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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

Subject : Replies to questionnaire on quantitative information on the practical operation of the European arrest warrant - Year 2005

Further to the questionnaire set out in doc. 8111/05 COPEN 75 EJN 23 EUROJUST 24 (see also CM 4551/05), delegations will find attached a compilation of the replies received so far with regard to the year 2005.

Questions to Member States as issuing States:

	BE	CZ	DK	DE	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	HU	MT	NL ¹	AT	PL	PT	SI	SK	FI	SE	UK
1. How many European arrest warrants have been issued in 2005?			64 ²		38				29	121 ³		44				1	373		1448		81	56 ⁴	86		131
2.1. How many of these European arrest warrants were transmitted via Interpol?			44		38				0	/		25				1	20		758		81	⁵	66		131
2.2. How many of these European arrest warrants were transmitted via the SIS?			62		none				0	/		25				none	373		0		/	0	78		0
2.3. How many of these European arrest warrants were transmitted via the VPN of the EJM?			0		none				0	/		none				none	none		0		/	0	None		0

- ¹ NL: It seems important to note that although the data provided relate to the period of 1 January until 31 December 2005, this does not mean that those data do always relate to cases that started in 2005 and/or ended in 2005. Some cases have started in 2004 and ended in 2005 and others started in 2005 will end in 2006.
- ² DK: 9 European arrest warrants were cancelled, 4 European arrest warrant were replaced by a traditional request, 22 European arrest warrants are closed and 29 European arrest warrants are still open.
- ³ IT: Out of which 63 are still pending. In one case the EAW has been withdrawn after its issuing.
- ⁴ SK: Consequently 13 of them were withdrawn (in particular those issued concerning the offenders in countries, which limited the application of the EAW by declarations).
- ⁵ SK: The Slovak legislation enables the direct transmission of the EAWs. However Courts have the obligation to provide the National Bureau of Interpol with the EAWs as well. All EAWs are transmitted through the National Bureau of Interpol (it does not exclude the possibility of the parallel direct transmission).

	BE	CZ	DK	DE	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	SI	SK	FI	SE	UK
3. How many of these arrest warrants resulted in the effective surrender of the person sought?			19 out of 22 ⁶		10				6	57		10				⁷	30		112		10	14	37		43

⁶ DK: In 1 case the person concerned fled before the surrender could be executed. In two cases the persons were surrendered in pursuance of the surrender procedure between the Nordic countries.

⁷ MT: Proceedings are still underway.

Questions to Member States as executing States:

	BE	CZ	DK	DE	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	SI	SK	FI	SE	UK
4. How many European arrest warrants have been received by the judicial authorities of your Member State in 2005?			33 ⁸		25				67	69 ⁹		31				4	434 ¹⁰		218		29	¹¹	10		5986

⁸ DK: In 2 cases the European arrest warrants were cancelled, and in 4 cases Denmark did not receive a European arrest warrant in Danish, English or Swedish. 8 cases are still open and in 19 cases Denmark has made a decision on surrender.

⁹ IT: Out of which 51 are still pending.

¹⁰ NL: We refer to question 12 for a more detailed overview. We would like to indicate here that in 26 cases an EAW has been withdrawn in a later stage, even where the person sought had been arrested.

¹¹ SK: The Slovak Republic received 33 arrest warrants in 2005. From the Republic of Hungary - 17, from the Federal Republic of Germany - 3, from the Republic of Slovenia - 2, from the Republic of Poland - 5, from France - 2, from The Kingdom of Spain - 1, from the Republic of Austria - 2, from the Czech Republic - 1

	BE	CZ	DK	DE	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	SI	SK	FI	SE	UK
5.1. How many persons have been arrested under a European arrest warrant in your country?			22 ¹²		24				18	/		17				4	164		100		25	17	7		154
5.2. How many have been effectively surrendered?			15 out of 19 ¹³		17				7	18		13				2	229 ¹⁴		80		15	13	10		77
5.3. Of those surrendered, how many consented to the surrender?			9		15				4	/		9				none ¹⁵	76		41		5	6	5		35
5.4. Of those surrendered, how many did not consent to the surrender?			6		2				3	/		4				3	153		39		10	7	5		42

¹² DK: out of 27 cases.

¹³ DK: the surrender was postponed in three cases and in one case the issuing state withdrew the request on surrender.

¹⁴ NL: This includes persons in respect of whom more than one EAW coming from different judicial authorities from the same Member State was received and executed.

¹⁵ MT: However, one decided to discontinue Constitutional proceedings which had been instituted separately from the surrender proceedings.

	BE	CZ	DK	DE	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	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?			none		none				4	/		3				none	61 ¹⁶		16		5	1	0		12 ¹⁷
6.2. Which were the grounds for refusal?			-		none				See Annex	/		See Annex				N/A	See Annex		See Annex		See Annex	See Annex	/		See Annex

¹⁶ NL: In The Netherlands the public prosecutor as well as the court can refuse to execute an EAW. The public prosecutor, when receiving the EAW, checks it for its completeness. In a case of incompleteness additional information is requested in all cases. The public prosecutor is also responsible for checking whether a ground for refusal does apply. If the EAW remains incomplete or it is apparent that a ground for refusal does apply the public prosecutor is competent to refuse the execution of the EAW, without any referral to the Court.

The public prosecutor in Amsterdam refused the execution of 27 EAWs and the district Court in Amsterdam refused the execution of 24 EAWs.

¹⁷ UK: Plus 14 – seven individuals discharged twice due to lack of information.

	BE	CZ	DK	DE	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	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)?			7 days / 16 days ¹⁸		8				Between 1 and 10 days	¹⁹		Approx. 5-10 days				N/A	²⁰		10 days		²¹	25 days	17 Days		28
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)?			17 days / 26 days ²²		9				between 1 week and 1 year	/		Approx. 5-10 days				one month ²³	56-59 days		2 months		²⁴	38 days	37 days		63

¹⁸ DK: **7 days** (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. **16 days** from either the time of arrest or from the receipt of all necessary information (if later than the time of arrest) to the actual surrender.

¹⁹ IT: At the moment, it is not possible to determine the duration of the procedure of the execution in Italy.

²⁰ NL: Persons arrested in the border regions: 4 days; persons arrested from Amsterdam : 10 days.

²¹ SI: Shortest period: one day. Longest period: 30 days

²² DK: **17 days** (6 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. **26 days** from either the time of arrest or from the receipt of all necessary information (if later than the time of arrest) to the actual surrender

²³ MT: One month excluding appeal and other proceedings (criminal, civil and constitutional).

²⁴ SI: The courts that had EAW cases gave the following times:

District Court Ljubljana: 50 - 60 days, District Court Kranj: 75 days, District Court Krško: 70 days, District Court Koper: 30 - 60 days, District Court Novo mesto: 45 days

	BE	CZ	DK	DE	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	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		none				9	/		None				4 ²⁵	None		2		1	1	0		57
8.2. In how many of those cases was Eurojust informed?			-		none				4	/		-				4	None		0		0	1	0		57
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		none				0	/		None				None	24 ²⁶		10		0	0	0		0
9.2. In how many of those cases was the person released, according to Article 23(5) of the Framework Decision?			-		none				N/A	/		None				None	None		0		0	0	0		0

²⁵ MT: Four although notification was made following expiry of the 60 days time-limit in terms of 17.3.

²⁶ NL: The majority of those cases (16) concerned persons against whom a national criminal prosecution was pending.

	BE	CZ	DK	DE	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	SI	SK	FI	SE	UK
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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?			in 3 cases ²⁷		8				1 9	/		8				4 28	63 2 ²⁹				4	11	6		2 6
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?			in all 3 cases		8				0	/		8				none	65				0	0	5		0

²⁷ DK: Two persons have been effectively surrendered.

²⁸ MT: 1 was a national. 3 were foreigners currently residing in Malta.

²⁹ NL: Total number of persons surrendered who are regarded as equivalent to nationals

	BE	CZ	DK	DE	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	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?			³⁰		none				0	/		None				none	N/A ³¹		0		0	0	0		0
12. Is there any other information regarding the operation of the European arrest warrant that you would like to give?			³²		-				N/A	/		-				no	See ANNEX		no		³³	³⁴	no		no

³⁰ DK: Concerning article 5 (1): 0, Concerning article 5 (2): 0, Concerning article 5 (3): 3

³¹ NL: NL does not require a guarantee as provided for in Article 5(2).

³² DK: Denmark shall mention that a translation of the relevant legal provision(s), cf. section e) – (“Nature and legal classification of the offence(s) and the applicable statutory provision/code”) have been missing in almost every European arrest warrant certificate that Denmark as executing state has received in 2005.

Furthermore a number of certificates did not contain the necessary description of the legal guarantees, cf. section d) (“Specify the legal guarantees”). This lack of information cause delays of the administrative procedures.

³³ SI: EAW is practical and effective.

³⁴ SK: In cases where the original EAWs were not transmitted to the Slovak authorities and where the prosecutor found that the EAWs (transmitted by fax or through the National Bureau of Interpol) would not be possible to execute, the EAWs were returned to the issuing authority. The reasons were notified to the issuing authority. In such cases the issuing authorities did not sent the original documents to the Slovak Republic.

Reply to Question 6.2: *Which were the grounds for refusal ?***IRELAND**

Identity, Ill health, delay, decision to charge the subject.

LATVIA

- 1: Where the person who is the subject of the European arrest warrant is being prosecuted in the executing Member State for the same act as that on which the European arrest warrant is based;
- 2: The European arrest warrant has been issued for the purposes of execution of a custodial sentence, where the requested is a national of the executing Member State and that State undertakes to execute the sentence or detention order in accordance with its domestic law;
- 3: The European arrest warrant has been issued relating to the offence which was not a criminal offence in accordance with Latvian law.

THE NETHERLANDS

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

- Incompleteness of the EAW: 5 ;
- The offence did not carry a sanction of 12 months: 1;
- The person sought was not in The Netherlands;
- Art. 2 (4): 1 ;
- Art. 3 (1) FD EAW : 2 ;
- Art. 3(2) FD EAW : 4 ;
- Art. 4(6) FD EAW : 6 ;
- Art. 4 (7) a FD EAW, in cases where before the coming into force of the FD EAW a request for transfer of proceedings from the issuing State had already been refused : 2 ;
- Art. 5(3) FD EAW, where the issuing judicial authority refused to provide an adequate guarantee: 5 .

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

- Incompleteness of the EAW : 5 ;
- Insufficient additional information in view of assessment of the applicability of Art 3 (1): 1 ;
- Lack of a decision in the issuing State of a judicial decision to arrest the person: 1 ;
- Art. 2 (4): 2 ;
- Art. 5 (1) : 3 ;
- Art. 5(3) FD EAW, where the issuing judicial authority refused to provide an adequate guarantee: 4 ;
- Human rights clause, lack of an effective remedy: 2 ;
- Art. 4 (7) (a), although the public prosecutor had expressly requested the surrender : 4 ;
- Health of the person : 2

POLAND

Lis pendens; ne bis in idem, the fact that an offence has been committed in whole or in part in the territory of Poland; the sentence is currently being served; the European arrest warrant has been issued for the purposes of execution of a custodial sentence where the requested person is a Polish national who did not consent to surrender.

SLOVENIA

One case: medical reasons.

One case: EAW was issued for the same person by two different countries, priority was given to one country.

Three cases: EAW refused because the offence was committed prior to 7.8.2002.

In all of the cases person was arrested on the basis of EAW, states that issued EAW were asked to provide documentation in accordance with provisions of international agreements that regulate extradition and subsequently:

- In one of the cases EAW was revoked by the country that issued it
- In one of the cases extradition of the person was granted
- In one of the cases extradition was refused

SLOVAKIA

Considerable part of a crime was committed in the territory of the Slovak Republic.

UNITED KINGDOM

Includes double jeopardy, time limit for prosecution expired, insufficient information concerning the conduct, voluntary presentation to issuing judicial authority, offence not an extradition offence.

Reply to Question 12: *Is there any other information regarding the operation of the EAW that you would like to give ?*

THE NETHERLANDS

Overview of the Member States from whom EAWs were received

MEMBER STATE	NUMBER	MEMBER STATE	NUMBER
Belgium	87	Latvia	0
Cyprus	0	Lithuania	17
Danmark	1	Luxemburg	2
Germany	136	Malta	1
Estonia	0	Austria	8
Finland	2	Poland	57
France	47	Portugal	7
Greece	1	Slovenia	0
United Kingdom	21	Slovak Republic	4
Hungary	8	Spain	13
Ireland	0	Czech Republic	1
Italia	16	Sweden	5