



**COUNCIL OF
THE EUROPEAN UNION**

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9120/11

**COPEN 83
EJN 46
EUROJUST 58**

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 9734/5/09 REV 5 COPEN 87 EJN 28 EUROJUST 28
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Subject :	Replies to questionnaire on quantitative information on the practical operation of the European arrest warrant – Year 2010
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Further to the questionnaire set out in 8111/05 COPEN 75 EJN 23 EUROJUST 24, delegations will find in ANNEX a compilation of the replies received with regard to the year 2010 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 2010 ?	553		552	85	2096	74		566				29	159	402 ₁	32	1015	16			3753	84	2000 ²		361 ₃	116	169 ₄	

1

LT: 291 EAWs have been issued for the purposes of conducting a criminal prosecution and 111 EAWs have been issued for the purposes of executing a custodial sentence.

2

RO: 1235 EAWs were transmitted for execution to the Member States.

3

SK: 7 of them were additional request; 122 of them were cancelled.

4

SE: (97 arrest warrants issued for the purpose of conducting a criminal prosecution and 72 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?	⁵		none	44	1916	13		566				29	none	250	8	311	6			2792	80	⁶		4	53	169	

⁵ BE: No statistics available.

⁶ RO: Before November 2010, the EAW were sent for diffusion through Interpol channels. In November 2010, the SIRENE Office – Romania became operational. After November 2010, the database of the SIRENE continued to be updated with the EAW issued before and after November 2010. All EAW issued after November 2010 are transmitted only 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
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2.2. How many of these European arrest warrants were transmitted via the SIS?	623 ⁷		none	52	2096	74	566					none	327 ₈	29	704	5			3012	80	9			357	102	169	
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- ⁷ BE: The number of EAWs transmitted via the SIS does not correspond with the number provided in the answer to question 1. The fact is, the data are collected from different sources. The number of EAWs transmitted via the SIS is provided by the Belgian SIRENE office. All other data are derived from a national database. Since these data are inserted manually on a case-by-case base, some margin of error is inevitable.
- ⁸ LT: The number of EAWs issued by the competent authorities of the Republic of Lithuania does not coincide with the number of EAWs transmitted via Interpol or via the SIS for several reasons. Firstly, international search is not announced when the location of the requested person is known to the competent authorities. In cases when more than one EAW is issued in respect of the same person, only one international search is announced (information about each of these EAWs is always provided for the Member State concerned). It should also be noticed that a EAW is not transmitted via Interpol in cases when information is received that a requested person is located in a Schengen state.
- ⁹ RO: The database of the SIRENE Office Romania continued to be updated with EAW issued before and after November 2010. A concrete number of the EAW sent via SIS per year can not be given. The programme which is presently used does not allow for such statistic.

	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	none	none ¹⁰	none	none	none		none	none	none		none	none	not applicable	

¹⁰ LU: EAW by direct transmission to executing authority : **4**. EAW via Eurojust : **8**.

	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
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3. How many of these arrest warrants resulted in the effective surrender of the person sought?	57		97	42 ¹¹	835 12	29 ¹³		97				4	48	79	14	231	1			929		855		164	49	65	
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¹¹

DK: Furthermore in 10 cases the person concerned is/has been in custody, but there is no information on the actual surrender. Finally in 4 cases correspondence between the Danish authorities and the other member state is pending).

¹²

DE: This figure does not distinguish between surrenders based on EAWs transmitted in 2010 and those transmitted already in 2009.

¹³

EE: 29 persons surrendered, 3 persons detained in Estonia, in 3 cases the EAW was withdrawn and 39 persons are still 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 2010?	543		330	64 ¹⁴	15	36		1544				34	40	75	22	204	16			297		547		111	30	117	

¹⁴ DK: 8 were cancelled/withdrawn.

¹⁵ DE: In 2010, the SIS - connected Member States entered 12.133 alerts on the base of a EAW. 1.889 alerts were entered in Interpol for EAWs by Member States that do not participate in the 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?	16		221	41 17	1221	33		1105				11	18	69	15	178	6			249	96	Approximately 400		80	26	116 18	
5.2. How many have been effectively surrendered ?	68		179	35 19	1006	31 ²⁰		931				11	18	60	12	165	6			162	73	372		42	28	99	

¹⁶ BE: No statistics available.

¹⁷ DK: Furthermore 6 persons covered by a European Arrest Warrant were arrested due to offences committed in Denmark.

¹⁸ SE: This figure includes 8 persons who were already deprived of their liberty in Sweden, i.e. 108 were deprived their liberty due to a EAW.

¹⁹ DK: Thereof 1 person was surrendered pursuant to the surrender procedure between the Nordic countries. Furthermore 3 persons travelled to the requesting member state voluntarily without police escort and 3 persons fled after the Danish authorities had made a decision on the surrender, but before the actual surrender took place. In addition to the 35 cases 6 cases are still pending.

²⁰ EE: In respect of one person still pending criminal proceedings in Estonia, 2 EAW's issued for the extension of surrender and 1 person doesn't have connections with Estonia.

	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
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5.3. Of those surrendered, how many consented to the surrender?	at least 26 people		118	17	543	25		423					10	13	51	11	151	4				102		21		21	18	53	
5.4. Of those surrendered, how many did not consent to the surrender?	at least 26 people		61	19	463	6		508					1	5	9	4 ²²	14	2				60	15	23		21	10	46	

21 RO: Approximately 85%.

22 LU: Intermediate situations: - Arrested persons who consented to surrender, but where surrender is delayed and not realised before 31.12.2010 : **3**. Arrested persons who did not consent to surrender, but where surrender is delayed and not realised before 31.12.2010 : **none**.

23 RO: Approximately 15%.

	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?	15		51	1	153 24	1		40				none	5	2	1	13	none			71	8	168		11	2	6	

²⁴ DE: In the (other) 60 cases the EAW was withdrawn.

	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
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6.2. Which were the grounds for refusal?	²⁵		Cf. Annex I	²⁶	Cf. Annex I	²⁷		²⁸					²⁹	³⁰	³¹	Cf. Annex I	none			Cf. Annex I	Cf. Annex I			Cf. Annex I		Cf. Annex I	
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²⁵ BE: No statistics available.

²⁶ DA: The Danish authorities had already decided that the person was to be surrendered to another member state, when the Danish criminal case against the person was concluded.

²⁷ EE: The conduct for which the EAW was issued, did not constitute an offence under the Estonian law.

²⁸ ES: Ne bis in idem, criminal prosecution is statute-barred, double criminality.

²⁹ LV: The European Arrest warrant has been issued for the purpose of execution of custodial sentence in cases where the requested person is a national.

³⁰ LT: In the 1st case the court did not receive any evidence confirming that the requested person committed the crimes for which he was convicted. In the 2nd case the statute of limitations for the execution of the judgement of conviction had expired under the criminal law of the Republic of Lithuania.

³¹ LU: Date of offence (<8.8.2002).

³² FI: The persons sought asylum in Finland. The Court of First Instance refused to surrender. Before the Supreme Court ruled on surrender, the issuing state withdrew the EAW.

	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)?	4 days		49	16,5 days	15;4 days	8		12					10 - 15 days	Approximately 5 - 10 days	1 month	2 to 10 days	8 days in average	on average 7 days		21 days	12,78 days	33		28	15 days	Approximately 13 days	

³³ RO: After the arrest of the sought person, within 24 hours he or she appears before the court. If he or she consents to the surrender, the procedure takes approximately 3 - 4 days.

	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
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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)?	23 days		61	38 days	36,8 days ³⁴	12		43					35 - 40 days	Approximately 15 - 20 days	2 months		25 - 30 days in average	on average 30-60 days						77	41 days	Approximately 60 days	
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³⁴ DE: In the above mentioned procedures, in which the accused is in detention in Germany, either in provisional detention or serving a sentence, the time of the surrender procedure starts running only as from the moment the detention is maintained with a view to a surrender.

³⁵ LU: 45 days in case of appeal against the judicial decision to surrender.

	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?	³⁶		6	² ³⁷	32	none		13				none	none	none	none	none	none			5	none	none		3	none	3	

³⁶ BE: No statistics available.

³⁷ DK: In both cases the decision of the Danish Ministry of Justice was tried by the city court and the high court in Denmark. Furthermore in 1 of the 2 cases, the Danish police has difficulties finding the wanted 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
8.2. In how many of those cases was Eurojust informed?	none		6	none	none ³⁸	none		none				none	none	none	none	none	none			1	none	not the case		1	none	3	

³⁸

DE: According to § 83 c Abs. 4 of the German Mutual Assistance Act (IRG) should Eurojust be informed only in case of exceptional circumstances. These did not present themselves in any of the proceedings.

	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?	³⁹		4	21	521 ⁴⁰	none		92				none	none	none	none	none	none			20	none	41		none	none	4	

³⁹ BE: No statistics available.

⁴⁰ DE: In case of transport over land, the judicial authorities competent for the execution of sentences of those States (Länder) over whose territory the person will be transported, must, on the basis of the federal structure of Germany, to be involved. This leads to delays. The majority of surrenders take place with neighbouring Member States, by whose authorities a timely take-over of the person is not assured in all cases.

⁴¹ RO: The 10 days limit could not be respected by Romania, as an executing state, in three cases. After the decision for surrender remained final, the competent authorities of the issuing state were informed in order to settle the date for surrender. The surrender date was postponed and the state of arrest of the requested person was maintained until the actual surrender took place – according to article 23 (3) of the Framework Decision.

	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?	⁴²		none	²⁴³		none		none				none	none	none	none	none	none	none		1	none	none		none	none	3	

42

BE: No statistics available.

43

DK: There is no information on, whether the court referred to Article 23(5). In both cases the person fled and the actual surrender has not taken place.

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ANNEX

DG H 2B

GS/mvk

17
EN

	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?	44		25 45	46	33	19		24				1	10	48	none	45	none			114	2	90%		24 ⁴⁷	3	11	

⁴⁴ BE: Belgian authorities have registered the surrender of 12 people with Belgian nationality. There are no statistics available on the number of Belgian residents that have surrendered in 2010.

⁴⁵ CS: 23 nationals; 2 residents.

⁴⁶ DK: 4 cases concerning a Danish national. (Please note that the national statistics only register nationality, not residency).

⁴⁷ SK: The judicial authorities of the Slovak Republic executed EAW with regard to Slovak nationals in 24 cases. 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?	⁴⁸		15 (nationals)	4	33	19		19				none	none	⁴⁹	none	45	none	75				90%		no statistics available	2	⁵⁰	

⁴⁸ BE: No statistics available.

⁴⁹ LT: In all cases concerning the surrender of citizens of the Republic of Lithuania.

⁵⁰ SE: In at least 9 cases. In two cases there is a lack of information.

	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?	⁵¹		none	² ⁵²	1	none		11				1	none	none	none	32	none			2		20%		No statistics available	4	⁵³	

⁵¹ BE: No statistics available.

⁵² DK: In 1 case the Danish authority requested a guarantee under Article 5(1) and in 1 case a guarantee under Article 5(2).

⁵³ 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).

	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
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12. Is there any other information regarding the operation of the European arrest warrant that you would like to give?	no		see Annex II	no	no	no	no	no				54	no	no	no	no	no			see Annex II	no	see Annex II		no	no	no	no	
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⁵⁴ CY: In some cases the disproportionate use of EAW for relatively minor offences was noticed.

Replies to question 6.2

"Which were the grounds for refusal?"

SLOVAKIA

- the criminal prosecution or punishment of the requested person was statute-barred
- the remaining custodial sentence to be executed is less than 4 months
- withdrawal of the EAW
- person was not located on the territory of the Slovak Republic
- lack of prescribed information in the EAW
- EAW was not forwarded

GERMANY

- The European Arrest Warrant does not fulfill the formal requirements: 9
- The offence is not punishable under the law of the requested Member State by a custodial sentence for a maximum period of at least 12 months: 1
- The remaining custodial sentence to be executed is less than four months: 1
- The person concerned has already been finally judged for the same offence in another Member State: 3
- Execution is requested on the basis of a sentence in absentia without the admissible conditions in Article 5 of the Framework Decision having been fulfilled: 7
- The investigation or execution is statute-barred according to German law: 24
- Double criminality does not obtain in relation to an offence not listed in Article 2(2) of the Framework Decision: 16
- Extradition would infringe European public policy: 1
- The person concerned is being prosecuted in Germany for the same offence: 3
- It cannot be presumed that the requesting State would consent to a similar request from Germany (non-reciprocity): 3
- A foreigner who is habitually resident in Germany has not consented to extradition for the purpose of execution of a sentence: 32

- There is no guarantee that a German national extradited for criminal investigation purposes will be returned in order to serve the sentence for the offence: 2
- An offence of which a German national has been accused has a significant domestic connection within the meaning of Section 80(2) of the Law on International Legal Assistance in Criminal Matters: 2
- A German national has not consented to extradition for the purpose of execution of a sentence: 50

Remark:

Two persons under investigation absconded.

HUNGARY

- prescription 5
- surrender requested of own national for execution of a sentence 3
- the arrested person was not identical to the person sought 2
- there were ongoing criminal proceedings in Hungary for the same offences 3

ROMANIA

Grounds for refusal based on the Framework Decision:

- Article 4 (2)
- Article 4 (6)

Other reasons for refusal:

- the EAW was withdrawn by the issuing Member State
- the sought person was not found on the Romanian territory
- he was arrested in another Member State

SWEDEN

- The matter concerned a judgment rendered in absentia (1)
- Dual criminality could not be established and it was not a “list offence” (3)
- The statutes of limitation in Swedish law (1)
- The arrest warrant concerned a custodial sentence and the wanted person was a Swedish national that demanded that the sanction should be enforced in Sweden (1)

CZECH REPUBLIC

- (2) Czech national - act committed before 1.11.2004
- (1) person is prosecuted for the same act as the one on which the EAW is based
- (11) requested person is a national and the EAW has been issued for the purposes of execution of a custodial sentence
- (5) the EAW is cancelled
- (10) the person is not located in the CZE
- (3) the act does not constitute an offence under the CZ law

PORTUGAL

- 2 (identity error);
- 4 (execution of foreign sentence in Portugal);
- 2 lack of (dual criminality).

POLAND

- Execution would violate human or citizen rights and freedoms (recital 12 of the EAW Framework Decision)
- the offender is a Polish citizen or is domiciled in Poland (art. 4 (6) of the EAW Framework Decision)
- parallel prosecutions conducted in Poland concerning the same person against whom the EAW was issued for the same acts (art. 4 (2) 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).

Replies to question 12

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

GERMANY

The figures given are based on a statistical survey covering cases where surrender took place after 17 January 2010 and the report from the judicial administration of the relevant Land was submitted to the Federal Justice Office (Justice Ministry) by 16 January 2010.

ROMANIA

1) After the surrender of the person sought based on the article 5 (3) of the Framework Decision, Romanian authorities have encountered difficulties in finding a legal base for the transfer of the surrendered person from the issuing state of the EAW. In practice, Romanian authorities considered that the procedure provided by the European Convention on the transfer of sentenced person – Strasbourg 1983 must be followed. Some of the Member States do not agree with this point of view.

Romania would like to know whether other Member States have any special procedure that, which for the time being, allows them to transfer the person in question simply based on article 5 (3) of the Framework Decision (and moreover, allows them to incarcerate the person simply based on the foreign sentence, without a recognition procedure in the executing state) or whether they are following the provision of the European Convention - Strasbourg 1983, or whether there is a different practice at EU level.

2) The Member States must provide *ex officio* the period of detention served in the executing Member State, according to the provisions of the article 26 (2) of the Framework Decision.

3) Regarding the provisions of article 23 paragraph 3 of the FD, Romania would like to know if, in practice, the new date for surrender is being decided by the police authorities from the two MS, or between the judicial authorities (courts or prosecutor's offices) of the issuing and executing MS.

CZECH REPUBLIC

19 cases were concluded in different way (e.g. person was located on the territory of another Member State, the Czech competent authorities did not received original EAW, etc.)
In 31 cases the surrender was postponed
In 5 cases the consent was given with the prosecution for other offences
In 22 cases the procedure have not been yet closed.

POLAND

Some courts raised issues with the practical operation of the EAW system. The concerns were following:

- the periods set by courts in other Member States for the receipt of the surrendered persons are too short and do not always allow for carrying out proper convoy and transport arrangements.
- the EAW procedure is sometimes needlessly lengthy due to the fact that courts have to wait a long time for the delivery of the original of the EAW or have to request information whether the surrendered person invoked the principle of speciality the issuing State.
- some executing Member States infringe art. 26 of the EAW Framework Decision by not providing information on the length of detention of the surrendered person.