



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 20 October 2010

**7551/5/10
REV 5**

**COPEN 64
EJN 5
EUROJUST 34**

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

Subject :	Replies to questionnaire on quantitative information on the practical operation of the European arrest warrant – Year 2009
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Further to the questionnaire set out in 8111/05 COPEN 75 EJN 23 EUROJUST 24, delegations will find in ANNEX I a compilation of the replies received with regard to the year 2009 and in 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 2009?	508		439	96	2433	46	116	489	1240	33		17	171	354 ¹	46		7	530	292	4844	104	1900 ²	27	485 ³	129	263 ⁴	

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- ¹ LT: 211 EAWs were issued by the Prosecutor General's Office in prosecution cases and 143 EAWs were issued by the Ministry of Justice in conviction matters.
- ² RO: From a total amount of approximately 1900 EAWs issued for diffusion (via Interpol), 1265 EAWs were transmitted for execution to the Member States after the requested person was arrested or localized in EU.
- ³ SK: 42 of them were cancelled during the year 2009; 6 of them were additional requests.
- ⁴ SE: 93 arrest warrants issued for the purpose of conducting a criminal prosecution and 170 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?	/			47	2200	1	84 ⁵	489	750	none		17	none	277	3		7	20 ⁶	90	3907	80	1900 ⁷	19	123	52	259	

⁵ EL: In 56 cases the EAW was transmitted via Interpol and SIS simultaneously, in 5 cases it was also transmitted via EJN and Interpol or SIS.

⁶ NL: There has been a change in policy in the transmission via Interpol. Transmission via Interpol is not used when there is operational information that the person is in a SIS Member State.

⁷ RO: After it has been issued, each EAW is sent through Interpol channels for diffusion. After the searched person is located/arrested in one of the Member States, the EAW in Romanian language and the proper translation are transmitted to the requested state directly by the issuing court or by the central authority Ministry of Justice, or via Interpol.

	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?	/			63	2433	46	87 ⁸	489	935	none		none	none	351 9	15		3	530	292	3957	80	none ¹⁰	1	362	109	259	

⁸ EL: In 56 cases the EAW was transmitted via Interpol and SIS simultaneously, in 5 cases it was also transmitted via EJN and Interpol or SIS.

⁹ LT: The number of issued EAWs may not coincide with the number of EAWs transmitted via Interpol or via the SIS for several reasons. First of all, an international search may also be announced when national police authorities provide certain information about a person in respect of whom a national search is announced. Moreover, if information is received that a person is located in a 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 for the Member State concerned).

¹⁰ RO: Romania is not yet a member of Schengen, so there are no EAWs transmitted via SIS.

	BE	BG	CZ	DK	DE	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK
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2.3. How many of these European arrest warrants were transmitted via the VPN of the EJN?	none			none	none	none	6 ¹¹	none	none	none		none	none	none	EAW by direct transmission to executing authority-31; EAW via Eurojust-2		none	none	none	none	none	none	none	none	none	none	none	
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¹¹ EL: in 14 cases of EAW the intervention of Eurojust was of great value (EAWs transmitted to Great Britain and the Netherlands).

	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?	73		67 ¹²	51	777 ¹³	21 ¹⁴	19 ¹⁵	99	420	16		3	40	84 (41 - GPO, 43 - MOJ)	26		2	none	37	1367	63	877	6	79	47 (1 outside Schengen area)	28 ¹⁶	

¹² CZ: 4 EAW issued in 2008; 59 EAW issued in 2007; 14 issued in 2006.

¹³ DE: This figure does not differentiate between surrenders based on EAWs issued in 2008 and those based on EAWs issued in 2009.

¹⁴ EE: 21 persons surrendered, 7 persons detained in Estonia, 1 EAW was for extension of surrender and 17 persons are still wanted.

¹⁵ EL: 35 EAWs were eventually reduced at 26 as 9 of them concerned persons already mentioned in another EAW issued (35 EAWs for 26 persons).

¹⁶ SE: Regardless of when the EAWs were issued, 28 persons were surrendered to Sweden during 2009 (22 for conducting a criminal prosecution; 6 for executing a custodial sentence or detention order).

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 2008?	565		310	58 ¹⁷	18	38	216	1629	967	326		27	27	52	21 ¹⁹		8	683	387	286	99	473	56	97	26	93	

¹⁷ DK: (14 was cancelled/withdrawn).
¹⁸ DE: Through SIS: 11.310; through Interpol: 2.142.
¹⁹ LU: + 2 requests for extension.

	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?	/		234	25 ²⁰	1208 ²¹	30 ²²	178 ²³	1232	789	463		13	11	30	16		5 (3 not in Malta)	none	180		83	376	47	66	22	90 ²⁴	
5.2. How many have been effectively surrendered ?	/		220 ²⁵	25 ²⁶	982	31 ²⁷	127	990 ²⁸	626	263		13	11	37	14		4 ²⁹	408	234	163	61	371	39	43	25	87	

²⁰ DK: Furthermore 10 persons covered by European arrest warrants were arrested for offences committed in Denmark.

²¹ DE: In 157 cases the person was already serving a german custodial sentence and in 19 cases in german custody on demand, so that no deprivation of liberty was required.

²² EE: 1 case was the extension of surrender and 7 wanted persons served their sentences in Estonian prison.

²³ EL: 7 EAWs concerned 3 persons (instead of 7). In one case the arrested died before surrender due to a car accident, in 2 cases the arrest was based on a 2008 issued EAW and in 1 case on a 2007 issued EAW.

²⁴ SE: This figure includes 11 persons who were already deprived of their liberty in Sweden, i.e. 79 were deprived of their liberty further to an EAW.

²⁵ CZ: 170 cases + 2 cases from 2006 + 1 case from 2007 + 47 cases from 2008.

²⁶ DK: 1 case was handled pursuant to the surrender procedure between the Nordic countries. In addition to the 25 cases 9 cases are still pending.

²⁷ EE: In 4 cases the EAW was withdrawn by the issuing state after the person was arrested in Estonia.

²⁸ ES: Out of 1244 granted.

²⁹ MT: 1 was withdrawn by the Polish authorities.

	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?	/		138 ³⁰	13	564	21	94	504	380	153		11	9	35	13		4	67	177	95	53	341	22	24	15	43	
5.4. Of those surrendered, how many did not consent to the surrender?	/		82 ³¹	12	418	10	33 ³²	740	246	110		2	2	2	2 ³³		0	341	57	68	8	30	17	19	10	43 ³⁴	

³⁰ CZ: 108 cases + 2 cases from 2006 + 1 case from 2007 + 27 cases from 2008.

³¹ CZ: 62 cases + 20 cases from 2008.

³² EL: 3 EAWs concerned the same person.

³³ LU: Intermediate situations: - Arrested person who consented to surrender, but where surrender is delayed and not realised before 31.12.2008 (). – Arrested person who did not consent to surrender, but where surrender is delayed and not realised before 31.12.2008 (1).

³⁴ SE: there is no information in one of the cases in this regard.

	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 ³⁵		44	5	174	none	23	38	36	27		none	3	2	1 ³⁷		0	50 ³⁸	45		6	91	5	22	1	4	
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		n/a	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	

³⁵ BE: 13 refusals + 1 removal + 1 without object.

³⁶ FR: All courts of appeal have not been able to provide figures and therefore the French delegation is unable to communicate a global figure.

³⁷ LU: + 1 surrender-requested for execution of a pecuniary sentence not executed after agreement with issuing authority.

³⁸ NL: In The Netherlands the public prosecutor as well as the court can refuse to execute an EAW. The public prosecutor, when receiving the EAW, checks it for its completeness. In a case of incompleteness additional information is requested in all cases. The public prosecutor is also responsible for checking whether a ground for refusal does apply. If the EAW remains incomplete or it is apparent that a ground for refusal does apply the public prosecutor is competent to refuse the execution of the EAW, without any referral to the Court.

	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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7.1. 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		40 days	19 days	15, 7 days	9	10-30 days	14	14 days	6 weeks ³⁹		10-15 days	Approximately 5-10 days	1 month	1 to 5 days		7 days	10 days ⁴⁰	17 days	24 days	14 days	3 - 4 days ⁴¹	1-30 days	27 days	15 days	Approximately 15 days	
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³⁹ IE: It should be noted however that few subjects consent to surrender on arrest. Where consent is granted on arrest, surrender takes on average 9 days.

⁴⁰ NL: In 2009, the average duration of a simplified surrender from persons arrested in the border regions was : 1 day.

⁴¹ RO: After the arrest of the sought person, within 24 h he or she is presented to 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
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)?	31 days		56 days	35 days	37,8 days ⁴²	12	15-120 days	38	29 days	4,5 months		35-40 days	Approximately 15-20 days	2 months	45 days ⁴³		30-60 days depending on whether an appeal has been lodged	76 days	37 days	31 days	70 days	Approximately 15 - 20 days	7 days - 2,5 months	84 days	21 days	Approximately 60 days	

⁴² DE: In these proceedings in which the prosecuted person is serving a German custodial sentence or in custody on demand, the time period starts to run only when the custody for surrender purposes starts.

⁴³ LU: 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?	⁴⁴		11	1 ⁴⁵	36	none	1	10	7	101 since 2007		none	none	none	none		none	16	1	12	1	none	2	3	none	2	

⁴⁴ BE: Belgium does not have statistics on this question. However, it seems that the time-limits are observed in the case the person concerned is in detention.

⁴⁵ DK: The person could not be found in Denmark at first and was not arrested until the day of the actual 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
8.2. In how many of those cases was Eurojust informed?	0		5	none	none	none	none	3	1	101		none	none	none	none		none	regularly	none	2	1	none	none	none	none	2	

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?	/		12	12	501 ⁴⁶	none	1 ⁴⁷	89	52	none ⁴⁸		none	none	none	none		none	73 ⁴⁹	2	23	none	50	13	3	none	2	
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	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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⁴⁶ DE: In case of travel by land, all State authorities competent for the execution of penalties of the concerned Länder or need to be involved, which leads to delays. The 10 day period is only occasionally breached. The vast majority of surrenders take place with a bordering Member State, whose authorities do not always receive a timely taking over of the prosecuted person.

⁴⁷ EL: if the 10 days time limit can't be respected judicial authorities claim a new surrender day according to art. 23 par 3 of the F-D.

⁴⁸ IE: In 4 cases the issuing state was unable to collect the subjects within the specified times limits and was unable to provide an adequate reason.

⁴⁹ NL: Many of those cases concerned persons against whom a national criminal prosecution was pending or persons who were detained for other reasons or persons in relation to whom other EAWs were received after the decision of the court but before the surrender: 37.

⁵⁰ RO: The 10 days limit could not be respected in a few cases in 2009. After the decision for surrender remained final, the competent authorities of the issuing state were informed in order to settle the date for surrender but no flight tickets were available within the specified time. The surrender date was postponed and the arrest of the requested person was maintained until the actual surrender took place (about 12 days after the surrender decision remained final) - according to article 23 (3) of the Framework Decision.

9.2. In how many of those cases was the person released, according to Article 23(5) of the Framework Decision?	/		none	none ⁵¹		none	none	7	⁵²	none ⁵³		none	none	none	none		none	none	none	13	none	none	1	none		none	
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⁵¹

DK: In 2 cases the time limit was formally extended in accordance with article 23(3).

⁵²

FR: All courts of appeal have not been able to provide figures and therefore the French delegation is unable to communicate a global figure.

⁵³

IE: 4 subjects were released by the Courts because of the inability of the issuing state to collect them within the time frame or to provide adequate reasons for not doing so.

	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?	/		26 nationals; 6 residents	1 case concerning a Danish national ⁵⁴	103 ⁵⁵	23	27 ⁵⁶	23 surrendered (out of 33 granted)	77	58		3	8	32	none		3	99 ⁵⁷	2	99	32	90 %	9	49 ⁵⁸	3	13 ⁵⁹	

- ⁵⁴ DK: In addition to this, 1 case concerning a Danish national was executed pursuant to the surrender procedure between the Nordic countries. Please note, that the national statistics only register nationality, not residency.
- ⁵⁵ DE: In 41 cases German citizens were surrendered.
- ⁵⁶ EL: in 4 cases although the relevant Greek authorities consented to the execution of the EAW, the surrender was postponed until the completion of their service of sentence.
- ⁵⁷ NL: In 2009 the total number of persons surrendered who are regarded as equivalent to nationals is: 8.
- ⁵⁸ SK: The Slovak Republic does not investigate the residence of arrested persons.
- ⁵⁹ SE: this figure concerns Swedish nationals.

	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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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 nationals; 4 residents	1	33	23	4	16	3	none			none	To all citizens of Lithuania	none		none	107	none	81	none	80 %	none	none	3	5	
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	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	none	none	none	5	15	⁶⁰	statistics not available		3	none	none	none		none	Article 5(1) - n/a ⁶¹	12	6	none	10 %	1	Article 5(1) - none; Article 5(2) - none	none	⁶²	

⁶⁰ FR: All courts of appeal have not been able to provide figures and therefore the French delegation is unable to communicate a global figure.

⁶¹ NL: The Netherlands does not require a guarantee as provided for in Article 5 (2).

⁶² 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
12. Is there any other information regarding the operation of the European arrest warrant that you would like to give?	/		Cf. Annex II	No further information			Cf. Annex II		Cf. Annex II			Cf. Annex II						Cf. Annex II	Cf. Annex II				Cf. Annex II	Cf. Annex II			

Replies to question 6.2

"Which were the grounds for refusal?"

LITHUANIA

1 case - failed to match the principle of double criminality because the act on which the European Arrest Warrant was based did not constitute an offence under the criminal law of the Republic of Lithuania; 2 case - under the criminal law of the Republic of Lithuania the statute of limitations for execution of the judgment of conviction had already been expired.

SLOVENIA

Article 4/4 of the FD (lapse of time); 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); withdrawal (revocation) of the EAW; issuing state did not provide additional information- documentation.

GERMANY

- The requested person is not resident in Germany: 14
- The European arrest warrant does not satisfy the formal requirements: 7
- Under the law of the requested Member State, the offence is not punishable by a custodial sentence for a maximum period of at least 12 months: 1
- The remainder of the custodial sentence still to be served is less than four months: 1
- The requested person has already been finally judged by another Member State in respect of the same act: 3
- Execution is requested on the basis of a decision rendered *in absentia* without the conditions permitted in Article 5 of the Framework Decision being fulfilled: 4
- Prosecution or punishment is statute-barred under German law: 42
- There is no double criminality in respect of an offence not listed in Article 2(2) of the Framework Decision: 6

- Extradition would contravene European public order: 2
- Criminal proceedings are being conducted against the requested person in Germany in respect of the same act: 5
- The requesting State cannot be expected to grant a similar request from Germany (lack of reciprocity): 0
- A foreign national habitually resident in Germany has not consented to extradition for the purpose of execution of a sentence: 34
- It cannot be guaranteed that a German national extradited for the purpose of prosecution will be returned to serve his sentence: 2
- In respect of the offence of which a German national is accused, there is a significant link with Germany within the meaning of § 80(2) of the Law on International Judicial Assistance in Criminal Matters (IRG): 2
- A German national has not consented to extradition for the purpose of execution of a sentence: 47
- Other (death of the requested person, residence in a third country): 4

FINLAND

Art 4(6), (citizen).

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)
- Identification
- Health

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 remaining custodial sentence to be executed is of less than 4 months
- Withdrawal of EAW
- The person was not located on the territory of the Slovak Republic
- Lack of prescribed information in the EAW
- The EAW was not forwarded
- The person is prosecuted for the same act as that on which the EAW is based

SWEDEN

- The wanted person could not be found in Sweden (1)
- The statutes of limitation in Swedish law (2)
- 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)

In addition, in one case a court reversed the decision to grant surrender due to the fact that the decision to surrender was not enforced within the stipulated time-limit.

LATVIA

- The European arrest warrant has been issued for the purpose of execution of custodial sentence, where the requested is a national.
- Statute - barred offence.

LUXEMBOURG

Date of offence (< 8.8.2002).

FRANCE

- The issuing state has not provided an effective remedy in case of an *in absentia* judgment.
- The original European Arrest Warrant was not provided and a fax does not allow to verify the authenticity of the European Arrest Warrant.
- Nullity of the detention procedure after the arrest of the person (because of a notification of rights which did not comply with articles 63 and following of the code of criminal procedure).
- The summary of the fact of which the person was accused, did not suffice.
- The execution of a foreign sentence in France regarding a French national (article 4, 6 of the Framework Decision).
- Failure to reply to a request for additional information.
- *Ne bis in idem* principal.
- Error regarding the person.
- Lack of criminal liability under French law for facts which do not feature on the list of 32 offences.

SPAIN

Criminal prosecution is statute-barred, ne bis in idem, double criminality.

CZECH REPUBLIC

- (2) Czech national - act committed before 1.11.2004.
- (7) person is prosecuted for the same act as that on which the EAW is based.
- (6) requested person is a national and EAW has been issued for the purposes of execution of a custodial sentence.
- (15) EAW is canceled.
- (14) person is not located in the CZE

GREECE

Law 3251/2004 : 11 par f (8 cases), 11 par d (2 cases), 11 par h (2 cases), 10 par 1a (1 case), 11 par b (7 cases), 11 par g (1 case), 12 par a (2 cases)

NETHERLANDS

- Incompleteness of the EAW: 6 ;
- Art. 2 (4): 7;
- Art 3 (2): 2
- Art 5(1): 5 ;
- Art. 4 (4): 1;
- Art. 4 (6): 14
- Art. 4 (2): 2
- After the arrest of the person mentioned in the EAW it became clear that that was not the person wanted by the issuing judicial authority;
- Different reasons (as the withdrawal of the EAW by the issuing authority after the court procedure started, the person was not in the Dutch territory, the judgement underlying the EAW was annulled in the issuing State, the issuing authority chose in a later stage to transfer the execution of the judgement): 13.

DENMARK

In 2 cases execution was refused on the basis of the Danish Extradition Act Section 10e, cf. Article 4 (4) of the Framework Decision (statute-barred), in 2 cases execution was refused on the basis of the Danish Extradition Act Section 10g, cf. Article 5 (1) of the Framework Decision (absentia) and in 1 case the fingerprints of the person arrested did not comply with the fingerprints of the person sought.

ROMANIA

Grounds for refusal based on the Framework Decision:

- article 4 (2) - 1 case
- article 4 (6) - 5 cases.

Other reasons for refusal:

- the EAW was withdrawn by the issuing Member State
- the sought person was not found yet on the Romanian territory
- the sought person was arrested in other Member State
- after receiving supplementary information (photograph, fingerprints) it was established that the arrested person is not the sought person.

AUSTRIA

Retraction/recovation (5), Austrians/own jurisdiction (8), no arrest warrant despite of an existing alert (3), Flight (7), res iudicata (1), withdrawn (7), not punishable (4), own jurisdiction (7), statute-barred (1) and in absentia (2).

PORTUGAL

Art. 4 n°6 of the FWD.

Replies to question 12:

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

SLOVENIA

The proportionality issue - courts have estimated that in some cases the issuing authority did not use any alternatives to issuing an EAW, such as using less constraining instrument of mutual legal assistance, obtaining the presence of suspects at the trial via other means, using the SIS to establish the place of residence of a suspects, etc, which could actually prevent issuance of the EAW.

MALTA

When a requested person is ordered to be surrendered, any bail he may enjoy should be revoked in order that he may be committed to custody to await his return. A fugitive who was accused with trafficking in narcotics and located in the United Kingdom, who had been granted bail, when ordered to be surrendered to Malta absconded. To date her whereabouts remain unknown although we are informed efforts are being made to trace her.

FRANCE

The French delegation points out that, in accordance with the Framework Decision on the European Arrest Warrant, these statistics are indicative in so far as the Ministry of Justice does not centralise all the European Arrest Warrant files and, on the contrary, encourages the direct transmission from judicial authority to judicial authority.

CYPRUS

The proportionality issue was often commented by the Judges during the execution process and was considered as an issue which should be urgently addressed at the European Union level.

CZECH REPUBLIC

(6) cases were concluded in different way (e.g. person was located on the territory of another Member State, person died, the czech competent authorities did not receive original EAW, etc.)

In (31) cases the surrender was postponed

In (5) cases the consent was given with the prosecution for other offences

In (21) cases the procedure has not been yet closed

NETHERLANDS

Overview of the Member States from whom EAB's were received

MEMBER STATE	NUMBER	MEMBER STATE	NUMBER
Belgium	107	Latvia	12
Bulgaria	8	Lithuania	7
Cyprus	0	Luxemburg	4
Danmark	3	Malta	0
Germany	131	Austria	10
Estonia	3	Poland	199 (!)
Finland	4	Portugal	6
France	44	Rumania	19
Greece	8	Slovenia	0
United Kingdom	35	Slovak Republic	3
Hungary	7	Spain	7
Ireland	1	Czech Republic	14
Italia	43	Sweden	3

ROMANIA

1) After the surrender of the person sought based on the article 5 (3) of the Framework Decision, Romanian authorities had encountered difficulties in finding a legal base for the transfer of the surrendered person from the issuing state of the EAW. In practise, Romanian authorities considered that the procedure provided by the European Convention on the transfer or sentenced person - Strasbourg 1983 must be followed. According to article 3 paragraph (1) (d) of this Convention, "*the transfer must be consented to by the sentenced person*" unless expulsion is also provided by the conviction sentence⁶³.

Romania would like to know if other Member States have any experience in cases when the surrendered person which must be transferred (after a final conviction) is refusing this procedure and no expulsion measure has been imposed. What happens then? The person in question must be transferred, based on the condition imposed by the executing authority of the EAW without consideration of his refuse to consent to the transfer, or his opinion to the transfer must be respected overlooking the decision of the executing court issued based on the article 5 (3) of the Framework Decision?

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.

⁶³ Article 3 of the Additional Protocol to the Convention on the transfer or sentenced persons, Strasbourg, 1997 "*Upon being requested by the sentencing State, the administering State may, subject to the provisions of this Article, agree to the transfer of a sentenced person without the consent of that person, where the sentence passed on the latter, or an administrative decision consequential to that sentence, includes an expulsion or deportation order or any other measure as the result of which that person will no longer be allowed to remain in the territory of the sentencing State once he or she is released from prison*".