 days		67 days	27 days	38,4 days ³²	11 days		Approximately 46 days	37 days	5,5 months ³³		35 - 40 days		2 months	19 days ³⁴		30 days ³⁵		33 days	25 days	67days		29,7 days	62 days	28 days	Approximately 51 days	

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

33

IE: Currently 5,5 months for a typical case.

34

LU: 50 days in case of appeal against the judicial decision to surrender.

35

MT: A surrender procedure takes on average 30 days in cases where the person does not consent to the surrender (60 days in cases where there is an appeal. There were no such cases in 2012).

	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?	none		15	2	20	none		7	13	310 ³⁶		none		none	none		none		2	4	none		1	none	1		1	

³⁶ IE: Statistics available from 2007 only.

	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
8.2. In how many of those cases was Eurojust informed?*	none		3	none	none	none		³⁷	³⁸	310		none		none		none	none		none	none	none	none	none	1	1		

³⁷ ES: This figure is not known by the Ministry of Justice.

³⁸ FR: Data not available.

	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?	none		1	17	439 ³⁹	none		160	14	none		2		none	none		none		2	13	none		10 ⁴⁰	2	3	none	
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³⁹ DE: Due to Germany's federal system, if the person surrendered travels by land, the law enforcement authorities of all the *Länder* through which he or she passes must 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. It is not always guaranteed that the Polish authorities will promptly take charge of the requested person.

⁴⁰ SI: Once time limit extended, proposed by police.

	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	
9.2. In how many of those cases was the person released, according to Article 23(5) of the Framework Decision?	none		none	none	none	none		none	41	none		none		none	none		none		none	3	none		none	none	3	none		none

⁴¹ FR: Data not available.

	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?	2 ⁴²		74 ⁴³	6 ⁴⁴	36 ⁴⁵	21		25	86	180		none		51	none		none		none	130	45		6	⁴⁶	6		19	

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BE: Belgian authorities have registered the surrender of at least 2 people with Belgian nationality. There are no statistics available on the number of Belgian residents that have been surrendered in 2012.

43

CZ: 67 nationals, 7 residents.

44

DK: Four cases concerning Danish nationals and two cases concerning foreign nationals resident in Denmark.

45

DE: 28 arrest warrants were executed against German nationals and 8 arrest warrants were executed against persons resident in Germany. In 28 cases, German nationals were surrendered.

46

SK: The judicial authorities of the Slovak Republic executed EAW with regard to Slovak nationals in 42 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
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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?	none		71 ⁴⁷	4	27 48	21		20	4	none				⁴⁹	none		none		65	5		1	⁵⁰	4		10	
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⁴⁷

CZ: 64 nationals, 7 residents.

⁴⁸ DE: 19 cases concerning German nationals, 8 cases concerning foreign nationals.

⁴⁹ LT: To all citizens of Lithuania.

⁵⁰ SK: No statistics available.

	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	none	none		none	16	51		none	none	none	none		none	3	none	1		1		none	53		

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51

IE: Statistics non available.

52

SK: No statistics available.

53

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?	no		Cf. Annex II	no	Cf. Annex II				no	no		no		no	no		no		no	Cf. Annex II	no		no		no		no	
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Replies to question 6.2

"Which were the grounds for refusal?"

CZECH REPUBLIC

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

GERMANY

- The requested person was not in Germany: 5
- The European arrest warrant did not satisfy the formal requirements: 6
- Under the law of the requested Member State, the offence was not punishable by a maximum custodial sentence of at least 12 months: 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 (custodial sentence of at least 4 months)
- Execution was requested on the basis of a judgment *in absentia* without the admissible conditions pursuant to Article 5 of the Framework Decision having being fulfilled: 17
- Prosecution or enforcement of the sentence was statute-barred under German law: 16
- There was no double criminality for an offence not listed in Article 2(2) of the Framework Decision: 11
- Extradition would have violated European public policy (*ordre public*): 3
- The requested person was being prosecuted in Germany for the same offence: 3
- It could not be presumed that the requesting State would grant a similar request from Germany (non-reciprocity): 0

- A foreign national habitually resident in Germany did not consent to extradition for the purposes of execution of a sentence: 22
- A German national did not consent to extradition for the purposes of execution of a sentence: 35
- 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 that offence had been discontinued: 0
- An extradition request from a third State was given priority: 2

SPAIN

- Ne bis in idem,
- Criminal prosecution is statute-barred,
- Double criminality,
- A Spanish national did not consent to extradition for the purpose of execution of the sentence.

POLAND

- the requested person has been finally judged by a Member State in respect of the same acts provided that, where there has been 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);
- the requested person may not, owing to his age, be held criminally responsible for the acts on which the arrest warrant is based under the law of Poland (art. 3 (3) 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 act does not constitute an offence under Polish law (art. 4 (1) and 2 (4) of the 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 EAW 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 Poland and Poland undertakes to execute the sentence or detention order in accordance with Polish law (art. 4 (6) of the EAW Framework Decision);
- the EAW 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*);
- 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).

PORTUGAL

- 5/art.4.6;
- 1/art. 4a;
- 1/art.15.2;
- 1/art.2.1;
- 1/mistaken of identity.

FINLAND

- Finnish citizens wanted to serve their sentences in Finland.
- EAW was not applicable.

LITHUANIA

- 1 case - insufficient data to make a decision on the person's surrender;
- 2 case - under the criminal law of the Republic of Lithuania the statute of limitations for execution of the judgement of conviction had already been expired;
- 3 case - the surrender was refused as it would have violated the fundamental human rights and freedoms.

LUXEMBOURG

Art. 5 of the Framework Decision - judgements in absentia - no guarantee for a new trial with two levels of jurisdiction.

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 FD. 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.
- Individual did not flee as suggested
- Minimum gravity requirement not met
- Issues around *trial in absentia*, whereby the individual was not informed of trial
- Identification issues
- Health issues
- *Ne bis in idem* – i.e. individual would be tried twice for the same offence
- Extraterritoriality issues

SWEDEN

The arrest warrant concerned a custodial sentence and the wanted person was a Swedish national that demanded who the sanction should be enforced in Sweden (all 4 cases).

DENMARK

In 2 cases the refusal to execute the European Arrest Warrant was based on the fact that the offences had been (partly) committed in Danish territory, cf. Article 4 (7) (a) of the Framework Decision on the European Arrest Warrant (2002/584/JHA, as amended).

In 2 cases the refusal to execute the European Arrest Warrant was based on non-compliance with Article 4 a of the Framework Decision (judgments rendered in absentia).

In addition, 1 case led to non-execution of the European Arrest Warrant due to competing arrest warrants, cf. Article 16 (1) of the Framework Decision. (Surrender did take place in respect of the other Member State).

Furthermore, in 1 case the surrender was postponed for serious humanitarian persons as mentioned in Article 23 (4) of the Framework Decision.

AUSTRIA

- committed exclusively in Austria (1);
- no arrest warrant despite of an existing alert (3);
- withdrawn (16);
- own jurisdiction (12);
- no guarantees (2);
- rule of speciality (2);
- no double criminality (1);
- less than 4 month to execute (2);
- other grounds (6).

SLOVENIA

- Unconfirmed identity.
 - Statute of limitations of criminal proceedings.
 - Statute of limitations (enforcement of sanctions).
 - EAW withdrawn by issuing MS.
-

Replies to question 12

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

CZECH REPUBLIC

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

In 17 cases the surrender was postponed.

In 10 cases the consent was given with the prosecution for other offences.

In 23 cases the procedure have not been yet closed.

GERMANY

No.

The figures given are based on a statistical survey covering cases in which surrender took place in 2012 and for which the competent judicial authority of the relevant *Land* submitted the relevant report to the Federal Office of Justice by 15 January 2013.

Experience has shown that in isolated cases, reports on extradition proceedings concluded in 2012 are not submitted until after 15 January 2013. Those cases will be included in the statistics for 2013.

POLAND

In some cases the executing state did not provide information on how long the arrested person was detained prior to the surrender. This made it impossible to properly include that detention time in the eventual sentence.