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

Questions to Member States as issuing States:

	BE ¹	CZ ²	DK	DE ³	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	HU	MT	NL ⁴	AT	PL	PT	SI	SK	FI	SE	UK
1. How many European arrest warrants have been issued in 2005?		4	64 ⁵		38	38	519	1914	29	121 ⁶	44	44	500	42	42	1	373	975	1448	+/- 200 ⁷	81	56 ⁸	86	144 ⁹	131

¹ BE: Due to the decentralised application of the EAW, the Belgian Ministry of Justice does not have adequate statistics available. Belgium will endeavour to remedy this situation in the future

² CZ: See Annex.

³ DE: See Annex.

⁴ 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.

⁵ 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.

⁶ IT: Out of which 63 are still pending. In one case the EAW has been withdrawn after its issuing.

⁷ PT: Once the local authorities are competent to directly send EAW a certain flexibility on what concerns the numbers must be established.

⁸ SK: Consequently 13 of them were withdrawn (in particular those issued concerning the offenders in countries, which limited the application of the EAW by declarations).

⁹ SE: 85 arrest warrants issued for the purpose of conducting a criminal prosecution and 59 issued for the purpose of executing a custodial sentence or detention order.

	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
2.1. How many of these European arrest warrants were transmitted via Interpol?		4	44		38	12	519	1182	0	/	All	25	All	1	42	1	20	385	758	¹⁰	81	¹¹	66	138	131
2.2. How many of these European arrest warrants were transmitted via the SIS?		None	62		None	26	519	1582	0	/	Not yet in force	25	/	42	0	None	373	590	0	184	/	0	78	138	0
2.3. How many of these European arrest warrants were transmitted via the VPN of the EJM?		None	0		None	None	None	0	0	/	None	None	None	0	0	None	None	0	0	0 ¹²	/	0	None	/	0

¹⁰ PT: Ignored. (because INTERPOL receives all the EAW for reasons of creating possibilities for the effective removal of the persons to be surrendered).

¹¹ 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).

¹² PT: However 16 EAW were sent directly to the competent authorities for execution. (the VPN does not exist yet).

	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?		In 2005: None	19 out of 22 ¹³		10	12	54 out of 69 arrested	162	6	57	3	10	69 ¹⁴	24	23	¹⁵	30	73	112	38	10	14	37	10 ¹⁶	63 ¹⁷

- ¹³ 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.
- ¹⁴ LT: In 51 cases decision to surrender was made but actual surrender is postponed.
- ¹⁵ MT: Proceedings are still underway.
- ¹⁶ SE: Out of 10 effective surrenders by Sweden in 2005, 5 were based on EAWs issued in 2005.
- ¹⁷ UK: Out of 63 effective surrenders by the UK in 2005, 43 were based on EAWs issued in 2005.

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?		7	33 ¹⁸		25	68	632	452	67	69 ¹⁹	24	31	36	25	53	4	434 ²⁰	198	218	47 ²¹	29	²²	10	34	5986 ²³

¹⁸ 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.

¹⁹ IT: Out of which 51 are still pending.

²⁰ 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.

²¹ PT: This number concerns only the EAW that were received in the executing authorities, for execution, other EAW having been introduced in the SIS are ignored.

²² 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

²³ UK: The response provided by the UK includes all of the requests/alerts transmitted by EAW partners to the UK in 2005 by whatever channel; for example bilateral transmission, Interpol notice or diffusion.

	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?		5	22 ²⁴		24	65	492	372	18	/	8	17	29	10	51	4	164	117	100	39	25	17	7	30	154
5.2. How many have been effectively surrendered?		3	15 out of 19 ²⁵		17	47	400 out of 430 granted	304	7	18 ²⁶	8	13	All except for two ²⁷	7	45	2	229 ²⁸	134	80	33 ²⁹	15	13	10	28	77
5.3. Of those surrendered, how many consented to the surrender?		3	9		15	24	193	175	4	/	5	9	19	6	24	None ³⁰	76	94	41	20	5	6	5	11	35
5.4. Of those surrendered, how many did not consent to the surrender?		None	6		2	23	237	129	3	/	3	4	17	1	21	3	153	40	39	13	10	7	5	17	42

²⁴ DK: out of 27 cases.

²⁵ DK: the surrender was postponed in three cases and in one case the issuing state withdrew the request on surrender.

²⁶ IT: In 2005, IT surrendered 9 Italian nationals to the following Member States pursuant to an EAW: Belgium: (1), France: (4), Germany: (1), Spain: (1), and UK: (2).

²⁷ LT: One is mentally ill, one is unable to participate in the proceedings.

²⁸ 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.

²⁹ PT: This number does not include the persons whose surrender has been postponed.

³⁰ 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		None	14	17	23	4	/	None	3	None	8	1/3/3 ³¹	None	61 ³²	29	16	2 ³³	5	1	0	3	12 ³⁴
6.2. Which were the grounds for refusal?		/	-		none	See Annex	See Annex	See Annex	See Annex	/	/	See Annex	/	See Annex	See Annex	N/A	See Annex	See Annex	See Annex	<i>Ne bis in idem</i>	See Annex	See Annex	/	See Annex	See Annex

³¹ HU: In 2 cases partial refusal of execution, but the person was surrendered, in 3 cases refusal of surrender, in 3 cases a Hungarian national was sought by Germany and the German Constitutional Court annulled the relevant German Act in the meantime, so the Hungarian nationals were released.

³² 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.

³³ PT: However, 3 more persons were not surrendered, the issuing authorities having informed that there was prescription in the original procedure.

³⁴ 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)?		23 days	7 days / 16 days ³⁵		8	20 days to one month	11	11	Between 1 and 10 days	³⁶	10-15 days	Approx. 5-10 days	One month	2 to 5 days	3 days	N/A	³⁷	21 days	10 days	22 days	³⁸	25 days	17 Days	Approx 15 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)?		55 days	17 days / 26 days ³⁹		9	2 to 3 months	36	26	between 1 week and 1 year	/	35-40 days	Approx. 5-10 days	2 months	⁴⁰	40 days	One month ⁴¹	56-59 days	40 days	2 months	47 days	⁴²	38 days	37 days	Approx. 50 days	63

³⁵ 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.

³⁶ IT: At the moment, it is not possible to determine the duration of the procedure of the execution in Italy.

³⁷ NL: Persons arrested in the border regions: **4 days**; persons arrested from Amsterdam : **10 days**.

³⁸ SI: Shortest period: **one day**. Longest period: **30 days**

³⁹ 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.

⁴⁰ LUX: One case only with 2 EAWs concerning the same person. After 2 levels of jurisdiction-1st instance and appeal, the average between arrest and final decision was **41 days**.

⁴¹ MT: One month excluding appeal and other proceedings (criminal, civil and constitutional).

⁴² 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		None	/	None	3	9	/	None	None	None	0	None	4 ⁴³	None	1	2	2	1	1	0	1	57
8.2. In how many of those cases was Eurojust informed?		None	-		None	/	None	2	4	/	None	-	1 ⁴⁴	0	None	4	None	0	0	2	0	1	0	1	57

⁴³ MT: Four although notification was made following expiry of the 60 days time-limit in terms of 17.3.

⁴⁴ LT: Our member in Eurojust was informed about one case, but the reason was not related to time limits.

	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	
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		None	/	None	6	0	/	None	None	1 ⁴⁵	0	None	None	24 ⁴⁶	10 ⁴⁷	10	0	0	0	0	0	3 ⁴⁸	0
9.2. In how many of those cases was the person released, according to Article 23(5) of the Framework Decision?		None	-		None	/	None	0	N/A	/	None	None	None	0	None	None	None	0	0	0	0	0	0	0	0	0

⁴⁵ LT: 1 case, because the person did not have personal documents.

⁴⁶ NL: The majority of those cases (16) concerned persons against whom a national criminal prosecution was pending.

⁴⁷ AT: For reasons of the issuing State.

⁴⁸ SE: The time limit was exceeded by one or two 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
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	in 3 cases ⁴⁹		8	9	42	19	19	/	None	8	31	0	15	4 ⁵⁰	63 2 ⁵¹	0	32	17	4	11	6	16	26
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?		2	in all 3 cases		8	in all cases	22	1	0	/	None	8	None	0	14	None	65	0	22	2	0	0	5	9	0

⁴⁹ DK: Two persons have been effectively surrendered.

⁵⁰ MT: 1 was a national. 3 were foreigners currently residing in Malta.

⁵¹ 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?		None	⁵²		None	/	4	0	0	/	None	None	None	0	1	None	N/A ⁵³	1	0	2	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?		no	⁵⁴		-	no	-	no	N/A	-	/	-	no	/	no	no	See Annex	no	no	-	⁵⁵	⁵⁶	no	See Annex	no

⁵² DK: Concerning article 5 (1): 0, Concerning article 5 (2): 0, Concerning article 5 (3): 3

⁵³ NL: NL does not require a guarantee as provided for in Article 5(2).

⁵⁴ 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.

⁵⁵ SI: EAW is practical and effective.

⁵⁶ 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.

Note from GERMANY

Please note that unfortunately Germany will not be able to provide the General Secretariat with the requested information for 2005 and find the reasons for that below:

The German delegation asks for your understanding that due to the decision of the German Constitutional Court of 18 July 2005 by which it declared the German law to implement the FD EAW null and void, it is not possible to send accurate statistical data for the year 2005. As already mentioned in the letter of 21 July 2005 from the German Minister of Justice (Council doc. 11600/05 COPEN 122), the decision has not led to serious difficulties in extradition procedures, leaving aside the temporary non-extradition of German nationals. However, the numerous specificities of the transitional situation after that decision (e.g. (1) Some Member States accept EAWs issued by DE, other Member States do not. (2) Some Member States surrender nationals to DE, others do not) does not allow us to deliver meaningful data relating to the Framework Decision on the EAW.

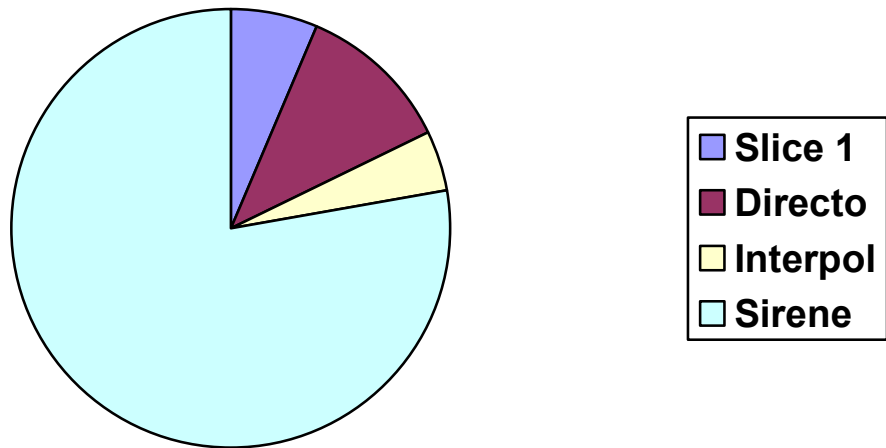
Note from the CZECH REPUBLIC

General remark: The statistical data should be interpreted in the light of the fact that the scope of application of the Czech legislation implementing the Framework decision on the European arrest warrant is limited to the acts committed on and after 1 November 2004. Respective changes to the legislation have been enacted and will enter into force on 1 July 2006. As from 1 July 2006, the Czech Republic will accept and act on the European arrest warrants received on and after 1 July 2006 even if the alleged offence took place before 1 November 2004. Similarly, as from 1 July 2006 the Czech Republic will make requests for surrender in a form of the European arrest warrant irrespective of the date of the alleged offence.

Reply to Question 2.3. *How many of these European arrest warrants were transmitted via the VPN of the EJM ?*

PORTUGAL

VIA DE TRANSMISSÃO



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

GREECE

- * Lack of common legal basis
- * Violation of human rights and citizens
- * Execution of custodial sentence in Greece

SPAIN

Double criminality, criminal prosecution is statute-barred, ne bis in idem.

FRANCE

French 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 France 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 French national and the authority 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 with was not a criminal offence in accordance with French law.
4. Incompleteness of the European arrest warrant.
5. No French translation.
6. European arrest warrant was revoked by the country that issued it.

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.

LUXEMBOURG

In 7 cases EAW procedure could not be applied because of the date of the offences (< 8.8.2002). In 1 case a German EAW concerning a Luxembourg national was refused for lack of common legal basis (German EAW legislation considered non valid after the decision of the BVG of July 18th 2005).

HUNGARY

- statutory limitation
- lack of double criminality
- guarantee was not assured for the re-surrender of Hungarian national
- in 3 cases a Hungarian national was sought by Germany and the German Constitutional court annulled the relevant German Act in the meantime, so the Hungarian nationals were released

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

AUSTRIA

- "Ne bis in idem".
- Austrian citizen.
- Domestic proceedings for the same offence.
- Double criminality.

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.

SWEDEN

- Statute of limitation (1 case)
- Sentence shall be served in Sweden, Article 4 (6) of the Framework Decision (2 cases).

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
Denmark	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

SWEDEN

- We would like to stress the importance of carefulness when filling in the form. Erroneous information can cause delayed handling of the arrest warrant and, in worst case, incorrect deprivation of liberty.
- We would like to promote the use of the EJA Atlas. Sending arrest warrants through a contact point or the Central Authority instead of directly to the competent executing authority causes delayed handling of the arrest warrant.
