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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 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?					1785	31		588	1028	35		20	97 ¹	316 ²	44	373	3			3473	117	856		208 ³	84	170 ⁴	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 SK: 19 of them were cancelled.

⁴ 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?					1785	20		588	635	none		All	none	316	1	328				1090	10 %	856		14	45	164	185
2.2. How many of these European arrest warrants were transmitted via the SIS?					1767	25		588	899	none		Not yet in force	none	641 ⁵	24	45				487	80 % ⁶	-		111	78	164	0 ⁷

⁵ 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.

⁶ 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 EAWs transmitted via Interpol may be included in this global percentage.

⁷ 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?					none	none		none	none	none		None	none	none	0 ⁸	0				25	none	-		0	0	not applicable	0

⁸ 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?					506	14		59	345	14		4 ⁹	16	60	15	84	1			434	45	235		71 ¹⁰	43	22 ¹¹	99 ¹²

⁹ 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.

¹⁰ 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.

¹¹ SE: 22 persons were surrendered to Sweden during 2007 regardless of when the EAWs were issued.

¹² 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?					7248 ¹³	50		1207	504	173		37	20	42	21	106	9			214	89	274		97	12	40	2534

¹³ 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.

	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?					714	45		929	372	97		7	14	18	17	86				155	74	231		58	10	37 ¹⁴	504
5.2. How many have been effectively surrendered ?					571	40		715 ¹⁵	308	49		6	14	18	9	78	6			105	80 / 89 ¹⁶	237		53	9	32	328 ¹⁷

¹⁴ 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.

¹⁵ ES: 715 (out of 937) (including requests relating to the same person).

¹⁶ PT: 6 surrenders took place in 2008 in relation to EAWs received in 2007.

¹⁷ 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?					325	19		332	184	28		5	6	16	8	67				54	63/74	170		19	3	16	¹⁸
5.4. Of those surrendered, how many did not consent to the surrender?					245	21		483	124	21		1	8	2	2	11				51	11/74	57		34	8	24	¹⁹

¹⁸ UK: This information is not available immediately but will be submitted at a later date once collation is completed for the data.

¹⁹ 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?					108	7		26	22	1		5	3	2	5	13	0			32	3 / 89	37		11	0	1	70
6.2. Which were the grounds for refusal?					Cf. Annex I	Cf. Annex I		²⁰	Cf. Annex I	²¹		²²	Cf. Annex I	²³	Cf. Annex I	Cf. Annex I	N/A			Cf. Annex I	²⁴	Cf. Annex I		²⁵	-	²⁶	Not collated

²⁰ ES: Ne bis in idem, double criminality, criminal prosecution is statute-barred.

²¹ IE: Multiple warrants listing different offences (currently being appealed).

²² 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.

²³ LT: ne bis in idem, double criminality

²⁴ PT: Lack of dual criminality (1), refusal of surrender of national and enforcement of the sentence in Portugal (2)

²⁵ 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).

²⁶ 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)?					14.3 days	7		12 days	9 days	1 week		10 - 15 days	Approx. 5 - 10 days	1 month	3 - 9 days ²⁷	Approx. 7 days				from 3 days up to 90 dyss	16 days	10 days		approx. 27 days	26 - 35 days	approximately 15 days	Av. 8 day

²⁷ LU: 3 - 9 days (arrest - effective surrender; in Luxembourg no specific decision if consent).

	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?					27	none		3	1	31		none	none	none	none	0				5	3	3		1	0	2	N/A
8.2. In how many of those cases was Eurojust informed?					none	none	in one case		1	31		none	none	none	none	0				0	3	3		1	0	2	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
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?					291	none		64	24	5		none	none	2	none	0				15	none	none		0	0	0	N/A
9.2. In how many of those cases was the person released, according to Article 23(5) of the Framework Decision?					none	none		none	1	none		none	none	none	none	0				0	N/A	none		0	0	0	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?					92	36		35 ²⁹	93	8		none	14	16	1 x national	25				83	22 ³⁰	In 90% of the cases		45	1	10	31

²⁹ ES: 35 granted; 20 surrenders.

³⁰ PT: Information only available as concerns nationals.

³¹ 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?					17	36		17	5	none		none	14	³²	0	25				55	not available	In 30% of the cases		0	1	8	N/A

³² 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?					-	none		2	no information	-		none	none	none	none	3				1	at least 1 under 5(2)			0	0	³³	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						Cf. Annex II		Cf. Annex I		-		Cf. Annex II	no

³³ 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).

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 than 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. La diminution nette du nombre de mandats d'arrêt européens émis par les autorités françaises entre 2006 (1552) et 2007 (1028) s'explique principalement par l'achèvement du processus de transformation des signalements art. 95 CAAS en mandats d'arrêt européens, engagé par les juridictions françaises à la suite de l'entrée en vigueur de la loi du 9 mars 2004.

II. Les juridictions françaises ont refusé l'exécution effective du mandat d'arrêt européen dans les cas suivants :

1. les personnes objet du mandat d'arrêt européen sont/ont été poursuivies en France pour les mêmes faits que ceux pour lesquels le mandat d'arrêt européen a été délivré,
2. le mandat d'arrêt européen a été délivré en vue de l'exécution d'une peine de prison, il concerne un ressortissant français et l'autorité d'exécution s'engage à exécuter la peine ou le titre de détention selon la loi nationale,
3. le mandat d'arrêt européen a été délivré pour un délit ne constituant pas une infraction pénale au regard de la loi française,
4. le mandat d'arrêt européen est incomplet et la demande d'informations supplémentaires est restée vaine
5. le mandat d'arrêt européen a été révoqué par l'Etat d'émission,
6. les faits reprochés ont été commis antérieurement au 1^{er} novembre 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

- Der Verfolgte hält sich nicht in Deutschland auf: 1
- Der Europäische Haftbefehl entspricht nicht den formalen Voraussetzungen: 6
- Die Straftat ist nach dem Recht des ersuchenden Mitgliedstaates nicht mit einer Freiheitsstrafe im Höchstmaß von mindestens 12 Monaten bedroht: 1
- Die zu vollstreckende restliche Freiheitsstrafe liegt unter vier Monaten: 2

- Der Verfolgte wurde wegen derselben Tat bereits von einem anderen Mitgliedstaat rechtskräftig verurteilt: 1
- Die Vollstreckung wird aufgrund eines Abwesenheitsurteils erbeten, ohne dass die nach Artikeln 5 Nr. 1 des Rahmenbeschlusses zulässigen Bedingungen erfüllt werden: 2
- Die beiderseitige Strafbarkeit ist bei einer Straftat, die nicht zum Katalog des Artikel 2 Abs. 2 des Rahmenbeschlusses zählt, nicht gegeben: 2
- Die Auslieferung würde gegen den deutschen ordre public verstoßen: 4
- Gegen den Verfolgten wird wegen derselben Tat in Deutschland ein strafrechtliches Verfahren geführt: 5
- Die Einleitung eines strafrechtlichen Verfahrens wegen derselben Tat wurde abgelehnt oder ein bereits eingeleitetes Verfahren eingestellt: 6
- Ein Ausländer, der in Deutschland seinen gewöhnlichen Aufenthalt hat, hat der Auslieferung zum Zweck der Strafvollstreckung nicht zugestimmt: 11
- Die Rücküberstellung eines zur Strafverfolgung ausgelieferten deutschen Staatsangehörigen zur Verbüßung der Strafe ist nicht gesichert: 2
- Bei der einem deutschen Staatsangehörigen vorgeworfenen Straftat liegt ein maßgeblicher im Sinne des Art. 80 Abs. 2 IRG vor: 6
- Ein deutscher Staatsangehöriger hat der Auslieferung zur Strafvollstreckung ins Ausland nicht zugestimmt: 55

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.
-

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.
