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COVER NOTE

From : General Secretariat
To : delegations
Subject : Notifications to Eurojust of breaches of time limits in the execution of European Arrest Warrants (Article 17(7) (first sentence) of FD on EAW)

Delegations will find in the Annex the Note referred to in the subject matter.

From:	Eurojust
Date:	26 May 2014
To:	Presidency of the Council of the European Union and European Commission
Subject:	Notifications to Eurojust of breaches of time limits in the execution of European Arrest Warrants (Article 17(7) (first sentence) of FD on EAW)
Annex:	Statistics on notifications to Eurojust of breaches of time limits in the execution of European Arrest Warrants (Article 17(7) (first sentence) of FD on EAW)

I. Purpose

Eurojust is pleased to provide a note on notifications to Eurojust of breaches of time limits in the execution of European Arrest Warrants (EAWs) pursuant to Article 17(7) (first sentence) of the Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant (FD EAW), on the basis of the experience of its National Desks in relation to the reporting of such breaches by national authorities.

The purpose of this note is to raise awareness of the services that Eurojust can provide at operational and strategic level further to the compliance by Member States of their obligation to inform Eurojust of breaches of time limits in the execution of EAWs and the reasons therefor pursuant to Article 17(7) (first sentence) of FD EAW.

Article 17(7) of FD EAW provides that “*Where in exceptional circumstances a Member State cannot observe the time limits provided for in this article [decision to execute the EAW], it shall inform Eurojust giving the reasons for the delay. In addition, a Member State which has experienced repeated delays on the part of another Member State in the execution of EAWs shall inform the Council with a view to evaluating the implementation of this Framework Decision at Member State level.*” [emphasis added]

The focus of this note lies on Article 17(7) (first sentence) of FD EAW, as it is this part of the provision that concerns the role of Eurojust, and aims at (i) presenting Eurojust's role when informed of breaches of time limits in the execution of EAWs with a view to assisting in the reduction of the delays and contributing to the smooth operation of EAW proceedings, (ii) raising awareness in the Member States of their reporting obligation towards Eurojust, pursuant to Article 17(7) (first sentence) of FD EAW, and (iii) presenting the main issues identified at Eurojust concerning notifications of such breaches on the basis of its limited experience due to very reduced number of such notifications received thus far (see Annex).

II. Eurojust's role in relation to notifications of breaches of time limits in the execution of EAWs (Article 17(7) (first sentence) of FD on EAW)

On the basis of its casework, Eurojust has reported in its Annual Reports on the number of breaches of time limits in the execution of EAWs that have been registered at Eurojust, and on the main reasons for the delays in their execution (*see* Annex concerning statistics). It has also been reported in Eurojust Annual Reports that only a small number of Member States regularly notifies Eurojust of breaches of time limits in the execution of EAWs, and that EU statistics on the practical operation on the EAW (those provided by the General Secretariat of the Council on the basis of information transmitted by the Member States) indicate, *inter alia*, that more breaches occur than those registered at Eurojust (Article 17(7) (first sentence) of FD on EAW).

When notified of breaches of time limits in the execution of EAWs, Eurojust can contribute to reducing delays in the execution of EAWs and in this way to the smooth operation of EAW proceedings. In accordance with Article 3(1)(b) of the Eurojust Decision, one of the objectives of Eurojust is to improve cooperation between the competent authorities of the Member States, in particular by facilitating the execution of international mutual legal assistance and the implementation of extradition requests. Thus, Eurojust acts as facilitator and coordinator in EAW cases.

The more the Member States comply with their obligation towards Eurojust the more Eurojust can provide the following services. At an operational level,

- Ideally, the sooner Eurojust is informed of a breach of the time limits in the execution of an EAW (soon after the 90-day time period has elapsed, or even preferably, as soon as it becomes apparent to the national authorities that the 90-day time limit will most likely not be observed) the higher the possibility for Eurojust to assist in speeding up the execution of the EAW, and in this way reducing the delay or, even avoiding that the time limit is breached.
- Eurojust can speed up the execution of EAWs by facilitating the swift exchange of legal and practical information between the concerned Member States, in particular when the information needed relates to *i*) an ongoing procedure in the issuing Member State, *ii*) description of facts in the EAW; *iii*) legal classification of the criminal conduct; *iv*) foreseen or imposed sentence for the offences; and *v*) clarification of national legislation.

At a strategic level, Eurojust can also play a preventive role:

- The more Eurojust is informed of breaches of time limits and of the reasons for the delays, the better Eurojust is in a position to understand the reasons for the delays (e.g. is the application of the FD on EAW causing difficulties?). Eurojust can work with national authorities with a view to preventing difficulties and delays occurring in the future.
- Eurojust can contribute to the identification of trends, similarities and differences concerning the reasons for the delays amongst Member States. In order to achieve this, information on the number of breaches of time limits and on the reasons for these breaches should be facilitated on a wide scale to Member States, so as to allow that information which would otherwise remain at national level or at Eurojust be analysed by Eurojust and reported to the Council of the EU and the European Commission, and in this way shared at EU level and the reasons for the breaches tackled at such level.
- On the basis of its casework, Eurojust can also make proposals regarding legislative changes to alleviate difficulties and breaches of time limits in the execution of EAWs.

III. Main issues identified concerning notifications of breaches of time limits in the execution of EAWs under Article 17(7) of the FD on EAW on the basis of the experience of National Desks at Eurojust

The main issues identified at Eurojust concerning notifications of such breaches are limited due to the very reduced number of such notifications received by Eurojust to date.

3.1 Notifications by national authorities, acting as executing judicial authorities, of situations where they cannot observe the EAW time limits

Just over a third of the National Desks are informed, some of them systematically, of situations where national authorities, acting as executing authorities, cannot observe EAW time limits. Some of these National Desks report that under their national legislation their national authorities have a legal obligation to report such breaches.

Just over a dozen of National Desks are not informed of such breaches of time limits either because (i) Article 17(7) FD on EAW has not been implemented in their Member State, (ii) only certain categories of delays, under their national legislation, require reporting to Eurojust, or (iii) simply the practice of systematically reporting appears to have been discontinued in recent years despite there being no indication that breaches have ceased. Some of these National Desks receive an annual report from their national authorities on the general operation of the EAW where information on such breaches is included but they note that they had not been informed of such breaches at an earlier stage (neither during nor after the conclusion of the surrender procedures). Other National Desks do not offer any particular reason for the absence of such reporting.

3.2 Point at which such information is usually transmitted to Eurojust (e.g. during or after the end the surrender procedure).

Of those National Desks that receive such information, seven receive it during the surrender procedures (one of which receives it as soon as it becomes apparent to the national authorities that the 90-day time limit will most likely not be observed), and five receive it after the surrender procedures are concluded (two of which receive it towards the end of the calendar year).

3.3 Authorities in the Member States competent to transmit such notifications to Eurojust (e.g. central authority, judicial authorities dealing with the case)

The national authorities in the Member States competent to inform Eurojust of such situations of breaches of time limits differ from Member State to Member State. Of those National Desks that indicate a competent national authority, nine indicate that such authority is the Central Authority (mostly, the Ministry of Justice); four indicate that it is the prosecutor/judicial authority dealing with case; three indicate that it is the Prosecutor General's Office; one that it is the judge dealing with case, and another indicates that such authority is not specifically foreseen in their national legislation but that it should be the Prosecutor General's Office.

3.4. Format used by national authorities to provide such notifications to Eurojust

The most common used format to provide such notifications is *e-mail*, followed by mail, and fax. For one National Desk, further to the above formats, a telephone call also suffices. For one other National Desk a formal letter is required.

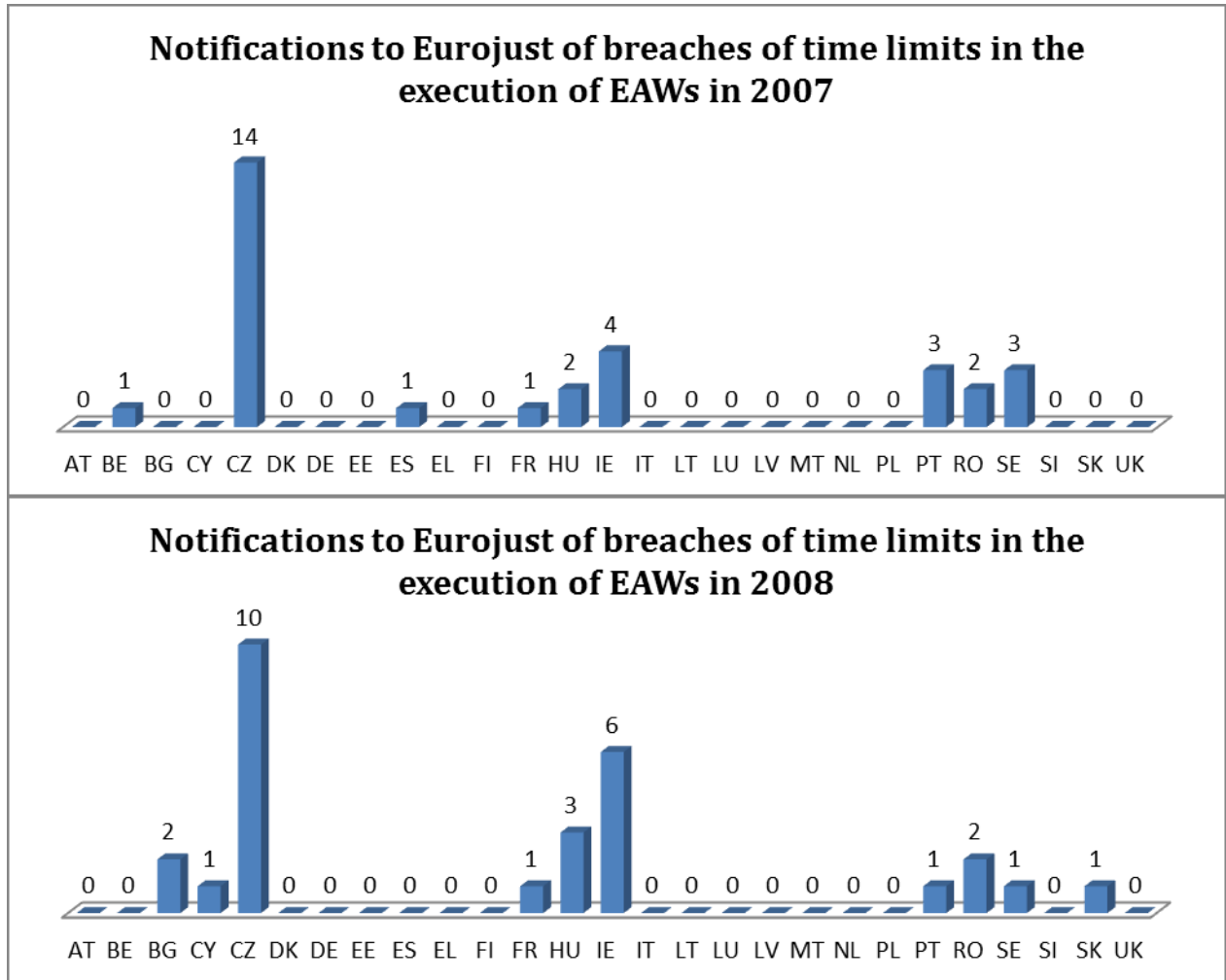
3.5 Main reasons for the delays in the execution of EAWs

The main reasons reported to Eurojust for the delays in the execution of EAWs are *i)* the need on the part of the executing authorities to obtain additional/supplementary information from the issuing authorities in relation to: an ongoing procedure in the issuing Member State, the description of facts in the EAW, the legal classification of the criminal conduct, foreseen or imposed sentence for the offences or clarification of national legislation; *ii)* appeal procedures in EAW cases under national legislation; *iii)* when constitutional proceedings alleging breach of human rights as protected by national constitutional law or the European Convention on Human Rights are filed; *iv)* the requested person absconds while on bail; *v)* the requested person is serving a domestic sentence in the executing Member State; *vi)* the requested person is awaiting the outcome of legal action in the issuing Member State; *vii)* the volume of requests to particular Member States; and *viii)* limited resources in executing Member States.

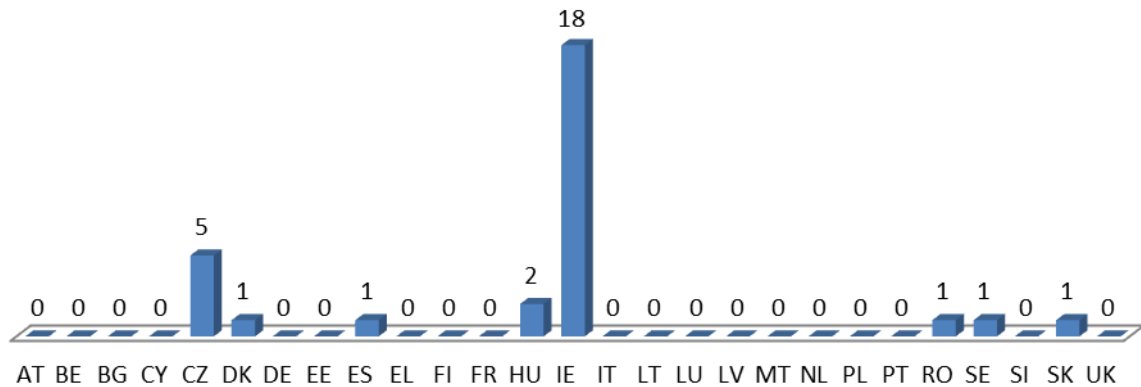
ANNEX

Statistics on notifications to Eurojust of breaches of time limits in the execution of European Arrest Warrants (Article 17(7) (first sentence) of FD EAW)

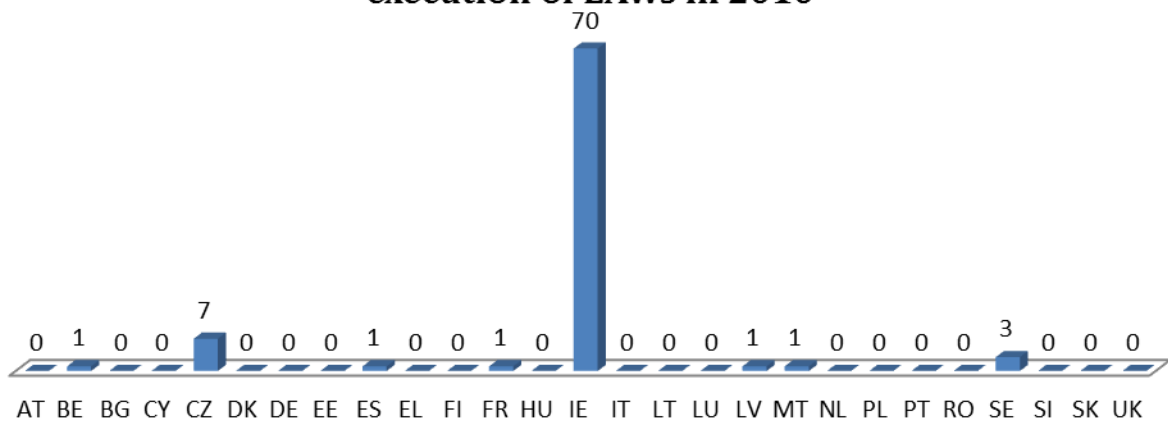
The figure “0” indicated in the tables can mean that the Member State concerned either *i*) did not make a notification to Eurojust or *ii*) did not breach the time limits.



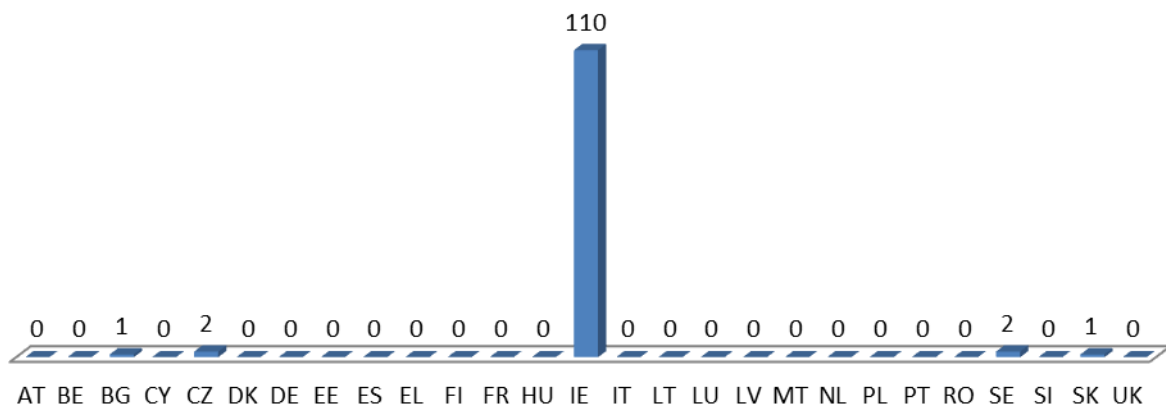
Notifications to Eurojust of breaches of time limits in the execution of EAWs in 2009



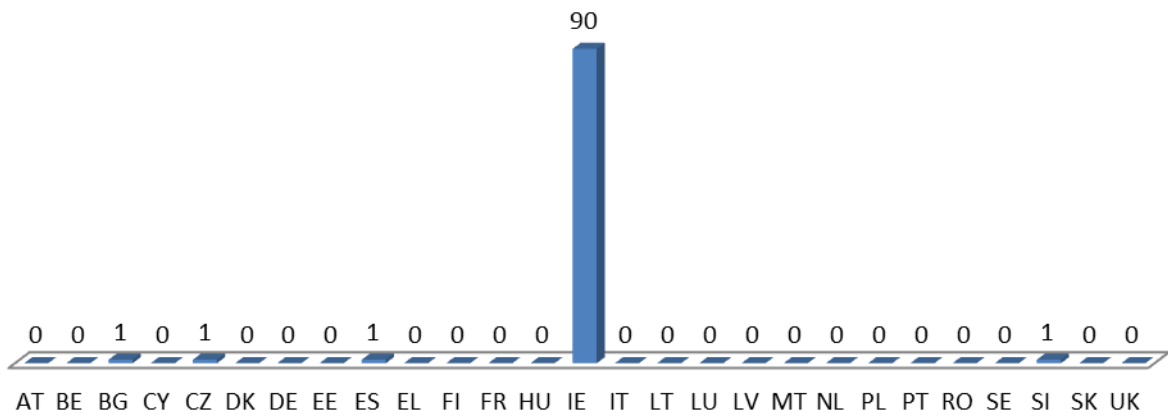
Notifications to Eurojust of breaches of time limits in the execution of EAWs in 2010



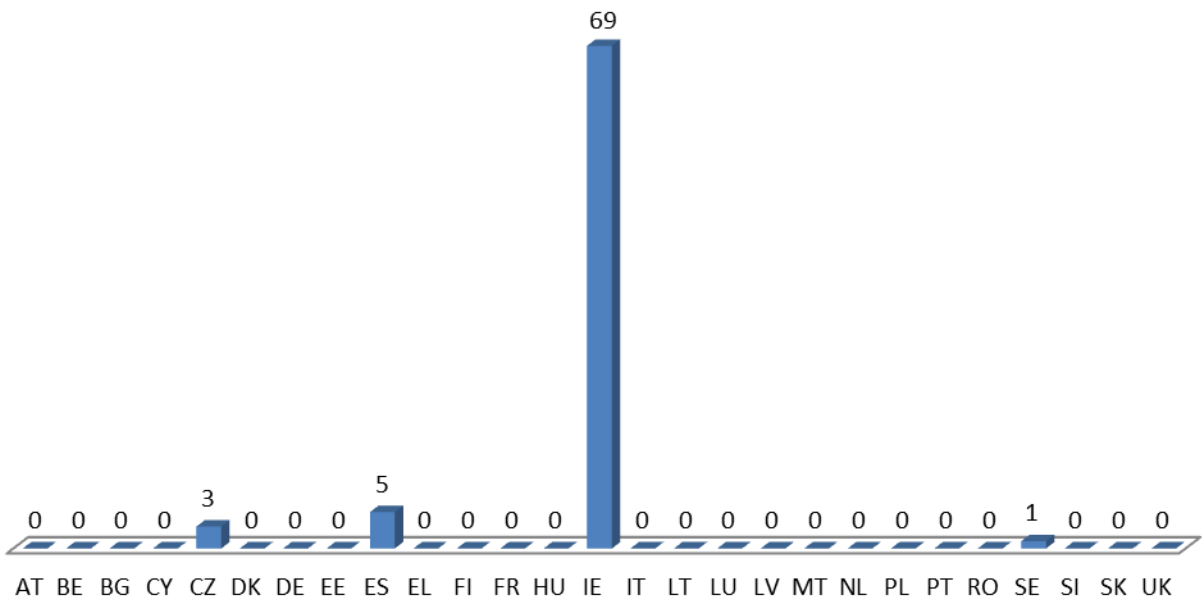
Notifications to Eurojust of breaches of time limits in the execution of EAWs in 2011



Notifications to Eurojust of breaches of time limits in the execution of EAWs in 2012



Notifications to Eurojust of breaches of time limits in the execution of EAWs in 2013



**Total notifications to Eurojust of breaches of time limits
in the execution of EAWs 2007-2013**

