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NOTE

From :	General Secretariat of the Council
To :	Working Party on Cooperation in Criminal Matters (Experts on the European Arrest Warrant)
No. prev. doc. :	8111/05 COPEN 75 EJN 23 EUROJUST 24 7196/3/13 REV 3 COPEN 34 EJN 14 EUROJUST 19
Subject :	Replies to questionnaire on quantitative information on the practical operation of the European arrest warrant – Year 2013

Further to the questionnaire set out in 8111/05 COPEN 75 EJN 23 EUROJUST 24, delegations will find in ANNEX an updated compilation of the replies received with regard to the year 2013 and in ANNEX I and ANNEX II the replies to questions 6.2. and 12.

Questions to Member States as issuing States:

	BE	BG	CZ	DK	DE	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK
1. How many European arrest warrants have been issued in **2013**?			327[1]		1932	88				69		24		519[2]			9			2972		2238		335			

[1] CZ: According to statistics of the Czech Ministry of Justice.

[2] LT: 352 EAWs have been issued for the purposes of conducting a criminal prosecution and 167 EAWs have been issued for the purposes of executing a custodial sentence.

	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?			454[3]		1932	none				none		24		[4]			9			2203		2153		23			

[3] CZ: According to statistics of the Czech Police Presidium.

[4] LT: No statistics available. In all cases requests for international searches of one person are transmitted via both channels: Interpol and SIS. However, in cases, when there is information concerning person's detention or exact location address in a particular country, EAW in respect of such a person is transmitted via one channel only: Interpol or SIS, depending on whether the particular country is participating in SIS. Priority is generally given to SIS channel.

	BE	BG	CZ	DK	DE	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK
2.2. How many of these European arrest warrants were transmitted via the SIS?			454		2417[5]	88				none		none		[6]			9			2405		2153		312			

[5] DE: It is generally expected that more European Arrest Warrants will be transmitted via Interpol than via SIS. This is due to the fact that the German authorities can transmit several international search requests for one person via Interpol. In SIS, however, only one search can be activated per person sought by German authorities. That this was not the case in 2013 is due to the fact that at the time of the survey, search requests has already been activated in SIS that could not yet be transmitted via Interpol, because the requirements for an Interpol alert (inter alia, the agreement of other authorities) had not yet been fulfilled.
In addition, in some cases the search activated in SIS had already led to the arrest of the requested person before an Interpol search had been initiated. After consultation with the competent prosecution authorities, search documentation is in principle never transmitted via Interpol in such cases.

[6] LT: No statistics available. See reply to Question 2.1. above.

	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[7]		none		none			

[7] PL: 10 European Arrest Warrants were transmitted via the EJN.

	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?			104[8]		900[9]	35[10]				17		7		109			1			731		422		43			

[8] CZ: 39 + 1 case from 2006 + 2 cases from 2007 + 1 case from 2008 + 2 cases from 2009 + 8 cases from 2010 + 13 cases from 2011 + 38 cases from 2012.

[9] DE: No distinction is made between surrenders resulting from a European Arrest Warrant transmitted in 2013 and those resulting from European Arrest Warrants transmitted in 2012 or earlier.

[10] EE: 2 persons were arrested in Estonia, 1 EAW was withdrawn, 3 persons were arrested outside EU and in these cases the extradition request has been issued, 33 persons are still declared wanted.

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 **2013**?			204		12091[11]	55				223		72		116			14			333		608		70			

[11] DE: In 2013 a total of 12 091 alerts were introduced by SIS Member States based on a European Arrest Warrant (not including Germany, see 2.2). A total of 301 search requests were received via Interpol from States which use the European Arrest Warrant but do not participate in the Schengen Information System.

	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?			156[12]		1924[13]	49				1441[14]		28	72				9			276		780		53			
5.2. How many have been effectively surrendered ?			187[15]		1141	49[16]				907[17]		28	72[18]				8			211		685		38			

12 CZ: +15 imprisonment.

13 DE: In the period under review, there were 1 924 hits on alerts under Article 26 of the Council Decision on SIS II (previously Article 95 of the CISA) by EU Member States (104 of which for the associated States of Norway, Iceland, Switzerland and Liechtenstein).
No distinction can be made here between actual arrests and mere indications of the whereabouts of a person sought in cases in which an alert has been flagged. The figure indicated includes cases in which the person sought was already either serving a sentence or remanded in custody in Germany, so there was no arrest, just superimposed detention where appropriate. However, it does not include cases in which arrest warrants are transmitted directly to judicial authorities without an alert being issued. In the period under review, a European arrest warrant was the basis for a decision on extradition in 1 349 cases.

14 IE: Since commencement of EAW.

15 CZ: 131 + 1case from 2009 + 6 cases from 2010 + 9 cases from 2011 + 40 cases from 2012.

16 EE: 3 EAWs has been withdrawn by the issuing Member State, 2 EAWs were issued for the extension of surrender and 1 person regarding whom the EAW was submitted to Estonia is still wanted.

17 IE: However, please note that a number of European Arrest Warrants may be transmitted by an issuing State for a single individual, therefore while 907 orders have been made, a number of these orders may refer to a single individual.

18 LT: 18 of them base on EAWs issued in previous years.

	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?			112[19]		665	47				391		24		66			8			153		632		21			
5.4. Of those surrendered, how many did not consent to the surrender?			75[20]		475	2				516		4		6			none			58		60		17			

[19] CZ: 84 + 3 cases from 2010 + 5 cases from 2011 + 20 cases from 2012.

[20] CZ: 47 + 1 case from 2009 + 3 cases from 2010 + 4 cases from 2011 + 20 cases from 2012.

	BE	BG	CZ	DK	DE	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK
6.1. In how many cases have the judicial authorities of your Member State refused the execution of a European arrest warrant?			73		166[21]	none				183		none		4			1			52		57		4			

[21] DE: The European Arrest Warrant was withdrawn in (the remaining) 43 cases.

	BE	BG	CZ	DK	DE	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK
6.2. Which were the grounds for refusal?			Cf. Annex I		Cf. Annex I					Cf. Annex I				Cf. Annex I			Cf. Annex I			Cf. Annex I				Cf. Annex I			

	BE	BG	CZ	DK	DE	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK
7.1. How long does a surrender procedure take in average where the person agreed to the surrender (time between the arrest and the decision on the surrender of the person sought)?			43 days		15,94 days	6 days				14 weeks		10 days		1 month			10 days			18,5 days		3 weeks[22]		28 days			

[22] RO: Between 2 weeks and one month.

	BE	BG	CZ	DK	DE	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK
7.2. How long does a surrender procedure take in average where the person did not consent to the surrender (time between the arrest and the decision on the surrender of the person sought)?			74 days		38,94 days[23]	9 days				7 months		35 - 40 days		2 months			27 days			23,3 days		6 weeks[24]		61 days			

[23] DE: Where, in the above-mentioned proceedings, the requested person is serving a custodial sentence or is remanded in custody, the time taken is counted from the point at which the person is detained solely for the purpose of extradition.

[24] RO: Between 3 weeks and two months.

	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?			14		28	none				383[25]		none		none			none			15		67		none			

[25] IE: Statistics available from 2007 only.

	BE	BG	CZ	DK	DE	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK
8.2. In how many of those cases was Eurojust informed?			8		none[26]	none				382		none		none			none			12		none		none			

[26] DE: Under Section 83c(4) of Germany's Act on International Cooperation in Criminal Matters, Eurojust is only to be informed in the event of exceptional circumstances. No such circumstances had arisen in any of the procedures.

	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?			1		519[27]	none				none		none		none			none			31		35		1			

[27] DE: Due to Germany's federal system, if the person surrendered travels by land, the law enforcement authorities of all the federal states through whose territory he or she is transported must be involved. This leads to delays. However, the 10-day limit is generally only exceeded by a narrow margin. The largest share of transfers were to Poland. It is not always guaranteed that the Polish authorities will promptly take charge of the requested person.

	BE	BG	CZ	DK	DE	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK
9.2. In how many of those cases was the person released, according to Article 23(5) of the Framework Decision?			none		none	none				none		none		none			none			17		6		none			

	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?			31[28]		67 [29]	21				193		none		65			4		135	15		223		22[30]			

[28] CZ: 28 nationals, 3 residents.

[29] DE: German nationals were surrendered in 35 cases.

[30] SK: The Slovak Republic does not investigate the residence of arrested persons.

	BE	BG	CZ	DK	DE	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK
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?			21[31]		49[32]	21				none				[33]			none			85		93		[34]			

[31] CZ: 21 nationals, 0 residents.

[32] DE: 32 involving German nationals and 17 involving foreign nationals; see 10.1.

[33] LT: In all cases concerning the surrender of citizens of the Republic of Lithuania.

[34] SK: No statistics available.

	BE	BG	CZ	DK	DE	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK
11. In how many cases have the judicial authorities of your Member State requested additional guarantees under Article 5(1) or Article 5(2) of the Framework Decision?			none		1	none				[35]		none		none			none			16		23		[36]			

[35] IE: Statistics not available.

[36] SK: No statistics available.

	BE	BG	CZ	DK	DE	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK
12. Is there any other information regarding the operation of the European arrest warrant that you would like to give?			Cf. Annex II		no	no				no		no		no			Cf. Annex II			Cf. Annex II		Cf. Annex II		no			

Replies to question 6.2

"Which were the grounds for refusal?"

GERMANY

- The requested person was not in Germany: 11
- The European arrest warrant did not satisfy the formal requirements: 18
- Under the law of the requested Member State, the offence was not punishable by a maximum custodial sentence of at least 12 months: 2
- The requested person had already been convicted of the same offence in another Member State by a judgment having the force of res judicata: 1
- The sentence passed was less than the minimum of four months' custody: 1
- Execution was requested on the basis of a judgment by default without the conditions permitted in Article 5 of the Framework Decision having been fulfilled: 21
- Prosecution or enforcement of the sentence was statute-barred under German law: 19
- There was no double criminality for an offence not listed in Article 2(2) of the Framework Decision: 13
- Extradition would have violated European public policy (ordre public): 5
- The requested person was being prosecuted in Germany for the same offence: 6
- It is unlikely that the requesting State would grant a similar request from Germany (non-reciprocity): 0
- A foreign national habitually resident in Germany did not consent to extradition for the purposes of execution of sentence: 18
- No guarantee was given that the person would be returned: 1
- A German national did not consent to extradition for the purposes of execution of sentence: 47

- The instigation of criminal proceedings for the same offence as that on which the request was based had been refused, or criminal proceedings which had already been instigated for that offence had been discontinued: 1
- German national with link to German territory transferred for criminal prosecution: 2
- An extradition request from a third State was given priority: 2

SLOVAK REPUBLIC

The act on which the European Arrest Warrant is based does not constitute an offence under the law of the Slovak Republic.

POLAND

- The requested person has been finally judged by a Member State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State (art. 3 (2) EAW Framework Decision);
- the requested person may not, owing to his age, be held criminally responsible for the acts on which the arrest warrant is based under the law of Poland (art. 3 (3) of the EAW Framework Decision);
- the offence was committed on the territory of Poland according to Polish law (art. 4 (7)(a) of the EAW Framework Decision);
- the act was does not constitute an offence under Polish law (art. 4 (1) and 2 (4) of the EAW Framework Decision);
- the EAW has been issued for the purposes of execution of a custodial sentence or detention order, where the requested person is staying in, or is a national or a resident of Poland and Poland undertakes to execute the sentence or detention order in accordance with Polish law (art. 4 (6) of the EAW Framework Decision);
- the EAW was issued for a purpose other than conducting a criminal prosecution or executing a custodial sentence or detention order or did not conform with the requirements as to content and form (art. 1(1) and art. 8 of the EAW Framework Decision *a contrario*).

MALTA

The Court decided that the persons concerned were not wanted for prosecution but merely investigation.

LITHUANIA

In two cases Lithuania has taken over the execution of the sentence instead of executing the EAW; in one case the statutory time of limitation has expired; in one case execution was refused due to a mental illness of the requested person.

IRELAND

- Correspondence could not be established;
- Issuing state could not provide guarantee of retrial;
- Cumulative sentence on multiple offences where correspondence could not be established for one offence;
- Invalid warrant (not signed by judicial authority);
- *Non refoulement*. Subject granted asylum from requesting state;
- Article 26 of the FD. The Court decided that, as the subject had been held in custody in this jurisdiction for the same time period as that to which he had been sentenced, there was no longer an outstanding sentence to be served and the warrant was void;
- Individual did not flee as suggested;
- Minimum gravity requirement not met;
- Issues around *trial in absentia*, whereby the individual was not informed of trial;
- Identification issues;
- Health issues;
- *Ne bis in idem* – i.e. individual would be tried twice for the same offence;
- Extraterritoriality issues.

CZECH REPUBLIC

(1) Act does not constitute an offence under the CZ law.

(5) Requested person is a national and EAW has been issued for the purposes of execution of a custodial sentence.

(18) Withdrawal of EAW.

(5) Person was not located on the territory of the Czech Republic.

Replies to question 12

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

ROMANIA

To our view possible improvements to the operation of the EAW are mostly related to legislative and operational (logistical) measures need to be taken at the national level of the EU member states. In general, communication and coordination need to be really improved both internally and between the issuing and executing states.

As an issuing state, we have confronted in almost all of the cases with the lack of feedback on receipt of the EAWs and also on the actual status of enforcement of the EAWs.

In general, the following information are missing: the exact period of arrest based on EAW (especially when the person sought is subject to proceedings in the executing state or under the enforcement of a custodial sentence applied by that state), the decision taken by the executing state (it is transmitted only upon request and after a very long period of time although as an issuing state we have to follow the line of the specialty rule), concrete information on the rule of specialty, the extension (comparing with the actual provisions of the FD) of the grounds of refusal or of the information needed for a decision to be take or of the conditions imposed to us by the executing state. In addition, when the EAWs were refused and the executing states decided to take over the execution of the custodial sentence, there is no info on how and when the custodial sentence was actually enforced.

We have been also confronted with some difficulties in relation to the taken-over procedure. The authorities of the executing states failed to actually surrender the person due the absence of the measures related to that person and to inform us in advance. It appeared that in some EU member states no internal coordination between the authority deciding on the EAW and the one in charge with the surrender really existed. This caused financial loses for our police authorities.

As an executing state, the most recurrent problem faced by our courts of appeal (executing courts) is related to the Schengen Alert (invalid or issued for other purposes than arresting the persons in questions - the legal basis of the EAW is not an arrest warrant but a court order requiring someone to appear in court) and the identity of the person sought.

In the end, we consider that a special attention has to be paid when EAW is doubled by a transfer of the person sough also subject to a custodial sentence within the executing state or a third one. Such transfer procedure may take place either between the EAW issuing and executing states or between the EAW executing state and a third one (EU member state). The number of such cases increased and an internal coordination within the executing (EAW)/issuing (transfer) state have to be very well assured (also due to the specialty rule applicable under FB 909) especially when the nominated central authorities are different.

POLAND

- In some cases the executing state did not provide information on how long the arrested person was detained prior to the surrender. This made it impossible to properly include that detention time in the eventual sentence;
- some States required an elaboration on the factual circumstances of the case and/or presenting specific evidence indicating that a crime had been committed.

MALTA

Kindly be informed that certain countries disregard the rule that scheduled offences are not subject to double criminality requirements and then expect requesting States (which implemented the Framework Decision correctly), to follow such a decision.

CZECH REPUBLIC

44 cases were concluded in different way (e.g. the surrender was postponed, cases the consent was given with the prosecution for other offences, the procedure has not been yet closed).