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**NOTE**

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from: General Secretariat of the Council  
to: Working Party on Cooperation in Criminal Matters  
Subject: Study "Making better use of statistical data relating to the European Arrest  
Warrant" - Member States comments on the Final report

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Further to the invitation by the Chair of the Working Party on Cooperation in Criminal Matters (CCM) at its meeting of 28 March 2012, delegations were invited by CM 2388/12 to send in written comments on the proposed EAW questionnaire (p. 76 of DS 1163/12).

The attached document contains a summary of all comments received.

**EAW Questionnaire Revision- Summary of MS comments****General comments:**

<b>Country</b>	<b>General comments</b>
Austria	Important to clarify purpose of questions. Ensure major part of existing data can still be used and avoid variations of interpretation.
Belgium	Don't significantly change questionnaire, apart from add glossary Admin burden outweighs improvements from changes
Cyprus	Only specific comments provided
Czech Republic	Don't significantly change questionnaire Admin burden outweighs improvements from changes
Estonia	Generally welcomes exercise and content of new questionnaire with some specific comments
France	Collecting EAW statistics is an onerous task and it is not feasible to collect some of the data sought
Germany	In favour of revising the questionnaire, including glossary. But want to reduce the questions to the practically relevant and essential so they don't tie up resources and thereby hinder extradition or law enforcement. Questions should be geared to producing indicators to assess quality of the EAW system. For outgoing EAWs number of requests and quality of results. For incoming EAWs important is trend in figures, success rate and length of time Study does not always reflect how complex matters are in practice. DE will also have to canvass view of courts and state prosecutors
Greece	Only specific comments provided
Italy	Support conclusions of study, in particular intro and glossary, the specific question on the type of offences underlying the EAW, structure and structure following phases of procedure.
Lithuania	Support study conclusion to maintain balance between adequate efficiency and desirability to limit time needed for completion. Therefore don't add new questions that don't add value to the functioning of the EAW system.
Netherlands	<u>Generally welcomes study. Main purpose of the original questionnaire to establish if EAW working. Now know it works. Need now is to now ensure insight in the working of the EAW in EU. Possibilities to collect data vary between MS and, although necessary, is perceived as a burden, in particular in times of budgetary restraints. Therefore need to review each question on the basis of "the need to know" and refrain from questions which are based on the notion of "nice to know," as indicated in relation to particular questions below and including proposed question on whether EAWs are issued for prosecution or execution of sentence. We can provide the number of EAWs issued in a year. However we do not have data on how many of the EAWs issued in a given year are executed in the same year. Collecting those date is considered burdensome and without a real "need to know". Wish to continue standing practice and would like to see this confirmed as a possibility.</u>

Slovakia	Comment re importance of year being reflected
Sweden	New proposal too ambitious and MS may not be able to respond to the new questions. Welcomes explanatory note and glossary
United Kingdom	General support for new questionnaire- content and format improved and questions consistent with identifying trends and operational issues. Number of questions appropriate and consistent with minimising admin burden. Positive practitioner feedback but until SIS2, UK may not be able to answer all the questions
Eurojust	Supports COM initiative to improve EAW stats

**Comments to the questionnaire proposed by the Study and COM presentation additions:**

*Questions to Member States as issuing states*

No.	Questions	MS comments
1	How many EAWs have been issued by the judicial authority of your country?	<p><b>BE</b> – needed- will lead to vital info  <b>CY</b>- Needed. Information supplied with the existing Standard Questionnaire  <b>CZ</b>- Acceptable. However, has to be taken into account that several EAWs can be issued in respect of one person. So it must be explained, that the number of the EAWs is counted, not the concerned persons.  <b>FR</b> – more onerous but possible to supply this data</p>
2	How many EAWs have been <u>transmitted</u> to the judicial authority of another MS?	<p><b>AT</b>- The wording "for the purpose of execution" or "under Article 9(1) of the Framework Decision" should be added to the question to make it clear that the question refers to transmission of EAWs in specific cases. This would filter out cases which relate to an alert. The explanations in the Glossary could also be supplemented.  <b>BE</b> – needed- will lead to vital info  <b>CY</b>- Cyprus transmits all its EAWs via Interpol  <b>CZ</b> - Acceptable. Nevertheless, what is a purpose of this question? Whether to find out number of transmitted EAWs or to indicate How many surrender procedures in other Member States were initiated (based on your EAW)? Number of initiated surrender procedures would refer to the number of requested persons and would be lower than number of transmitted EAWs (as several EAWs referring to one person may be issued).  Should be also explained, what exactly mean "transmitted" means as Study points out that there could be misunderstanding in this issue. It should be also noted that transmission still does not mean surrender procedure (e.g. practice in Ireland, where the EAW must be transmitted to even start the search establish whether the wanted person is there. In several Member States the person may be surrendered without receiving the EAW based only on SIS alert and SIRENE supplementary information).  <b>EE</b>- We cannot see any difference between questions 2 and 3, in practice if the EAW has been transmitted directly to another MS it has been transmitted to the competent/judicial authority;  <b>FR</b> – more onerous but possible to supply this data  <b>LT</b> – Inexpedient to provide this data as don't provide info to improve the system and in practice ways of transmission of EAW (and therefore stats on same) are not important and depend on differing requirements of executing MS e.g. provide original EAW, surrender on basis of copy from Interpol (Sirene bureau).  LT – understand this question to refer to EAWs that have been issued anytime (including previous years)  <b>UK</b> - Added the word 'Judicial' to mirror Qs qs1&amp;3 and the wording of the FD</p>

3	<p>How many EAWs have been <u>transmitted</u> solely directly to the judicial authority of another MS (without using Interpol or the SIS)?</p>	<p><b>CZ</b> - Question should be clarified since all the EAWs should be sent directly to the judicial authority of another MS. The Czech courts transmit the EAW to the judicial authority of another MS only if the requested person is located in another MS. However, the courts are obliged to send all issued EAWs to the SIRENE Czech Republic for initiating search in all Member States and to the Ministry of Justice according to Czech procedural rules. It should be clarified whether the aim of the question is number of EAWs or number of surrender proceedings initiated without assistance of SIS/Sirene or Interpol.</p> <p>If the idea of this question is, in how many cases the surrender procedure started only based on direct judicial communication (without the location of the person via police co-operation – SIS/SIRENE or Interpol), it has to be rephrased:          “In how many cases, the surrender procedure was initiated in another Member State solely based on direct sending of EAW from issuing authority without previous search for the person via SIS/SIRENE or Interpol”</p> <p><b>CY</b>- Cyprus transmits all its EAWs via Interpol</p> <p><b>EE</b>- We cannot see any difference between questions 2 and 3, in practice if the EAW has been transmitted directly to another MS it has been transmitted to the competent/judicial authority;</p> <p><b>FR</b> – more onerous but possible to supply this data</p> <p><b>LT</b> – Inexpedient to provide this data as don't provide info to improve the system and in practice ways of transmission of EAW (and therefore stats on same) are not important and depend on differing requirements of executing MS e.g. provide original EAW, surrender on basis of copy from Interpol (Sirene bureau). Understand this question to refer to EAWs that have been issued anytime (including previous years)</p> <p><b>UK</b> The UK transmits EAWs via Interpol as do not use SIS.</p>
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4	<p>In how many cases did the offence that generated an EAW also generate an Interpol <u>red notice</u> and/or Interpol diffusion?</p>	<p><b>CZ</b> - Courts in the Czech Republic are obliged to send all issued EAWs to the SIRENE Czech Republic, which in all cases uses also the Interpol channel to cover the EU Member States not yet connected to the SIS.</p> <p>What is purpose of question? If to see, whether the Member States are using also the Interpol channel for the searches based on EAW, than the wording can be much simplified:          “In how many cases the Interpol channel was also used for search based on the issued EAW” The division between diffusion and red notice is not useful for the EAW issues. However, within short time this question is obsolete, as all Member States will use the SIS.</p> <p>From the point of view of frequency of using Interpol and SIS/SIRENE channel in reality, the order of the question should be first SIS/SIRENE and second Interpol.</p> <p><b>CY</b> In all cases  <b>FR</b> – more onerous but possible to supply this data  <b>LT</b> – Inexpedient to provide this data as don't provide info to improve the system and in practice ways of transmission of EAW (and therefore stats on same) are not important and depend on differing requirements of executing MS e.g. provide original EAW, surrender on basis of copy from Interpol (Sirene bureau). Understand this question to refer to EAWs that have been issued anytime (including previous years)  <b>UK</b> - Could get this info as the numbers are small - is not something UK currently collect</p>
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5	<p>How many individuals who were object of an Interpol red notice and/or diffusion have been discovered resulting in the transmission of an EAW?</p>	<p><b>CZ</b> - Question is unclear, because the words "transmission of an EAW" is used and also because in many case the person is object both of SIS Alert and Interpol diffusion/red notice. Here we are speaking about individual and not EAWs, which is quite different - there can be several EAWs on one person. How relevant is this point for statistics about EAW, as it is dealing only with use of channels for police co-operation? As the purpose of the question is to see, in how many cases the surrender procedure started based on locating the person using the Interpol channel, CZ propose following wording: "How many persons were found solely via search through Interpol to start the surrender procedure based on issued EAW(s)?"</p> <p><b>CY</b> Not clear as to the time horizon referred. Clarification needed also as to the relevance of this question to the EAW procedure</p> <p><b>EE</b> - not relevant in the EAW procedure, this question should be deleted;</p> <p><b>FR</b> – more onerous but possible to supply this data</p> <p><b>LT</b> – Inexpedient to provide this data as don't provide info to improve the system and in practice ways of transmission of EAW (and therefore stats on same) are not important and depend on differing requirements of executing MS e.g. provide original EAW, surrender on basis of copy from Interpol (Sirene bureau).</p> <p>Understand this question to refer to EAWs that have been issued anytime (including previous years)</p> <p><b>UK</b> - Generally the EAW has already been transmitted but UK could provide this information.</p>
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6	<p>In how many cases did the offence that generated an EAW also generate an <u>alert</u> based on Article 95 of the Schengen Convention in the SIS?</p>	<p><b>CZ</b> - See comments to question 4.  Proposed text of the question:  “In how many cases the SIS alert was used for search based on the issued EAW”  Remarks: Using the number of article from the CISA would not be relevant in short time, so more general wording, which is still clear, should be used  <b>CY</b> As a non-SIS country at the moment, Cyprus could not know this information  <b>FR</b> – more onerous but possible to supply this data  <b>LT</b> – Inexpedient to provide this data as don't provide info to improve the system and in practice ways of transmission of EAW (and therefore stats on same) are not important and depend on differing requirements of executing MS e.g. provide original EAW, surrender on basis of copy from Interpol (Sirene bureau).  Understand this question to refer to EAWs that have been issued anytime (including previous years)  <b>UK</b> - As a non-SIS country at the moment UK could not know this information. SIS2 would likely fill this UK capability gap.</p>
7	<p>How many individuals who were object of Article 95 alert have been discovered resulting in the transmission of an EAW?</p>	<p><b>CZ</b> - As the purpose of the question is to see, in how many cases the surrender procedure started based on locating the person using the SIS/SIREN channel, we propose following wording: The remark used in present question 5 concerning discrepancy between person/EAW is valid here as well.  “<u>How many persons were found solely via search through SIS/SIRENE to start the surrender procedure based on issued EAW(s)?</u>”  <b>CY</b> As a non-SIS country at the moment, Cyprus could not know this information  <b>EE</b>- could also be deleted  <b>FR</b> – more onerous but possible to supply this data  <b>LT</b> – Inexpedient to provide this data as don't provide info to improve the system and in practice ways of transmission of EAW (and therefore stats on same) are not important and depend on differing requirements of executing MS e.g. provide original EAW, surrender on basis of copy from Interpol (Sirene bureau).  LT - Understand this question to refer to EAWs that have been issued anytime (including previous years)  <b>UK</b> - As a non-SIS country at the moment UK could not know this information. SIS2 would likely fill this UK capability gap.</p>



8	<p>In respect of how many of the EAWs <u>transmitted</u> by your judicial authorities was execution <u>refused</u>? Please list the three most frequent reasons.</p>	<p><b>BE</b> – needed- will lead to vital info  <b>CZ</b>- We are not able to collect responses to this question. The refused EAWs remain valid in respect to other Member States. We do not have the possibility to collect precise information on number of all refused surrender proceedings (refused Czech EAWs)  <b>CY</b> Needed, however clarification is necessary as to the time horizon referred.  We do not agree to add this question to the questionnaire.  <b>EE</b>- The order of questions 8 and 9 should be changed – effective surrender is more important than refusal;  <b>FR</b> – more onerous but possible to supply this data  <b>LT</b> - Understand this question to refer to EAWs that have been issued anytime (including previous years)</p>
9	<p>How many of these arrest warrants resulted in the effective <u>surrender</u> of the person sought?</p>	<p><b>BE</b> – needed- will lead to vital info  <b>CY</b> - Needed. Information supplied with the existing standard questionnaire. However, data is collected with regard to the date of surrender and not the year of transmission.  <b>CZ</b> - Acceptable. However, there is also again the difference between surrendered persons and executed EAWs. To be clearer, we suggest replacing words “of these” by words “EAWs issued by your judicial authorities”.  It should be also noted that this question does not cover EAWs, where the surrender was confirmed, however postponed (as this postponements may last even several years). If the aim was to cover also these cases, the question should be reworded: "How many EAWs issued by your judicial authorities resulted in positive decision concerning the surrender?"  <b>EE</b>- The order of questions 8 and 9 should be changed – effective surrender is more important than refusal;  <b>FR</b> – more onerous but possible to supply this data  <b>LT</b> – As understand question 2-8 and 10-11 to refer to EAWs that have been issued anytime (including previous years), is not clear what "of these arrest warrants" means in this question.  <b>UK</b> - We do not collate surrender figures by the year of transmission of the EAW but by the date of surrender. Could be possible depending on resources but is not something we routinely do.</p>

10	<p>In how many cases did your national competent authorities have to provide additional information that goes beyond the FD on the EAW?</p>	<p><b>CZ</b> - Do not agree to add this question. CZ is not informed by the courts about this on a regular basis. Cannot monitor and collect all cases of requests for additional information beyond the FD. We do not consider this question to be of use in respect to better functioning of the EAW. Brings unreasonable increase of administrative workload.</p> <p><b>CY</b> Difficult to provide such data, as this would create heavy administrative workload to examine and keep record from every single file.</p> <p><b>FR</b> – This question should be confined to EAWs where there has been a refusal to execute as it will not be feasible to collect this data in other cases where an analysis of whether the information goes beyond the FD s not carried out</p> <p><b>DE</b> – problematic as would have to be collected from state prosecutors and courts, mainly at Lander level and possibly over a period of time with follow-up. Goes beyond previous admin burden without corresponding benefit.</p> <p><b>LT</b> – Problematic as in LT experience requests for more info only received from a few MS; MS may have a different understanding of what is info beyond the FD leading to unreliable conclusions; would create large workload as involves analysis of correspondence in all cases.</p> <p>Understand this question to refer to EAWs that have been issued anytime (including previous years)</p> <p><b>UK</b>- It would be unlikely UK would be able to provide this data at present. This could only be provided by examining every file against the FD</p>
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11	<p>How many persons have been <u>sentenced</u>, including suspended sentence, after a procedure involving an EAW?</p>	<p><b>AT</b> The question is misleading and is not of any statistical value, since no comparative figures are collected as to whether the EAW was issued for criminal prosecution or for execution of a criminal sentence.</p> <p><b>BE</b> - There is no question concerning the total of EAW issued or transmitted for the purpose of conducting a criminal prosecution. Furthermore, the issuing of the EAW, the surrender of the person concerned and the sentence will often take place during different calendar years, which hampers the comparability of the results</p> <p><b>CY</b> Difficult to provide such data, as this would create heavy administrative workload to follow up each case for a long period of time.</p> <p><b>CZ</b>- No added value and brings unreasonable increase of administrative workload. Do not agree to add this question.</p> <p><b>EE</b>- goes in our opinion beyond the scope of EAW procedure and therefore should be deleted</p> <p><b>FR</b> – reservation on this question as it concerns only prosecution EAWs and assumes somewhat simplistically that the efficiency of the instrument can be measured on the basis of the number of convictions, while the purpose of the EAW is in fact to being a wanted person before a judicial authority.</p> <p><b>DE</b> – problematic as would have to be collected from state prosecutors and courts, mainly at Lander level. Would involve data that is not included in Judicial authority files and is no legal basis for requesting this info. Goes beyond previous admin burden without corresponding benefit.</p> <p><b>LT</b> - Understand this question to refer to EAWs that have been issued anytime (including previous years)</p> <p><b>UK</b> - SOCA do not follow up cases where subjects returned on an EAW. Would have to follow up each case, set reminders and contact forces. It is <b>HIGHLY</b> unlikely would be able to answer this question at present.</p>
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New	<p>How many EAWs have been issued by the judicial authority of your country for the following categories of offence:</p> <ul style="list-style-type: none"> <li>- Terrorism</li> <li>- Drug offences</li> <li>- Sexual Offences</li> <li>- Firearms/explosives</li> <li>- Offences Against Property/Fraud</li> <li>- Homicide/Fatal Offences</li> <li>- Non fatal offences against the person</li> <li>- Other</li> </ul>	<p><b>CY</b> - Agree  <b>EL</b>- Agree to add this question but also want to add "trafficking in human beings" as deem this offence refers to a continuously increasing criminal activity MS are faced with in the issue of relevant EAWs and it would be wise to know the exact statistical data if any for this specific offence  <b>IT</b> – Support- specific question on type of underlying offence provides useful info  <u><b>NL</b> This question is based on the notion of “nice to know”. We cannot explain to the “need to know” to our authorities and therefore consider them an unnecessary burden for our authorities. We therefore request to classify them as “optional”.</u></p>
New	<p>In how many cases did your issuing judicial authority tick one or more of the offences listed in Article 2.2 in respect of which verification of dual criminality does not apply</p>	<p><b>CY</b> - Agree  <b>DE</b> – problematic as would have to be collected from state prosecutors and courts, mainly at Lander level. Goes beyond previous admin burden without corresponding benefit  <b>EL</b> – Agree to add this question  <u><b>NL</b> This question is based on the notion of “nice to know”. We cannot explain to the “need to know” to our authorities and therefore consider them an unnecessary burden for our authorities. We therefore request to classify them as “optional”</u></p>

*Questions to Member States as executing states*

No.	Questions	MS comments
1	How many persons have been <u>arrested</u> on foot of a European Arrest Warrant in your country?	<p><b>BE</b> – needed- will lead to vital info</p> <p><b>CY</b>- Needed</p> <p><b>CZ</b> - Reasons for proposed modification of the question by adding the words "on foot" not clear. Prefer original (current) wording of the question without words "on foot".</p> <p><b>FR</b> – Pertinent question</p> <p><b>UK</b> - Do collate the total number of EAW arrests from all points under Q1</p>
1.1	In how many cases was the person <u>arrested</u> at the border while living/entering the European Union?	<p><b>CY</b>- possible but difficult to collect such data for 1.1 to 1.6</p> <p><b>CZ</b> – Collecting responses to Questions 1.1-1.6 does not contribute to the smoothness of the proceedings but it would only bring an additional administrative and cause many difficulties since answers to these questions are not accessible to the CZ courts, nor to the Ministry of Justice. Do not agree to add these questions to the questionnaire.</p> <p><b>EE</b> - All sub- questions from 1.1 to 1.6 should be deleted – all these questions are directly linked to police operational work and not relevant in EAW procedure;</p> <p><b>FR</b> – Sub-questions 1.1 to 1.6 are not useful and it would not be feasible to provide this data</p> <p><b>DE</b> Sub-questions 1.1-1.6 of doubtful use as no concrete link with effective application of EAW. Primarily police matters. Goes beyond previous admin burden without corresponding benefit</p> <p><b>LT</b> – Sub-questions 1.1-1.6 don't add any value</p> <p><b>UK</b> - While do collate the total number of EAW arrests from all points under Q1, UK do not have this detailed information in sub-questions 1.1-1.6 in a searchable form on current systems. HIGHLY unlikely UK would be able to answer this question at present. Such stats would not be used to inform the deployment of UK law enforcement services.</p>

1.2	In how many cases was the person arrested on foot of an ordinary/routine Police control inside your country?	<b>BE</b> – Not essential – doesn't outweigh admin burden
1.3	In how many cases was the person arrested while the object of a penal investigation on other grounds?	
1.4	In how many cases was the person arrested while the object of an administrative procedure?	<b>BE</b> – This term needs further clarification
1.5	In how many cases was the person arrested following information provided by the issuing country?	<b>BE</b> – Not essential – doesn't outweigh admin burden
1.6	In how many cases was the person arrested in circumstances other than the above?	

2	How many EAWs have been received, after the person was arrested, by the judicial authorities of your Member State?	<p><b>AT</b> The question appears to be of little statistical relevance and could be omitted. The EAW is already available on the search system (though not in the required language versions). Transmission pursuant to Article 9(1) of the Framework Decision, which is deemed to be relevant by many Member States, often does not occur until after arrest purely on account of the language regime. It is therefore not clear what purpose this question serves.</p> <p><b>CZ</b> - Addition of words "after the person was arrested" to the question not useful for better understanding the question. Prefer not to add these words and to keep the current wording: How many EAWs have been received by the judicial authorities of your Member State? However, it should be noted that this question refers to number of EAWs and not to the number of surrender procedures initiated, since several EAWs may be "received" in respect of one person</p> <p><b>CY</b>- Possible</p> <p><b>EE</b>- Actually we do not understand exactly question 2 – what is behind this question? Normally the person declared wanted under SIS alert is arrested in one MS, the issuing MS is informed immediately about the arrest with information provided with time limits and language requirements to send/transmit the EAW;</p> <p><b>DE</b> – DE also records all searches entered in the SIS as EAWs received because these are deemed to be EAWs. Background is that an alert issued by an MS according to Article 95 of the Schengen Convention practically requires a European arrest warrant; see Article 95(2) (b), which is often entered at the same time. Reliably counting the number of European arrest warrants sent in individual cases to or from a DE judicial authority (i.e. from a judicial authority of an issuing Member State or, if entered in the SIS, by the Federal Criminal Police Office (Bundeskriminalamt) (in practice entails considerable difficulties. The minimum number is likely to be around the number of arrests However, on the one hand direct contact, which is provided for and is desirable, and on the other hand the realities of DE federalism lead to the difficulties mentioned above of centralised data collection. It is accordingly not feasible to record the EAWs transmitted directly between judicial authorities</p> <p><b>UK</b> - Unclear if this is provisional arrest rather than an arrest on domestic offence first and then discovered wanted on EAW</p>
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3	In how many cases have the Judicial Administration of your country <u>refused the execution</u> of an EAW after the person was arrested?	<p><b>AT</b> The number of refusals should not be restricted to just those cases in which the person was arrested. The Framework Decision also permits surrender procedures to be conducted without arrest, while a large number of surrender procedures are conducted in respect of individuals who are serving criminal sentences. The wording "after the person was arrested" should be deleted. The term "Judicial Administration" should be replaced by the term "Judicial Authority".</p> <p><b>BE</b> – needed- will lead to vital info</p> <p><b>CY</b> - Needed</p> <p><b>CZ</b>- Acceptable – it corresponds to the current question.</p> <p>As concerns newly added sub-questions to the question No.3, we consider some of them to be useless and do not agree to add them to the questionnaire (e.g. questions in study 3-7, 3-8, 3-10, 3-12)</p> <p><b>FR</b> – Questions 3.3 to 3.13 are very detailed and will require an analysis of all the warrants. It would be preferable to have the approach in the current questionnaire or to draw on question 8 for issuing states and to list the 3 most frequent grounds for refusal</p> <p><b>DE</b> - Makes sense to set out the reasons for refusals in a uniform and systematic way as proposed The obstacles to admissibility and authorisation in DE practice can be correlated with the questions.</p> <p><b>EL</b> - Agree with COM-proposed list for refusal grounds</p> <p><b>SE</b> - In principle agree COM include all possible grounds</p> <p><b>UK</b> - Better to provide an open text box - i.e. for MS to provide the most common reasons as to why an EAW was refused. SOCA only records that within the file and not in searchable field. UK can say how many discharged as a total. Unlikely UK could provide this level of detail using current systems.</p>
3-1	Amnesty (FD art. 3.1)	<p><b>CY</b> – Q.3.1-.17 – possible but not considered useful</p> <p><b>NL</b> – <u>The technical legal terms in Q. 3.1 to 3.17 may not be clear to the authorities who have to provide the data. Prefer to use a reference to the provision of the FD and only expressions used in the FD itself.</u></p>
3-2	Res iudicata (FD art. 3.2)	<p><b>AT</b> - We have no objection in this regard. However, the term "res iudicata" should be avoided since pending criminal investigations relating to the same act can also constitute grounds for refusal to execute the EAW pursuant to Article 4, point (2), of the Framework Decision.</p>
3-3	Age (FD art. 3.3)	
3-4	Lack of double criminality (FD Art 4.1)	



3-5	Lis pendens (FD Art 4.2)	
3-6	No prosecution decided, prosecution halted or prevented (FD 4.3)	
3-7	Prosecution or punishment statute-barred (FD Art 4.4)	
3-8	Res judicata in a third country (FD Art 4.5)	
3-9	Sentence executed in requested MS on account of requested persons nationality/residence (FD Art 4.6)	
3-10	Extension of executing MS jurisdiction or no extra-territorial jurisdiction of the executing MS (FD Art 4.7)	
3.11	Trial in absentia without meeting requirements (FD Art 4a as inserted by FD 2009/299/JHA)	<b>CZ</b> – not useful – do not add
3-12	Lack of guarantee of review in respect of life sentence (FD Art 5.1)	<b>CZ</b> – not useful – do not add <b>NL</b> - <u>do not consider it legally correct to use a renumbering of paragraphs of article 5. The FD “in absentia” replaced paragraph 1 of Article 5 FD EAW but it did not renumber the remaining paragraphs of Article 5 FD EAW.</u>
3-13	Lack of guarantee of return of national/resident to serve sentence (FD Art 5.2)	<b>NL</b> - <u>do not consider it legally correct to use a renumbering of paragraphs of article 5. The FD “in absentia” replaced paragraph 1 of Article 5 FD EAW but it did not renumber the remaining paragraphs of Article 5 FD EAW.</u>
3.14	EAW content is not in conformity with FD requirements (FD Art 8)	

3.15	Lack of requested additional information (FD Art 15.2)	<b>CZ</b> – not useful – do not add
3.16	Decision to execute has not been taken within time limits (FD Art 17)	<b>SE</b> - question the placement in the Commission's Presentation of this question under the list of grounds for refusal. This is a ground for non-execution of an EAW rather than a ground for refusal. This issue is dealt with in another part of the questionnaire. <b>EUROJUST</b> – study question was phrased "EAW has not been forwarded in time" and EUROJUST unsure as to how this option relates to question as Art 17 relates to time limits in relation to the execution of an EAW and the proposed wording suggests e.g. scenario where provisional arrest and EAW has not been timely transmitted to executing MS resulting in release of requested person
3.17	Problems linked to transit via third MS (FD Art 25.1 and 25.3)	<b>CZ</b> – not useful – do not add <b>FR</b> – This question is not linked to a refusal to surrender but rather difficulties linked to a surrender already granted.
3-18	Other	<b>DE</b> - Missing refusal categories as follows: - maximum penalty no more than 12 months (outside the scope of the EAW FD, Article 2 EAW FD) - sentence no more than 4 months (outside the scope of the EAW FD, Art 2 EAW FD) - public policy (see however Art (1)(3) of the EAW FD) - priority of a conflicting request (Art 16 (1, 3 and 4 of the EAW FD) Clarify whether these categories should be classified under the last point, 'Other'. DE supports 'legal approach' in the sub-division of the reasons for and reducing the categories to the main reasons for would affect value of the statistics
4.1	In how many of the agreed cases did the surrender not take place because of non-compliance with the time limits delay imposed by Art. 17.4 of the FD?	<b>BE</b> – needed- will lead to vital info <b>CY</b> - Needed <b>CZ</b> - Acceptable, as corresponds to the current question. However, the question should be clarified since the FD does not impose duty to release the person if the time limits are not met. The time limits are considered just to determine time-limit within which some procedural steps should be taken. <b>EE</b> - Question 4.1 should be worded as the question 8.1 of the present questionnaire – in how many cases were the judicial authorities of your Member State not able to respect the 90-day time limit for the decision on the execution of the EAW according to Article 17(4) of the FD. In practice if the time limit of 90-days has been passed it does not mean, that the case is over. <b>LT</b> – Remove this question as in LT experience these cases are sporadic and data would not have any significant operational value as non-compliance with time-limits in Art 17.4 and 23.2 would lead to agreement on new date for surrender

		<b>UK</b> - SOCA does not have a mechanism for measuring time between actions. They are recorded within the case file. It is unlikely UK could provide this level of detail using current systems.
4.2	In how many of those agreed cases did the surrender not take place because of non-compliance with the time limits delay imposed by Art. 23.2 of the FD?	<b>CZ</b> - Acceptable, as it corresponds to the current question <b>CY</b> - Needed <b>LT</b> – Remove this question as in LT experience these cases are sporadic <b>UK</b> - SOCA does not have a mechanism for measuring time between actions. They are recorded within the case file. It is unlikely UK could provide this level of detail using current systems.
5	In how many cases did the judicial authorities of your Member State request a guarantee under Article 5.2 of the FD?	<b>BE</b> – needed- will lead to vital info <b>CZ</b> - Acceptable, as it corresponds to the current question <b>CY</b> - Needed
6	In how many cases did the judicial authorities of your Member State request a guarantee under Article 5.3 of the FD?	<b>BE</b> – needed- will lead to vital info <b>CZ</b> - Acceptable, as it corresponds to the current question <b>CY</b> - Needed
7	In how many cases did your judicial authority execute an EAW with regard to a national or resident of your MS?	<b>AT</b> - This question has the same content as the current question No 10 and should be made more precise by addition of the wording "resident as referred to in Article 4, point (6), and Article 5, point (3), of the Framework Decision". It will then cover only persons staying in the executing State in respect of whom a refusal to surrender is possible under the law of the executing State or who are to be treated in the same way as own nationals within the scope of the KOSLOVSKI judgment of the Court of Justice. <b>CZ</b> - Acceptable, as it corresponds to the current question <b>CY</b> - Needed

8	How many persons have been effectively surrendered?	<b>BE</b> – needed- will lead to vital info <b>CZ</b> - Acceptable, as it corresponds to the current question <b>CY</b> - Needed
		<b>FR</b> – insert two questions slightly changing and complementing question 8 in respect of effective surrenders as follows: 8. How many surrender decisions have been granted 8.1 How many persons have been effectively surrendered (current question 8) 8.2 How many deferred surrenders were granted
9	Of those persons surrendered how many consented to the surrender?	<b>BE</b> – needed- will lead to vital info <b>CZ</b> - Acceptable, as it corresponds to the current question <b>CY</b> - Needed <b>UK</b> - SOCA do not collate these figures at the moment. MAY be possible to do in the future when UK moves to a SIS 2 case management
New	In how many cases was the requested person temporarily surrendered to the issuing state pursuant to Article 24.2	<b>CY</b> – Possible but not considered useful <b>DE</b> – problematic as would have to be collected from state prosecutors and courts, mainly at Lander level. Goes beyond previous admin burden without corresponding benefit

## Questions to retain/re-instate from previous questionnaire

Issue
<b>EE</b> - We would like to keep questions 7.1 and 7.2 of the present questionnaire as in our understanding the time period for surrender procedure (time between the arrest and the decision on the surrender of the person sought is one of the most important information from the questionnaire at all.  We also would like to keep the question 8.1 of the present questionnaire – in how many cases Eurojust has been informed.
<b>EUROJUST</b> – Question 8.2 In how many cases was Eurojust informed (of the non-respect of time limits) should be retained as there is a legal obligation pursuant to Article 17.7 FD EAW to inform Eurojust and this question constitutes an important assessment tool of the level of compliance by MS. EUROJUST does not agree with study conclusion that because replies were not significant that the question is meaningless.

## Structure

Issue
<b>AT</b> - The statistical data must be based on a definition of the "reference year", since the granting of execution and the subsequent surrender often do not fall in the same year where, pursuant to Article 24 (1) of the Framework Decision, surrender is postponed for the purpose of prosecution or punishment in the executing State.
<b>EE</b> - After question 2 should be questions 7 to 9 – most important information is question 8 (how many persons have been effectively surrendered), then question 9 (of those persons surrendered how many consented to the surrender), then question 7 about surrender of nationals or residents. And after “positive” and more useful information goes the information about refusals;
<b>IT</b> - A simplified questionnaire following the phases of the EAW procedure is essential to avoid superfluous and not always helpful information.
<b>LT</b> - Some incompatibility in respect of the period of time when an EAW has been issued. In present questionnaire questions to MS as issuing states refer only to EAWs issued in a given year. In new questionnaire, questions to issuing MS numbers 2-8 and 10-11 refer to EAWs that have been issued anytime (including previous years). However question no. 9 includes a phrase "of those arrest warrants" this creating some confusion as to why this question exclusively is limited to certain EAWs and also whether it refers to EAWs which have either been issued or transmitted in a given year.
<b>SK</b> - EAW questionnaire does not reflect the situation when the year of the issuing of the EAW is different than the year when a person was arrested or surrendered. This fact shall be reflected mainly in questions 2.2 and 5.1 in which is the risk that the given data or numbers will not be completely correct (the number of issued EAW would be different from the actual number of conducted EAW for the respective year). In this regard the questionnaire should be more accurate in order to provide a real quantitative picture in the area of the EAW.