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THE EUROPEAN UNION**

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REV 1**

**COPEN 87  
EJN 28  
EUROJUST 28**

**NOTE**

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From : General Secretariat  
To : Working Party on Cooperation in Criminal Matters (Experts on the European Arrest Warrant)

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No. prev. doc. : 8111/05 COPEN 75 EJN 23 EUROJUST 24  
10330/3/08 REV 3 COPEN 116 EJN 44 EUROJUST 58

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Subject : Replies to questionnaire on quantitative information on the practical operation of the European arrest warrant – Year 2008

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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 2008 and in the ANNEX II replies to the questions 6.2. and 12.

## Questions to Member States as issuing States:

	BE	BG	CZ	DK	<u>DE</u>	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	<u>HU</u>	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK
1. How many European arrest warrants have been issued in 2008?			494		2149	46	119 <sup>1</sup>	623	1184 <sup>2</sup>	40		16	140 <sup>3</sup>	348 <sup>4</sup>	40	975				4829			39	342	107	190 <sup>5</sup>	

<sup>1</sup> EL: Out of the 119 EAW issued in 2008, 2 were withdrawn, 75 were transmitted via Interpol and SIS too. Out of those 75 EAW, 10 were transmitted, also, via European Judicial Network.

<sup>2</sup> FR: These statistics cover only EAWs brought to the knowledge of the Ministry of Justice. These statistics are incomplete as the French Ministry of Justice is not apprised of all EAWs issued by French judicial authorities and addressed to another Member State, because of the rule of direct transmission of EAWs. Not all courts of appeal have been able to provide the requested statistical data and therefore the French Ministry of justice is unable to give more global statistical data. However, this figure is relatively comparable to that for 2007 (1083).

<sup>3</sup> LV: 66 EAW were transmitted directly to executing country. 74 put into SIS.

<sup>4</sup> LT: 248 EAW were issued by the Prosecutor General's Office in prosecution cases and 100 EAWs were issued by the Ministry of Justice in conviction matters

<sup>5</sup> SE: 89 arrest warrants issued for the purpose of conducting a criminal prosecution and 101 issued for the purpose of executing a custodial sentence or detention order.

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2.1. How many of these European arrest warrants were transmitted via Interpol?			-		1826	37 (searches)	107	623	880	none		all	none	201	0	252				3271			25	69	31	185	
2.2. How many of these European arrest warrants were transmitted via the SIS?					2149	46 (searches)	87	623	946	none		not yet in force	none	388 <sup>6</sup>	6	723				3556			6	265	96	185	

<sup>6</sup> LT: For several reasons the number of issued EAWs may not coincide with the number of EAWs transmitted via Interpol or the SIS. First of all, international search may be also announced when national police authorities provide certain information about a person in respect of whom national search is announced. Moreover, if information is received that a person is located in the Schengen state, the EAW is not transmitted via Interpol. If more than one EAW is issued in respect of the same person, only one SIS alert is issued and one international search is announced (information about all these EAWs is always provided to the MS concerned).

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2.3. How many of these European arrest warrants were transmitted via the VPN of the EJN?					none	none	[10 via the EJN]		none	none		none	none		[1 (this EAW was transmitted via Interpol as well)]	[30 EAW by direct transmission to executing authority - 1 EAW via Eurojust]	none					[61]			0	none	0	Not applicable	
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	BE	BG	CZ	DK	<u>DE</u>	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	<u>HU</u>	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?			141 <sup>7</sup>		624 <sup>8</sup>	22	10 <sup>9</sup>	93	400	13		3	22	68	22	205				617				11	81	44 <sup>10</sup>	<sup>11</sup>	

<sup>7</sup> CZ: 68 - EAW issued in 2008; 59 - EAW issued in 2007; 14 - EAW issued in 2006.

<sup>8</sup> DE: This covers both EAWs which have been transmitted in 2007 and prior to 2007.

<sup>9</sup> EL: In one case the person sought was arrested in Greece.

<sup>10</sup> FIN: Of these 44 persons the EAWs had been issued 2008. There were additional 26 persons who were surrendered for EAWs issued previous years.

<sup>11</sup> SE: Regardless of when the EAWs were issued, 40 persons were surrendered to Sweden during 2008 (35 for conducting a criminal prosecution and 5 for executing a custodial sentence or detention order). In addition to these figures, in two cases, a Swedish arrest warrant resulted in an undertaking of the execution of the sentence in the executing State in accordance with Article 4(6) of the Framework Decision.

**Questions to Member States as executing States:**

	BE	BG	CZ	DK	<u>DE</u>	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	<u>HU</u>	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 2008?			245		10960 <sup>12</sup> + 1677 <sup>13</sup>	60	196	1534	709 <sup>14</sup>	198		26	11	43	29	14393				241			65	102 <sup>15</sup>	23	56	

<sup>12</sup> DE: received through SIS.

<sup>13</sup> DE: received through Interpol.

<sup>14</sup> FR: 709 foreign EAWs were received (this figure relates only to those EAWs that the Ministry of Justice is aware of. Not all courts of appeal have been able to provide the requested statistical data and therefore the French Ministry of justice is unable to give more global statistical data.

<sup>15</sup> SK: Hungary - 18, Germany – 21, Poland - 4, Austria - 6, Czech Republic – 46, Spain – 2, Romania – 2, United Kingdom – 1, Portugal – 1, Scotland - 1

	BE	BG	CZ	DK	<u>DE</u>	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	<u>HU</u>	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?			178		974 <sup>16</sup>	50 <sup>17</sup>	154	1230	454 <sup>18</sup>	320		8	7	37	18	113				213			61	58	22	48 <sup>19</sup>	
5.2. How many have been effectively surrendered ?			129 <sup>20</sup>		742	52	111	931 surrendered (out of 1173 granted)	574 <sup>21</sup>	194		8	7	37	9	95				118			50	36	20	46	

<sup>16</sup> DE: In 114 cases, the person sought was already serving a sentence in Germany, and in 7 cases he was being detained provisionally. Thus no arrest was required in these cases.

<sup>17</sup> EE: 7 wanted persons served their sentences in Estonian prisons. 2 persons served their sentences in other EUMS and Minister of Justice gave his permission to surrender them to the requesting MS. 1 case was the extension of surrender.

<sup>18</sup> FR: 454 persons have been arrested in France on the basis of a foreign EAW.

<sup>19</sup> SE: This figure includes 8 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.

<sup>20</sup> CZ: 3 cases from 2006; 18 cases from 2007.

<sup>21</sup> FR: This figure also comprises persons who were in custody for a different reason and who could be surrendered on the basis of an EAW.

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5.3. Of those surrendered, how many consented to the surrender?			92 <sup>22</sup>		432	37	75	475	Statistics unavailable <sup>23</sup>	109		6	6	33	8	81				65			34	25	12	28	
5.4. Of those surrendered, how many did not consent to the surrender?			37 <sup>24</sup>		310	15	36	698		85		2	1	4	1 <sup>25</sup>	14				53			25	11	8	18	

<sup>22</sup> CZ: 2 cases from 2006, 9 cases from 2007.

<sup>23</sup> FR: However, it concerns a large majority of cases.

<sup>24</sup> CZ: 1 case from 2006; 9 cases from 2007.

<sup>25</sup> LU: Intermediate situations: - Arrested person who consented to surrender, but where surrender is delayed and not realised before 31.12.2008 ( 7 ). – Arrested person who did not consent to surrender, but where surrender is delayed and not realised before 31.12.2008 ( 2 ).



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6.1. In how many cases have the judicial authorities of your Member State refused the execution of a European arrest warrant?			46		190 <sup>26</sup>	2	19	29	Statistics unavailable	14		1	none	1	2 <sup>27</sup>	18				53			12	12	1	7	
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		Cf. Annex I		Cf. Annex I	Cf. Annex I	Cf. Annex I				Cf. Annex I			Cf. Annex I	Cf. Annex I	4 art. 61	Cf. Annex I	

<sup>26</sup> DE: In the other 42 cases, there was on 28 occasions a withdrawal of the EAW and in 12 cases the person sought showed up voluntarily. There were two cases of mistaken identity.

<sup>27</sup> LU: 2 EAWs were withdrawn by issuing authority as Luxembourg took over the prosecution against the 2 nationals subject to proceedings.

	BE	BG	CZ	DK	<b>DE</b>	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	<b>HU</b>	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)?			37		14,8 days	8	10-30 days	13	Approximately 10days	2 months <sup>28</sup>		10-15 days	Approximately 5-10 days	1 month	From 1 to 10 days	8 days in average				From 1 up to 80 days. In practice takes about 20 to 30 days				Shortest period: 8 hours; longest period: 20 days	13 days	13 days <sup>29</sup>	Approximately 15 days	

<sup>28</sup> IE: This is an average number and includes those who agreed to surrender after proceedings had commenced in the Courts. Where a person consented in Court on arrest, surrender was executed in less than 30 days in all cases

<sup>29</sup> FI: In one additional case the surrender decision was postponed due to delay in organizing the temporary surrender. Duration 100 days.

	BE	BG	CZ	DK	<u>DE</u>	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	<u>HU</u>	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)?			79		37,1 days <sup>30</sup>	12	10-60 days	42	appr. 35 days	9 months		35-40 days	Approximately 5-10 days	2months	From 18 days (non-consent case without appeal) to 51 respectively 72 days (2 non-consent cases with appeal).	30 days in average				1 -90 days. In practice about 30 to 40 days			The courts that had EAW cases gave the following times: <sup>31</sup>	26 days	21 days	Approximately 74 days	

<sup>30</sup> DE: In the above - mentioned proceedings in which the person sought is already being (provisionally) detained in Germany, the relevant period starts running only when the person is detained for the purpose of surrender.

<sup>31</sup> SI: District Court Ljubljana: 14-16 days; District Court Krško: 33 days; District Court Koper: 20 days; District Court Murska Sobota: 12 days; District Court Maribor : 1 month; District Court Ptuj: 9 days; District Court Nova Gorica : 13-27 days; District Court Celje: 6-7 months.

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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?			23		15	none	1	17	Statistics unavailable	Total unavailable (29 in 2008, 29 notified in 2008)		none	none	In none cases	0	0				9				11	1	1	2	
8.2. In how many of those cases was Eurojust informed?			23		none <sup>32</sup>	none	none		none	91		1	none	In none cases	0	0				1				1	1	0	2	

<sup>32</sup> DE: According to § 83 c Abs. 4 IRG Eurojust should be informed only in exceptional circumstances. These did not occur in 2008.

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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?			21		363 <sup>33</sup>	none		81	Statistics unavailable	Statistics not available		none	none	In none cases	0	0					30			12	none	0	1	
9.2. In how many of those cases was the person released, according to Article 23(5) of the Framework Decision?			none		none <sup>34</sup>	none		0	none	3		none	none	In none cases	0	0					1			3	none	0	1	

<sup>33</sup> DE: In case of transfer over land, Germany's federal system implies that the judicial authorities of all "Bundesländer" over which the transfer takes place, must be notified. This leads to delays.

<sup>34</sup> DE: According to § d IRG, the prosecuted person should be released when he's not surrendered within 10 days or no new date for surrender is agreed. This did not happen in 2008.

	BE	BG	CZ	DK	<b>DE</b>	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	<b>HU</b>	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?			10 (nat), 3 (res.)		107	44	22	29 surrendered (out of 46 granted)	75 <sup>35</sup>	44		none <sup>36</sup>	2	31	1 case	39				98			8	<sup>37</sup>	7	<sup>38</sup>	

<sup>35</sup> FR: Out of 574 surrenders known to the French Ministry of Justice.

<sup>36</sup> CY: in two cases of EAWs related to nationals, they were not forwarded for execution to the competent authorities due to a constitutional limitation which does not allow for extradition of nationals for offences committed before 01.05.2004.

<sup>37</sup> SK: The judicial authorities of the Slovak Republic executed an arrest warrant with regard to Slovak nationals in 55 cases. Slovak Republic does not investigate the residence of arrested persons.

<sup>38</sup> SE: This figure concerns Swedish nationals.

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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?			7 (nat.); 3 (res.)		57	44	11	19	Statistics unavailable	none		Not applicabe	2	To all citizens of the republic of Lithuania	0	39				59			0	none	5	6	
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	BE	BG	CZ	DK	<u>DE</u>	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	<u>HU</u>	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?			1		none	none	1	6	Statistics unavailable	Statistics not available		1	none	none	0	21				2			2	Article 5(1) –None; Article 5(2) –None	3	<sup>39</sup>		
12. Is there any other information regarding the operation of the European arrest warrant that you would like to give?			none		no							Cf. Annex II	no	no						Cf. Annex II				Cf. Annex II				

<sup>39</sup> SE: Data related to the number of requested guarantees as provided for in Article 5 (1) 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?"*

CZECH REPUBLIC

- 3) act does not constitute an offence under the CZ law
- (5) Czech national - act committed before 1.11.2004
- (2) person is prosecuted for the same act as that on which the EAW is based
- (5) requested person is a national and EAW has been issued for the purposes of execution of a custodial sentence
- (5) abuse of identity
- (12) withdrawal of EAW
- (5) person was not located on the territory of the Czech Republic
- (2) the criminal prosecution or punishment of the requested person were statute-barred
- (1) lack of prescribed information in the EAW
- (1) lack of additional requested information
- (1) lack of guarantee
- (3) surrender procedure was not custodial
- (1) EAW was not been forwarded

LITHUANIA

Failed to match the principle of double criminality - the act on which the European Arrest Warrant was based did not constitute an offence under the criminal law of the Republic of Lithuania.

ESTONIA

In one case was a lack of double criminality (case wasn't punishable under Estonian criminal law as an offence) and in second case court decide that there was a lapse of time in this case.

## FRANCE

- le the EAW was cancelled by the issuing MD because of lapse of time;
- the EAW had already been executed : the person concerned who had been placed under judicial control, had evaded from it (which in itself is not a for which can reactivate a previously executed EAW);
- a copy of the EAW was not received by the judicial authority within the deadlines;
- mistaken identity
- the person concerned was being prosecuted in France for the same facts for which the foreign EAW had been issued

In some cases, judicial authorities decide to order the surrender of the person, but temporarily suspend the surrender “for serious humanitarian reasons” on the basis of Article 24(3) of the EAW Framework Decision (Article 695-38 of the *Code de Procédure Pénale*).

## IRELAND

Lack of correspondence, imposition of composite sentence where surrender was refused on one of a number of offences, identification, health, undertaking not provided.

## LUXEMBOURG

1 x date of the offences (< Aug.8-2002); 1 x non-transmission of EAW form.

## POLAND

- the act on which the EAW was based did not constitute an offence under the Polish law;
- the person who was the subject of the EAW was being prosecuted in Poland for the same act as that on which the EAW was based on;
- the EAW related to the offences which under the Polish law were committed in whole or in part in the territory of the Republic of Poland or in a place treated as such;
- the EAW has been issued for the purposes of execution of a custodial sentence or detention order and the requested person who was the Polish citizen did not consent to the surrender;

- the judicial authorities of the issuing State did not issued an order to carry out a conditionally suspended penalty;
- in one case the judicial authorities of the issuing State decided to discontinue the proceedings after the issuing of the EAW.

#### SLOVAK REPUBLIC

- the criminal prosecution or punishment of the requested person was statute-barred
- the criminal offence was considered as partially or as whole 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).

#### SLOVENIA

Article 4/4 of the FD (lapse of time); the identity of the person concerned has not been confirmed; Article 4/1 of the FD (the act on which the EAW was based did not constitute a criminal offence under the law of the Republic of Slovenia); the issuing state did not give the assurances laid down in article 5 of the FD; article 4/2 of the FD (the person who was the subject of the EAW was being prosecuted in the RS for the same act as that on which EAW was based); withdrawal of the EAW; issuing state did not provide additional information.

#### SPAIN

*Ne bis in idem*, double criminality, criminal prosecution is statute-barred.

#### SWEDEN

- The EAW was incomplete, and not completed upon request (1)
- The act did not constitute an offence according to Swedish law (2)
- The wanted person could not be found in Sweden (1)
- The statutes of limitation in Swedish law (3)

## GREECE

L. 3251/2004 : article 11 par. f (5 cases), art. 11 par. d (1 case), art.11 par g(i) (3 cases), art 11 par g(ii) (3 cases), art. 12 par a (2 cases), art 12 par. b (1 case), art. 12 par. e (1 case), failure of the issuing Member State to provide information requested according to art. 2 of Law 3251/04 (2 cases), non existence of the conditions foreseen in art. 10 par 2 of Law 3251/04 (1 case)

## CYPRUS

In one case the EAW was not forwarded to the competent judicial authority for execution, due to the fact that the person was sought for serving a sentence of less than 4 months.

## HUNGARY

- prescription 7
- surrender requested of own national for execution of a sentence 9
- the arrested person was not identical with the person sought 2
- there were criminal proceedings in course in Hungary for the same offences 0

## GERMANY

The wanted person is not in Germany: 4

The European arrest warrant does not meet the formal requirements: 24

The offence is not punishable under the law of the requesting Member State by a custodial sentence for a maximum period of at least 12 months: 1

The remaining custodial sentence to be executed is of less than 4 months: 2

The wanted person has already been finally convicted of the same offence in another Member State: 7

Execution is requested on the basis of a judgment rendered in absentia without the authorised conditions pursuant to Article 5(1) of the Framework Decision being met: 7

Prosecution or execution is time-barred under German law: 42

Double criminality is absent in the case of an offence that is not listed in Article 2(2) of the Framework Decision: 0

Extradition would be a violation of European public order: 3

Criminal proceedings are being brought in Germany against the wanted person for the same offence: 4

The institution of criminal proceedings for the same offence has been disallowed or proceedings already instituted have been halted: 3

Priority was given to the extradition request of a third State: 3

It cannot be expected that the requesting State would accede to a similar German request (no reciprocity): 1

An alien customarily resident in Germany has not agreed to extradition for the purpose of enforcement of the penalty: 28

There is no guarantee that a German national extradited for the purpose of criminal prosecution will be returned to serve his sentence: 4

In the case of a German national accused of an offence, there is a significant link within the meaning of Article 80(2) of the Law on international legal assistance in criminal matters (IRG): 0

A German national has not agreed to be extradited for the purpose of execution of sentence abroad: 57.

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Replies to question 12:

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

CYPRUS

The proportionality issue is a serious matter which should be taken into consideration by many countries. The number of EAWs received for minor offences during 2008 has increased dramatically.

POLAND

Some courts raised such difficulties appearing in cooperation with judicial authorities of other Member States as: short time required for translating the EAW and providing additional information or authentic documents, requiring additional information that is not envisaged in the FD on EAW, lack of information about the actual time of detention, a diverse practice with reference to the guarantee established under the art. 5.3. of the FD on EAW.

SLOVAK REPUBLIC

The Slovak EAW system has been evaluated within the 4<sup>th</sup> round of mutual evaluation in 2009 (7060/1/09 REV 1 CRIMORG 33 COPEN 43 EJM 19 EUROJUST 13 RESTREINT UE). All relevant information on the Slovak EAW system are included in that evaluation report.