



# **QUESTIONNAIRE ON THE CJEU'S JUDGMENTS IN RELATION TO THE INDEPENDENCE OF ISSUING JUDICIAL AUTHORITIES AND EFFECTIVE JUDICIAL PROTECTION**

## **UPDATED COMPILATION OF REPLIES AND CERTIFICATES**

## ***Executive summary***

In 2019, the Court of Justice of the European Union interpreted in a number of judgments to what extent a Public Prosecutor's Office falls within the concept of 'issuing judicial authority' under Article 6(1) of the Framework Decision on the European Arrest Warrant (EAW) and the surrender procedures between the Member States. The CJEU clarified in this case law the requirements of objectivity and independence and the need for effective judicial protection that must be afforded to the requested persons if an EAW is issued by a Public Prosecutor's Office.

Following a mandate given by the Council, Eurojust and the EJN worked, in close coordination, on a questionnaire and compilation of replies. The aim of the questionnaire was to assist practitioners in the application of the aforementioned new CJEU case law as it has raised many questions amongst practitioners regarding the legal position of public prosecutors in the Member States. A first version of this compilation was presented at the COPEN Meeting of 19 June 2019 (Council document no. 10016/19). An updated version was published in November 2019 to include new national legislation and more certificates in which Member States ensured compliance with the requirements set by the CJEU's case law (Council document no. 10016/19/ REV 1). Subsequent judgments of the CJEU on this topic in October and December 2019 prompted a further update of the document, including an additional question on the requirements of effective judicial protection.

The present compilation includes a brief summary of the most relevant judgments that the CJEU delivered on this issue in the period between May and December 2019, and compiles the replies received from the Member States, the United Kingdom and Norway, in relation to the following issues:

- Whether public prosecutors can issue an EAW;
- What authority ultimately takes the decision to issue an EAW;
- Whether national law guarantees the independence of the public prosecutors from the executive;
- Whether, in those countries where a public prosecutor can issue an EAW, such a decision, and in particular its proportionality, can be subject to court proceedings which meet in full the requirements inherent in effective judicial protection;
- What legal and/or practical measures have been taken to address the issue in the Member States affected by the CJEU's judgments;
- Any other additional information, including recent developments in national law and/or certificates issued to ensure compliance with the requirements set by the CJEU's case law.

## **I. Background**

On 27 May 2019, the CJEU focused in a first set of judgments on the concept of ‘issuing judicial authority’ (Article 6(1) EAW FD), after which Eurojust launched a questionnaire on this topic. At the COPEN Meeting of 19 June 2019, the Council gave Eurojust a mandate to update this Compilation in close coordination with the European Judicial Network (EJN).

After the publication of the Compilation, some relevant developments took place: new national certificates became available, new legislation was adopted (NL) and some national judgments were delivered. Eurojust and the EJN therefore prepared a first update of the questionnaire (Council doc. 10016/1/19 REV 1). This update was limited to inserting new certificates, a reference to the new Dutch law and some relevant national case law (DE, NL) that Eurojust and the EJN had obtained through the Eurojust National Desks and the EJN Contact Points.

In October and December 2019, more judgments followed in which the CJEU provided further guidance on the independence of the ‘issuing judicial authority’ and on the requirement of effective judicial protection, which must be afforded to persons subject to such an arrest. The CJEU interpreted not only the concept of ‘issuing judicial authority’ (Article 6(1) EAW FD), but also clarified the concept of ‘EAW’ (Article 1(1) EAW FD) and the requirement of effective judicial protection under the EAW FD. In light of these judgments, Eurojust and EJN prepared a new update of the questionnaire; summarising the CJEU’s recent case law on this topic (*see* II), adding an additional question to the questionnaire (*see* III) and inviting the competent national authorities to reply to the new question and to review/update, where needed, their replies to the old questions (*see* IV).

Eurojust and the EJN continuously keep the possibility of any future update open. Any comments and/or suggestions for a future update can be sent to Eurojust ([operations@eurojust.europa.eu](mailto:operations@eurojust.europa.eu)) and the EJN ([ejn@eurojust.europa.eu](mailto:ejn@eurojust.europa.eu)).

## II. Summary of the CJEU's judgments

In 2019, the CJEU delivered six judgments in which it examined - in relation to six different national legal orders (DE, LT, AT, FR, SE, BE) - the requirements that public prosecutor's offices must fulfil for issuing an EAW and/or the scope of judicial protection afforded to persons referred to in such warrants. In these judgments, the CJEU interpreted the concept of 'EAW' (Article 6(1) EAW FD), the concept of 'issuing judicial authority' (Article 1(1) EAW FD) and the requirement of effective judicial protection under the EAW FD.

- **Judgment of 27 May 2019 in Joined Cases C-508/18 OG and C-82/19 PPU PI** (retrievable [here](#)). In relation to an EAW for the purpose of prosecution, issued by a German public prosecutor's office, the CJEU ruled that the concept of 'issuing judicial authority' of Article 6(1) EAW FD must be interpreted as not including public prosecutors' offices of a Member State which are exposed to the risk of being subject, directly or indirectly, to directions or instructions in a specific case from the executive, such as a Minister for Justice, in connection with the adoption of a decision to issue an EAW.
- **Judgment of 27 May 2019 in Case C-509/18 PF** (retrievable [here](#)). In relation to an EAW for the purpose of prosecution, issued by a Lithuanian Prosecutor General's Office, the CJEU ruled that the concept of 'issuing judicial authority' of Article 6(1) EAW FD must be interpreted as including the Prosecutor General of a Member State who, whilst institutionally independent from the judiciary, is responsible for the conduct of criminal prosecutions and whose legal position, in that Member State, affords him a guarantee of independence from the executive in connection with the issuing of an EAW.
- **Judgment of 9 October 2019 in Case C-489/19 NJ** (retrievable [here](#)). In relation to an EAW for the purpose of prosecution, issued by an Austrian public prosecutor's office and endorsed by an Austrian court, the CJEU ruled that the concept of 'EAW' referred to in Article 1(1) EAW FD, must be interpreted as meaning that EAWs issued by the public prosecutor's offices of a Member State fall within that concept, despite the fact that those public prosecutor's offices are exposed to the risk of being subject, directly or indirectly, to directions or instructions in a specific case from the executive, such as a Minister for Justice, in the context of the issue of those arrest warrants, provided that those arrest warrants are subject, in order to be transmitted by those public prosecutor's offices, to endorsement by a court which reviews independently and objectively, having access to the entire criminal file to which any specific directions or instructions from the executive are added, the conditions of issue and the proportionality of those arrest warrants, thus adopting an autonomous decision which gives them their final form.
- **Judgment of 12 December 2019 in Joined Cases C-566/19 PPU JR and C-629/19 PPU YC** (retrievable [here](#)). In relation to an EAW for the purpose of prosecution, issued by a French public prosecutors' office the CJEU held that:
  - Article 6 (1) EAW FD must be interpreted as meaning that the magistrates of a public prosecution office of a Member State, who are responsible for criminal proceedings and act under the direction and supervision of their superiors, are covered by the concept of

'issuing judicial authority' within the meaning of this provision if their status guarantees their independence, in particular vis-à-vis the executive, in the context of the issuance of an EAW;

- The EAW FD must be interpreted as meaning that the requirements inherent in effective judicial protection which must accrue to a person against whom a EAW has been issued for the purpose of prosecution, are satisfied when, under the legislation of the issuing Member State, the conditions for the issue of that warrant, and in particular its proportionality, are subject to judicial review in that Member State.
- **Judgment of 12 December 2019 in Case C-625/19 PPU XD** (retrievable [here](#)). In relation to an EAW for the purpose of prosecution issued by a Swedish public prosecutor's office, the CJEU held that the EAW FD should be interpreted as meaning that the requirements inherent in effective judicial protection vis-à-vis a person against whom a EAW has been issued for the purposes of prosecution are met when, under the legislation of the issuing Member State, the conditions for issuing that warrant and in particular its proportionality, are subject to judicial review in that Member State.
- **Judgment of 12 December 2019 in Case C-627/19 PPU ZB** (retrievable [here](#)). In relation to an EAW for the purpose of the execution of a custodial sentence, issued by a Belgian public prosecutor's office, the CJEU held that the EAW FD must be interpreted as meaning that it does not preclude legislation of a Member State that confers the power to issue an EAW for the purpose of executing a custodial sentence on an authority which, while participating in the administration of justice in that Member State, is not itself a judicial authority, and that does not provide for a separate legal remedy against that authority's decision to issue such a EAW.

In the abovementioned judgments, the CJEU clarified the concept of issuing judicial authority and the requirements of effective judicial protection. The CJEU underlined that the requirement of effective judicial protection (*see* 2) is not a condition for classification of an authority as an issuing judicial authority in the meaning of Article 6(1) EAW FD (*see* 1).<sup>1</sup>

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<sup>1</sup> Joined Cases C-566/19 PPU JR and C-629/19 PPU YC, para 48; Case C-625/19 PPU XD, paras 30.

### 1. *The concept of issuing judicial authority*

When assessing to what extent the concept of issuing judicial authority (Article 6(1) EAW FD) includes a public prosecutor of a Member State, the CJEU took into consideration particularly the following two elements:

- **Participation in the administration of criminal justice:**<sup>2</sup> E.g., the authorities are competent, in criminal proceedings, to prosecute a person suspected of having committed a criminal offence so that that person may be brought before a court; and/or they are in charge of the organisation and direction of criminal investigations; and/or have power to issue an indictment.
- **Objectivity and independence:** The prosecutor's legal position safeguards the objectivity of the public prosecutor's role. He/she is required to take into account all incriminatory and exculpatory evidence. There are statutory rules and an institutional framework capable of guaranteeing that the public prosecutor's office is not exposed, when adopting a decision to issue such an arrest warrant, to any risk of being subject, inter alia, to an instruction in a specific case from the executive.<sup>3</sup> The independence is not called into question by the fact that a public prosecutor's office is responsible for conducting criminal prosecutions,<sup>4</sup> nor by the fact that the Minister for Justice may issue them with general criminal justice policy instructions,<sup>5</sup> nor by the fact that they are under the direction and control of their hierarchical superiors, themselves part of the public prosecutor's office.<sup>6</sup>

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<sup>2</sup> Joined Cases C-508/18 *OG* and C-82/19 *PPU PI*, paras 50-63; Case C-509/18 *PF*, paras 29-42; Joined Cases C-566/19 *PPU JR* and C-629/19 *PPU YC*, para 53.

<sup>3</sup> Joined Cases C-508/18 *OG* and C-82/19 *PPU PI*, paras 74-84; Case C-509/18 *PF*, paras 51-52 and 55 (with reference to relevant provisions of the Lithuanian Constitution and the Lithuanian laws on the public prosecutor's office that reflect this independence); Case C-489/19 *NJ*, para 40; Joined Cases C-566/19 *PPU JR* and C-629/19 *PPU YC*, paras 54-55 (with reference to the relevant provisions of the French Constitution and the French Code of Criminal Procedure that reflect this independence).

<sup>4</sup> Case C-509/18 *PF*, para 57; Joined Cases C-566/19 *PPU JR* and C-629/19 *PPU YC*, para 57.

<sup>5</sup> Joined Cases C-566/19 *PPU JR* and C-629/19 *PPU YC*, para 54.

<sup>6</sup> Joined Cases C-566/19 *PPU JR* and C-629/19 *PPU YC*, para 56.

## 2. *Effective judicial protection*

Where in the issuing Member State the competence to issue an EAW does not lie with a court, but with another authority participating in the administration of justice, the decision to issue the EAW and the proportionality of such a decision must be capable of being the subject, in the issuing Member State, of court proceedings which meet in full the requirements inherent in effective judicial protection.<sup>7</sup>

It is for the Member States to ensure that their legal orders effectively safeguard the required level of judicial protection by means of the procedural rules that they implement. These rules may vary from one Member State to another. Introducing a separate right of appeal against a public prosecutor's decision to issue an EAW is one possibility, but Member States can also opt for other mechanisms.<sup>8</sup> For instance, national procedural rules whereby the court that adopted the national arrest warrant reviews the decision of the public prosecutor's office to issue an EAW before or practically at the same time as that decision is adopted, or subsequently, including after the requested person's surrender, would meet the required threshold.<sup>9</sup>

The CJEU recalls in the context of effective judicial protection also the importance of Article 10 of Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and EAW proceedings.<sup>10</sup> This provision foresees *inter alia* that the 'competent authority in the executing Member State shall, without undue delay after deprivation of liberty, inform requested persons that they have the right to appoint a lawyer in the issuing Member State'.

The CJEU also clarifies that in relation to EAWs issued for the purpose of executing a custodial sentence, the judicial review is carried out by the enforceable judgment on which that arrest warrant is based.<sup>11</sup>

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<sup>7</sup> Joined Cases C-508/18 *OG* and C-82/19 *PPU PI*, para 75; Joined Cases C-566/19 *PPU JR* and C-629/19 *PPU YC*, para 62.

<sup>8</sup> Joined Cases C-566/19 *PPU JR* and C-629/19 *PPU YC*, paras 64-66; Case C-625/19 *PPU XD*, paras 43-45.

<sup>9</sup> Joined Cases C-566/19 *PPU JR* and C-629/19 *PPU YC*, paras 68-74 (French procedural rules comply with the required effective judicial protection); Case C-625/19 *PPU XD*, paras 48-52 (Swedish procedural rules comply with the required effective judicial protection).

<sup>10</sup> Joined Cases C-566/19 *PPU JR* and C-629/19 *PPU YC*, para 73; Case C-625/19 *PPU XD*, para 55.

<sup>11</sup> Case C-627/19 *PPU ZB*, para 35.

### III. Questionnaire

The CJEU's judgments raised a lot of questions amongst practitioners in relation to the legal position of public prosecutors in the Member States in the context of issuing EAWs. The main aim of this questionnaire was to assist the practitioners in the application of the EAW FD. In light of the recent judgments of October and December 2019, a follow-up question was prepared (see new question 4).

National authorities of countries that confer the competence to issue an EAW for the purpose of prosecution to a public prosecutor, were invited to reply to the new question 4. All authorities, but particularly those of the Member States that were concerned in the abovementioned judgments, were invited to review their previous replies and, if deemed appropriate, to send an update of their replies/certificates.



- (1) *Can prosecutors issue an EAW in your country?*
- (2) *Which is the entity, in your Member State, that **ultimately takes the decision** to issue an EAW?*
- (3) *Does your national law afford public prosecutors a guarantee of **independence** from the executive so that they are not exposed to the risk of being subject, directly or indirectly, to directions or instructions in a specific case from the executive, such as a Minister for Justice, in connection with the adoption of a decision to issue an EAW? (Please clarify if there are any legal provisions which give the executive a power to issue instructions to the prosecutor, and, if so, to what extent).*
- (4) **NEW! [Only for those Member States that confer the competence to issue an EAW for the purpose of prosecution to a public prosecutor]**  
*Please specify whether, in your Member State, in accordance with the abovementioned judgments,<sup>12</sup> the decision to issue an EAW, and inter alia the proportionality of such a decision, is capable of being the subject of court proceedings which meet in full the requirements inherent in effective judicial protection. Please specify how your national legal order safeguards the requisite level of protection (e.g. a separate legal remedy against the EAW issued by the public prosecutor, other procedural rules, implementation of Article 10 of Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and EAW proceedings).*
- (5) *In case your Member State, as issuing authority, is affected by the CJEU's judgments, which **legal and/or practical measures** has been taken or will be taken in order to prevent and address this issue?*
- (6) *Do you have, in view of the above-mentioned judgments, any other **additional information or comments** that you would like to share with the other Member States? This reply could include, for instance, **certificates**, relevant **national judgments** or recent **changes in national law**.*



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<sup>12</sup> Particularly, in view of the CJEU's rulings in Joined Cases C-566/19 PPU JR and C-629/19 PPU YC, paras 64-66; Case C-625/19 PPU XD, paras 43-45.






#### IV. Overview of full responses to the questions

Countries	Question 1	Question 2	Question 3	Question 4	Question 5	Question 6
 <b>AT</b>	Prosecutors issue an EAW but it becomes valid only if it is authorized by a judge. Sect. 29/1 of the federal law on judicial cooperation in criminal matters with the Member States of the European Union states: "The public prosecutor shall order the apprehension by way of a European arrest warrant authorized by a court...". The court receives the whole case file. In authorizing a EAW, the court is obliged to assess the requirements for issuing an EAW, in particular the necessity and proportionality of the EAW.	The ultimate decision to issue an EAW lies therefore with a judge.	The AT Minister of Justice can give instructions to the prosecutor in individual cases. Instructions have to be given in writing and are always part of the case file.	The decision and inter alia the proportionality of such a decision always has to be the subject of court proceedings, otherwise the EAW cannot be issued as stated under question 1. In addition, the EAW may be challenged by the person concerned. In dealing with such a legal remedy, the Court of Appeal will assess the requirements for issuing an EAW, in particular proportionality.	In accordance with the decision of the CJEU of 9 oct. 2019, C-489/19 PPU, NJ (Staatsanwaltschaft Wien), and against the background of the answer to questions number 1 to 3, Austria is of the opinion that the procedure for issuing an EAW is in line with the FD EAW.	The notification of Austria regarding Art 6 para. 3 FD EAW has been updated after the CJEU's judgment in Case C-489/19 PPU NJ (Staatsanwaltschaft Wien) (see attached document).   ST06016.EN20.DOC X

 <b>BE</b>	<p>In general, an EAW for prosecution purposes is issued by an investigative judge immediately after he/she has issued a national arrest warrant in absentia.</p> <p>A prosecutor can only issue an EAW</p> <ul style="list-style-type: none"> <li>- following an arrest warrant issued by a court in the trial phase</li> <li>- for the purpose of prosecution of minors.</li> </ul> <p>Furthermore, a prosecutor is the competent authority for issuing an EAW for the purpose of the execution of sentences.</p>	<p>See the response to the first question.</p>	<p>The Belgian Constitution guarantees the independence of the public prosecution office within the framework of individual investigations and prosecutions (art. 151, §1 of the Constitution).</p> <p>This independence is not affected by the possibility of the Minister of Justice to order to launch a prosecution before the Belgian courts. The competency of the Minister of Justice does not entail the possibility to give specific instructions on how the investigation should be conducted, nor any powers related to investigative measure, including the issuing of a European arrest warrant. This competency is</p>	<p>As explained by the agents of the Belgian government in its submissions Case C-627/19 PPU ZB, the requirements inherent in effective judicial protection that needs to be fulfilled for when a public prosecutor decides to issue an EAW are guaranteed through a global system which ensures effective judicial protection on various levels through legal, statutory and organizational provisions.</p> <p>Legally, it should be underlined that the EAW will always need to be preceded by a national arrest warrant issued by a judge. It is at this stage that all the applicable procedural guarantees, as enshrined under the Charter of the Fundamental Rights of the EU, are upheld, which is an essential</p>	<p>n/a</p>	 <p>BE_certificate.pdf</p>
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			<p>moreover merely related to facts and can never be directed against a specific person.</p> <p>The Minister of Justice may also issue binding guidelines on general criminal policy, including those related to investigation and prosecution policy. These guidelines are not directives or instructions in individual cases. Furthermore, the independence of the prosecutor guarantees that he/she is always entitled to divert from these guidelines based on the concrete elements of the case (art. 151, §1 of the Constitution).</p>	<p>prerequisite for issuing an European Arrest Warrant pursuant to the Bob Dogi judgment.</p> <p>Furthermore, the effective judicial protection is guaranteed through the constitutional provisions on the independence of the public prosecutors from the Ministry of Justice, see response on question 3.</p> <p>Lastly, effective judicial protection is guaranteed through guidelines that can be found in the Manual to execute and issue and European Arrest Warrant of the European Arrest Warrant, and on the Belgian level, the guidelines put together by the College of Prosecutors-General. For example, one of such guidelines prescribes that an</p>		
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				European Arrest Warrant for the purpose of executing a sentence can only be issued if one or more prison sentences put together amount to minimum 3 years.		
 <b>BG</b>	<p>According to the Bulgarian Law on the EAW at pre-trial proceedings only the case prosecutor is responsive for drafting an EAW.</p> <p>In accordance with the Bulgarian Constitution the Prosecutors are part of the judicial system in my country.</p>	<p>a/At the pre-trial phase of the criminal proceedings the prosecutor takes a decision for issuing an EAW against the defendant on a base of domestic warrant issued by the prosecutor with a guarantee that after surrendering of the wanted person he/she will be brought to the court for confirmation of the restrain measure or change it;</p> <p>b/At the trial phase only the court can take a decision for issuing an EAW against the accused person;</p>	<p>The Bulgarian national legislation gives a guarantee for independence of the Prosecution office from the executive power and in particular from the Ministry of justice.</p> <p>There are not any provisions stipulated the Ministry of justice to issue an instruction or orders to the Prosecution office.</p> <p>The employer of each prosecutor is the Supreme Judicial Council.</p> <p>The meetings of the Supreme Judicial Council are chaired by the Minister of justice</p>	<p>1.The public prosecutor's decision to issue an EAW for the purposes of a criminal prosecution in the pre-trial phase may be based on an effective national decision on detention of the person, which can be:</p> <p>a) a court decision: an enforceable order for detention on remand pending trial. A case in point is the situation in which the intermediate appellate review court sets aside an order of the court of first instance denying a motion by a public prosecutor under Article 64 of the Code of Criminal Procedure (NPK) and ordering further detention on</p>	<p>In accordance with the opinion of the Bulgarian Prosecution office, the Republic of Bulgaria in its capacity as issuing body is not affected by the CJEU's judgement and thus there is no need for amending the BG legislation.</p> <p>To date we are not aware of a position of the Bulgarian authorities to the effect that the Republic of Bulgaria is affected by the CJEU's judgments in a manner requiring a change of the regulatory framework. The formal opinion of the Public Prosecutor's</p>	 BG PPO order.pdf   BG_certificate.pdf

		<p>c/At the execution phase of serving of penalty the prosecutor takes a decision for issuing a EAW against the sentenced person.</p> <p>In the case of an EAW for the purposes of a criminal prosecution in the pre-trial phase and/or for issuing an EAW for the purposes of executing a custodial sentence, the public prosecutor is the authority that ultimately takes the decision to issue an EAW. The specificity lies in the fact that, where an EAW is issued for the purposes of executing a custodial sentence, this power is vested in the public prosecutor who has been entrusted with the</p>	<p>who does not have any right to vote.</p> <p>Therefore the Prosecution office is fully independent of the Ministry of justice.</p>	<p>remand, then itself orders detention on remand pending trial. Under the circumstances, the decision to issue an EAW is predetermined by the court decision and constitutes a step executing that decision. This option is elaborated in point 1.1.a of the Prosecutor General's Instruction approved by Order No 1774/2014. In our opinion, such a turn of events and correlation can be interpreted as a form of prior judicial review and a sanction from the court for the issuing of an EAW, including with regard to its proportionality.</p> <p>b) a public prosecutor's detention warrant under Article 64(2) of the NPK.</p> <p>In such cases, it is always guaranteed that, when an EAW is executed and the person is surrendered</p>	<p>Office of the Republic of Bulgaria (PRB) is that public prosecutors meet the requirements for an 'issuing judicial authority'. In this regard, organisational measures have been taken by supplementing the Instruction regarding the issuing of an EAW under Order No 1774 of 2014 by a new Order No RD-02-19 of 26 July 2019 (see attached file) and the publication of the CJEU's judgments in Joined Cases C-508/18 and C-82/19 PPU and in Case C-509/18. The other measures, if it is determined that the Republic of Bulgaria is supposed to reallocate EAW issuing powers, can only be regulatory, and they do not fall within the remit of the PRB.</p>	
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		<p>execution (judgment) case file. In any case, in view of the position of the public prosecutor as a judicial authority fully independent from the executive, the requirements for independence set by the case-law of the CJEU are met. The same applies to the requirements of objectivity when issuing an EAW for the purposes of a criminal prosecution in the pre-trial phase, to the extent that the public prosecutor is bound to take both exculpatory and incriminatory evidence and to assess it impartially.</p>		<p>to the Bulgarian authorities, the person will by all means be presented before the court of first instance for an examination of the public prosecutor's motion to order detention on remand pending trial. The fact that the surrendered person will be compulsorily brought before a court for an examination of a motion to order detention on remand pending trial in our opinion constitutes follow-up judicial review of the public prosecutor's decision to issue an EAW, which is ensured precisely by these proceedings. The admissibility of follow-up judicial review, including after the surrender of the requested person, and the absence of a requirement to introduce a right to appeal separately the decision to issue an</p>		
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				<p>EAW (this is only one of the options for effective judicial review) have been recognised by the CJEU (see in particular paragraphs 64 to 66 and 70 of the judgment in Joined Cases C-566/19 PPU and C-629/19 PU, and paragraphs 43 to 45 of the judgment in Case C-625/19). We suggest that you consider the possibility, when sharing the information relevant to the Republic of Bulgaria, of inferring the existence of guarantees of an adequate and effective judicial review in such cases from the fact that proceedings before a court are ensured immediately after the surrender of the person, in which the pleas in law for ordering detention on remand pending trial are assessed, i.e. the issuing of the EAW is reviewed as well.</p> <p>2. As to the right of defence of the person</p>		
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				<p>concerned within the context of Directive 2013/48/EU, this right is guaranteed in the proceedings on outgoing and incoming European arrest warrants by the rules of Article 43 of the Extradition and European Arrest Warrant Act (ZEEZA) and the rules on mandatory defence under the NPK.</p> <p>When a requested person under an EAW is presented before a court in the Republic of Bulgaria, the competent court appoints a legal counsel and an interpreter to the person if he or she does not speak Bulgarian and familiarises the person with the plea in law for his or her detention, the contents of the European arrest warrant, and his or her right to express consent to surrender to the competent authorities</p>		
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				<p>of the issuing Member State and the consequences thereof. On the other hand, if the person is detained on a public prosecutor's warrant under Article 42(2) of the ZEEZA, the rules of the NPK on mandatory defence guarantee the appointment of a legal counsel, irrespective of whether the person concerned speaks Bulgarian.</p> <p>Upon commencement of the judicial proceedings on an incoming EAW, the court informs the person claimed of his or her right to a legal counsel in the issuing Member State whose role is to assist the legal counsel in the Republic of Bulgaria by providing information and advice. If the person declares that he or she wishes to exercise this right, the court immediately informs the competent</p>		
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				authority of the issuing Member State of this wish (Article 43(5) of the ZEEZA). This fulfils the requirements of Article 10 of the above-mentioned Directive.		
 <b>CY</b>	No prosecutors in Cyprus can not Issue EAW. According to Article 3 of Law 133 (I) / 2004 on the EAW. and the procedures for the delivery of requested persons between the EU Member States, the EAW is a decision or decree of a judicial authority of a Member State of the European Union issued for the purpose of arrest and surrender of a person who is in the territory of another EU Member State and the competent authorities of the issuing State are required to: (a) prosecute; or (b) to execute a custodial sentence or a detention order.	The entity in Cyprus that ultimately takes the decision to take EAW is the District Court Judge.	The Attorney General of the Republic of Cyprus is an independent authority and Public Prosecutors acting on his behalf enjoy a degree of independence.	It doesn't apply to Cyprus.	It doesn't apply to Cyprus because the Issuing authority in Cyprus is the District Court Judge.	No.

	In addition, according to Article 6 of Law 133 (I) / 2004, the competent judicial authority issuing an EAW is the Provincial Judge in whose province the territorial jurisdiction of the offense for which the arrest and surrender of the requested person is pursued or the Court which issued the regarding the sentence or the security measure.					
 <b>CZ</b>	The answer for the CZ is no. In the CZ only courts can issue the EAW.	A court.	The executive body cannot give directions or instructions to the prosecutors in a specific case.	n/a	Does not apply.	n/a
 <b>DK</b>	The Danish Prosecution Service is no longer competent to issue European arrest warrants (EAWs)( See under 6).	According to the Danish Act on the Extradition of Offenders, Sections 46 and 47, the courts are the only competent authority to issue EAWs	n/a	n/a	n/a	As per 15 February 2020, a new Act on the Extradition of Offenders entered into force in Denmark. According to the new law, the courts are the only competent authority to issue European arrest warrants in

						Denmark, which is done on the application of the Prosecution Service. The EAWs are issued by the District Courts and appealable to the High Court.
 <b>DE</b>	Since the judgement of the CJEU in Joined Cases C-508/18 OG and C-82/19 PPU PI of 27 May 2019, EAWs have been issued by the Local, Regional or Higher Regional Courts or the Federal Court of Justice.	The decision to issue an EAW is taken by a court.	The Federal Government is not aware of any case in which direct or indirect influence by a Ministry of Justice on state level or federal level regarding the issuing of an EAW was exerted.  Nevertheless sec. 146 and 147 Courts Constitution Act have the following wording:	EAWs for the purpose of prosecution are no longer issued by public prosecutors. Instead, they are issued by way of court order. The requirement of effective judicial protection against the decision to issue an EAW as stipulated by the CJEU is therefore no longer relevant in the German context.	After the judgement of 27 May 2019, the German Federal Ministry of Justice and Consumer Protection informed the State Ministries of Justice and practitioners that the ruling of the CJEU should be interpreted as meaning that a court has to decide on issuing an EAW, and that it is the opinion of the Federal Government that the	In our view, existing EAWs (issued by public prosecutors before the CJEU ruling) can still be used as basis for a provisional arrest. When informed about an arrest, German prosecutors and courts handle the case as top priority. The prosecutor who has issued the EAW gets into contact with the

			<p>Section 146 The officials of the public prosecution office must comply with the official instructions of their superiors.</p> <p>Section 147 The right of supervision and direction shall lie with:</p> <ol style="list-style-type: none"> <li>1. the Federal Minister of Justice and Consumer Protection in respect of the Federal Prosecutor General and the federal prosecutors;</li> <li>2. the Land agency for the administration of justice in respect of all the officials of the public prosecution office of the Land concerned;</li> <li>3. the highest-ranking official of the public prosecution office at the Higher Regional Courts and the Regional Courts in</li> </ol>	<p>However, the general legal remedy against a court order is the complaint under sec. 304ff. of the German Code of Criminal Procedure. Separate judicial remedy can be sought against the underlying national arrest warrant.</p>	<p>existing law must henceforward be interpreted in this way.</p> <p>A conference took place in the Ministry in June 2019, which allowed for a discussion of the ruling's consequences. Several short-term measures were taken by the Ministry and included the facilitation of communication between relevant actors on a national and European level, in particular to ensure that EAWs which had been issued by public prosecutors before the CJEU ruling were re-issued by courts as quickly as possible.</p> <p>The German notification under Art. 6 (3) of FD EAW has been changed to reflect the new</p>	<p>competent court and asks to decide on the EAW as soon as possible. A new version of the EAW is sent. This practice has been working overwhelmingly without difficulty.</p> <p> <b>Germany Working Paper.pdf</b></p> <p> DE_certificate_2.pdf</p> <p> Changed notification EAW GE</p>
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			<p>respect of all the officials of the public prosecution office of the given court's district.</p> <p>According to these legal norms and their interpretation by the CJEU, there is thus a risk for public prosecutors to be subject, directly, or indirectly, to directions by the executive. However, as stated above, this risk has never materialised in in any case related to an EAW.</p>		situation (see next column).	
 <b>EE</b>	<p>The answer for Estonia is YES.</p> <p>It is the same as in Sweden, a prosecutor is competent to issue an EAW after a court decision on detention.</p>	<p>According to Code of Criminal procedure § 507 (1), in pre-trial proceedings it is the prosecutor's office which takes the decision to issue an EAW and in court proceedings it is the court conducting proceedings regarding a criminal offence which is the</p>		<p>Any decision or activity of the prosecutor, including issuing of the EAW, can be appealed against according to the Estonian Code of Criminal procedure § 228. This appeal is first adjudicated in the Office of the Prosecutor General and the decision of the Office of the Prosecutor General</p>	<p>When an EAW is issued by the prosecutor, a statement declaring that Prosecutor's Office is independent in the performance of its functions arising from law, is forwarded to the executing state together with EAW.</p>	 <p>Estonian statement-EAW.pdf</p>



		basis for an EAW, which takes the decision to issue an EAW. Prosecutor issues an EAW based on a national arrest warrant, which is issued by the court. Ministry of Justice forwards the EAW to the executing state.		can be appealed in the county court according to the Code of Criminal Procedure § 230.		
 <b>EL</b>	<p>According to art. 4 of the Law 3251/2004, the judicial authority authorised to issue a EAW is the Public Prosecutor of the Court of Appeals, who is competent either a) for initiating criminal proceedings for the act(s), for which arrest or surrender is sought, or b) for executing the custodial sentence or detention order imposed.</p> <p>According to the Greek Constitution, prosecutors are members of the judiciary.</p>	<p>According to art. 4 of the Law 3251/2004: "Competent judicial authority for issuing a European arrest warrant in Greece</p> <p>The judicial authority empowered to issue a European arrest warrant shall be the public prosecutor by the Court of Appeal who has the territorial jurisdiction:</p> <p>a) for the trial concerning the offence for which the arrest and surrender of the extraditee is requested,</p>	<p>According to the Greek Constitution, (articles 87 &amp; 88), prosecutors and judges form a single body of "magistrates" (judicial authority), both categories are equated under the above concept and they are integrated into the judicial power.</p> <p>Articles 87 of the Greek Constitution and 24 of the Law 1756/1988 guarantee a genuinely independent status for the Judiciary.</p> <p>Both judges and prosecutors, as</p>		Having in mind the answers provided above Greece is not affected by the CJEU's recent judgments.	n/a



		<p>b) for the execution of the custodial sentence or the detention order.”</p> <p>“magistrates” enjoy life-long tenure guaranteed by article 88 par. 1 of the Constitution. Fundamental principles regarding the independence of the Prosecution Office are equally provided in Law 1756/1988 on “The Code on the Organisation of the Courts and the Status of Magistrates”. Art. 24 par. 1 of the above law on the “independent judiciary” provides that “the Prosecution Office is a judicial authority independent from the courts and the executive power”.</p> <p>According to art. 24 par. 4c of Law 1756/1988: “Prosecutors in the execution of their duties and the expression of their views act</p>			
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			<p>independently, abiding by the law and their own consciousness” and they are never exposed to the risk of being subject to any subject matter directions or instructions by the executive.</p> <p>We underline, that, according to domestic legislation the recommendations issued by the hierarchical superior prosecutors must not be linked to the substance of the relevant criminal case, as, according to art. 24 of Law 1756/1988 par. 4a &amp; 5:</p> <p>The Prosecution is organised as a unified hierarchical structure under the direction of the Prosecutor General (the Head of the Greek prosecutors) but only “... general orders or</p>			
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			recommendations in relation to the exercise of the public prosecutors duties can be legally provided by: a) the General Prosecutor to all prosecutors of Greece; b) the Prosecutor to the Appeals PPO and the Prosecutor to the Court of First Instance PPO to all prosecution officials subjected to the jurisdiction of the Prosecutor to the Appeals PPO and the Prosecutor to the Court of First Instance PPO respectively”.			
 <b>ES</b>	Under the Spanish legal system Prosecutors cannot issue a EAW.	In accordance with Article 35 (1) of the Spanish Mutual Recognition Law 23/2014, only Investigating judges/Courts are entitled to issue a EAW for the purpose of prosecution when all the requisites for a national arrest warrant concur and	The PPO in Spain is a constitutional body, with legal personality and incorporated with functional autonomy within the judiciary in accordance with Article 124 of the Constitution -under the title of the Judicial Power-, and Article 2 (1) of the Law on the Organic Statute of the	n/a	Spain, as issuing authority, is NOT affected by the CJEU's judgments	As regards the double level of protection of the rights of the person concerned, the Spanish issuing judicial authority reviews, in the light of the particular circumstances of each case, whether the EAW is proportionate or not

		always upon a request of the Prosecutor in charge of the case (Art. 39 (1) and (3) of the Law 23/2014). So, Judges and Courts ultimately take the decision to issue a EAW.	Public Prosecutors, - Law 50/1981 as amended by law 24/2007-.  In addition, the above mentioned provisions state that the Public Prosecutor has the mission of promoting justice in defence of the law, the rights of the citizens and the general interest as well as ensuring the independence of the Courts.			upon a request of the Prosecutor who is also legally obliged to ensure respect for the rights of the persons concerned.  In addition, Article 13 (1) of the Mutual Recognition Code in Spain provides, in general terms, that legal remedies foreseen in the Penal Procedure Code apply to any EAW issued in criminal proceedings.   ES_certificate.pdf
 <b>FI</b>	Yes. Prosecutors are the only competent authorities to issue EAW's in Finland. According to the Act on Extradition on the Basis of an Offence Between	Prosecutor.	Yes. According to the Act on the National Prosecution Authority (32/2019) the National Prosecution Authority is, independently and	All requirements inherent in effective judicial protection as laid down in CJEU's Judgments apply to the EAW procedure in Finland.	Finland is not affected by the CJEU's judgments.	The Finnish Office of the Prosecutor General issued a Memorandum:

	<p>Finland and Other Member States of the European Union (1286/2003) prosecutor may issue an EAW for prosecution and for the enforcement of a custodial sentence.</p> <p>Prosecutors are responsible for the prosecution of criminal offences. According to the Criminal Procedure Act (689/1997) the duty of the prosecutor is to bring a charge for an offence and to prosecute the case. Prosecutor decides on the bringing of charges independently and considers the matter in a manner consistent with the legal safeguards of the parties and the public interest.</p> <p>Prosecutors also participate in many other ways in criminal proceedings. The prosecutor has</p>		<p>autonomously, responsible for organising the prosecutorial activities in Finland.</p> <p>According to the above-mentioned act each prosecutor makes decisions in criminal matters being handled by them, falling within the prosecutors' power of decision independently and autonomously.</p> <p>Due to the autonomous and independent status of the prosecutor he or she may not be directed or instructed in a specific case or otherwise by the executive, such as a Minister for Justice in any way, including issuance of with deciding to issue an EAW.</p>	<p>Prosecutor may issue an EAW for prosecution only if the person against whom an EAW will be issued has been remanded by a court order. The conditions for the issuing of an EAW and its proportionality are therefore subject to judicial review before an EAW is issued. Judicial review is also possible after the issuing of an EAW. The court may remand a person suspected of an offence and whose extradition to Finland is to be requested if the most severe punishment provided for the offence is imprisonment for at least one year and there are grounds to suspect that the person will not arrive voluntarily in Finland.</p> <p>Prosecutor's request for remand is made for the</p>		<p> FI_certificate.pdf</p> <p> FI EAW</p>
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	<p>according to the Coercive Measures Act (806/2011) the right to arrest a person in Finland. The prosecutor participates to the extent necessary in the criminal investigation in accordance with the Criminal Investigation Act (805/2011). The criminal investigation authority is obliged to comply with orders given by the prosecutor in relation to the investigation.</p> <p>For all the above-mentioned reasons prosecutors are covered by the concept of 'issuing judicial authority' within the meaning of the EAW framework decision.</p>			<p>explicit purpose of issuing an EAW. The court may not order a person to be remanded unless it considers the measure to be justifiable with consideration to the seriousness of the offence under investigation, the importance of clarifying the offence and the degree to which the use of the coercive measures infringes on the rights of the suspect or of others (principle of proportionality).</p> <p>The person against whom an EAW has been issued has the right of access to a lawyer. Directive (2013/48/EU) on the right of access to a lawyer in criminal proceedings and in EAW proceedings has been implemented and the related national legislation entered into</p>		
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				<p>force in Finland on 27 November 2016.</p> <p>The person against whom an EAW has been issued for the purpose of prosecution has the right to request the Court to hold a new remand hearing. The person also has the right to file a complaint against the Court's decision on remand without time limits. Based on a complaint the Court of Appeal may overturn the lower Court's decision on remand. If the lower Court's decision on remand is annulled, the EAW will be automatically cancelled.</p> <p>Once the requested person is surrendered to Finland, the court will hold a new remand hearing without delay and in any case not later than four days from the time when the</p>		
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				<p>requested person arrived in Finland.</p> <p>Prosecutor may issue an EAW for the enforcement of a custodial sentence only on the basis an enforceable custodial sentence issued by a court.</p>		
FR	<p>Prosecutors are solely competent to issue European arrest warrants. In fact, under Article 695-16 of the Code of Criminal Procedure, the public prosecutor's office of a jurisdiction puts into effect arrest warrants issued by an investigating Judge, a Court or a Judge responsible for the terms and conditions of sentences under the form of European arrest warrants. The public prosecutor's office is also competent to implement in the form of a European arrest warrant the execution</p>	<p>The public prosecutor's office issues a European arrest warrant either automatically or at the request of the jurisdiction which has issued a national arrest warrant.</p>	<p>Article 30 of the Code of Criminal Procedure expressly excludes the possibility for the Minister of Justice to give instructions to the public prosecutor in individual cases.</p> <p>In addition, Article 31 of the same Code provides that the public prosecutor's office carries out public prosecution and requests the enforcement of the law in accordance with the principle of impartiality to which he is bound.</p>	<p>The French code of Criminal Procedure provides that a European Arrest Warrant issued for the purposes of prosecution has necessarily to be preceded by the issuance of a domestic arrest warrant by a Court in the frame of the criminal proceedings pending in France. It is the duty of this Court to assess the proportionality and the necessity of the issuance of the arrest warrant. The decision of the Court of first instance in this regard can be challenged</p>	n/a	n/a


	<p>of custodial sentences of four months or more pronounced by the trial courts.</p>			<p>before the Court of appeal.</p> <p>The first level of protection implemented by the Framework decision on EAW is therefore completely ensured in France, insofar as the EAW is always based on a domestic decision issued by a judge.</p> <p>Furthermore, the decision to issue a EAW can in France be challenged in any case.</p> <p>Before trial, pursuant Article 170 of the French code of Criminal Procedure, the EAW can be referred to the courts for invalidation. Actions for invalidation are opened during the entire pre-trial period, and this for any kind of judicial process. According to the case law of the French supreme Court (Cour de cassation), if a request</p>		
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				<p>for annulment/invalidation of a EAW is brought before the Court, the Court has to verify whether the legal requirements for issuing a domestic arrest warrant are met or not and whether the issuance of a domestic EAW was necessary and proportionate. Nevertheless, such action is opened for the only parties to the proceedings. In other cases, the action can be brought before the Court only after the notification of the EAW and the effective surrender of the concerned person.</p> <p>After trial, the sentenced person who is the subject of a EAW has a right to lodge classical remedies (appeal before the Court of appeal, remedy before the French supreme Court) against</p>		
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				<p>the decision imposing the sentence on which the EAW is based . Moreover, according to Article 710 of the French code of Criminal Procedure, in order to challenge specifically the EAW, the sentenced person has a right to lodge a particular remedy. This remedy may refer to the validity of the issuance of an EAW and may be lodged as soon as the EAW has been issued, provided that the concerned person has been previously informed of the existence of the EAW before its notification.</p> <p>In any event, after its surrender, the concerned person has the right to be assisted by a lawyer for every remedy lodged against the EAW.</p>		
 <b>HR</b>	In Croatia a prosecutor is competent to issue an	Prosecutors (state attorneys) and judges.	According to the Croatian Constitution, Prosecution Office is	The Republic of Croatia implemented Directive 2013/48/EU (regarding	Taking into account the previous answers,	

	EAW after a court decision on detention. Prosecutors in Croatia are part of the judiciary.		autonomous (independent) from the executive power and is part of the judicial power.  Prosecutors are not exposed to the risk of being subject, directly or indirectly, to directions or instructions in a specific criminal case coming from the executive.	the right of access to a lawyer in criminal proceedings and EAW proceedings). - Before issuing of EAW by the prosecutor, the court makes a decision on detention. An appeal is possible against that decision. - There is no appeal against EAW. - After arrest and detention upon an EAW, an appeal is possible.	no measure needs to be taken.	 CRO_certificate.pdf
 HU	Pursuant to the HU law (Art 25 of the Act CLXXX from the year 2012 on the international cooperation with the MSs of the EU in criminal matters) the EAW can be issued by the Court exclusively. In cases prior the charging the investigative judge may issue an EAW based on the motion of the prosecutor. The PPOs in Hungary are entitled to submit motions to the Court to issue an EAW, but cannot issue it on its	In Hungary, under Hungarian Law, the competent court takes the decision to issue an EAW.	Does not concern Hungary.  Pursuant to the Fundamental Law of Hungary /Art. 29 (1)/ the prosecution service is independent and is not exposed to the risk of being subject to instructions or directions from the executive power. Therefore the executive is not entitled to give instructions or directions to the prosecution service,	n/a	Does not concern Hungary.	n/a

	own. Despite that the HU PPOs are considered as judicial authorities in Hungary.		neither generally, nor in individual cases.			
 <b>IE</b>	No. In Ireland, only the High Court can issue an EAW, which is done on the application of the Director of Public Prosecutions in Ireland. The issuing judicial authority is the High Court. A prosecutor in Ireland cannot issue an EAW themselves.	The High Court.	Yes it does. Section 2 (5) of the Prosecution of offences act 1974 provides as follows: "(5) The Director shall be independent in the performance of his functions". <a href="http://www.irishstatutebook.ie/eli/1974/act/22/enacted/en/print.html">http://www.irishstatutebook.ie/eli/1974/act/22/enacted/en/print.html</a> The Director of Public Prosecutions is not answerable to the Minister or Department of Justice. The office of the Taoiseach (the Prime Minister of Ireland) presents the Public Prosecution Office's financial vote before the Irish parliament. This function is limited to the extent and value of the annual budget provided to the Director of Public		n/a	n/a


			Prosecutions in Ireland for the running of her office. Accordingly, there exists no risk from the office of the Director of Public Prosecutions being subject, directly or indirectly, to directions or instructions in a specific case from the executive in connection with the adoption of a decision to issue an EAW.			
 <b>IT</b>	I confirm that in Italy prosecutors are the only judicial authority competent to issue EAWs after the definitive decision of the court on detention.	The investigative judge in the preliminary (investigative) phase; the single judge or the three judges' panel at trial phase if the national arrest warrant is issued at the trial stage; the Court of Appeal at the appeal phase if the national arrest warrant is issued at that stage; the prosecutor in the executing phase when the decision is	<p>According to the Italian Constitution, Prosecution Office is autonomous (independent) from the executive power and it is integrated into the judicial power.</p> <p>Indeed, the Italian Constitution excludes Public Prosecutors from the sphere of influence of the executive power and places them in their own right in the</p>	n/a	Taking into account the previous answers, no measures need to be taken.	 <p>IT_certificate.pdf</p>

		final and the penalty has to be executed.	<p>sphere of independence of the Judicial authority, that is safeguarded by a Superior Council of the Judiciary, whose members are elected to the extent of two thirds by judges and prosecutors, and that has competence in the field of appointments, promotions, transfers and disciplinary proceedings. Under Article 104 of the Constitution “the judiciary is an autonomous and independent order vis a vis any other power”.</p> <p>As a result, Public Prosecutors have not only been placed out of the dependence of the Minister of Justice, but they have also obtained the same guarantees as the judges responsible for giving rulings (with whom they share the</p>			
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			<p>same career) that protect their professional position from any intrusion of the executive power. Namely, public prosecutors are included in the judicial order and participate of the unified culture of jurisdiction, in the sense that they belong to the same order. Thus, public prosecutors are and must be fully independent.</p> <p>Public Prosecutors enjoy maximum independence with regard to their status. The recruitment, disciplinary proceedings, transfers and promotions of public prosecutors are decided by the Supreme Council of the Judiciary (Article 105 of the Constitution); they are irremovable from their office (Article</p>			
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			<p>107 of the Constitution) and appointed after a public examination (Article 106, paragraph 1 of the Constitution). The functions performed by public prosecutors are those of the judicial order; they ensure compliance with the laws, prompt and regular administration of justice and protection of the rights of the State, legal persons and incapacitated persons; they promote repression of offences by carrying out the necessary investigations; they prosecute offences when investigations show elements capable of supporting charges in the trial phase; they enforce final judgments and any other decision made by judges as provided for by the</p>			
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			<p>law. In criminal proceedings Public Prosecutors perform the function of the public party by representing the State's general interest and, under Article 112 of the Constitution, have an obligation to initiate public prosecution. From this principle it follows that public prosecution cannot be subject to criteria of political opportunity, or submitted to vetoes or directives adopted by the Government or the Parliament and that the body in charge of public prosecution is in itself as independent vis a vis political conditioning as the judges responsible for giving rulings.</p>			
 <b>LT</b>	For the purposes of prosecution the issuing authority in Lithuania is Prosecutor General's	For the purpose of prosecution the issuing authority is the Office of the	The CJEU stated the Prosecutor General of Lithuania may be considered to be an	Article 691 (Issuance of the European arrest warrant for the purposes of surrender	Based on the CJEU judgment of 27 May 2019, PF, C-509/18 PPU, we can indicate	n/a


	<p>Office of the Republic of Lithuania.</p> <p>Criminal Procedure Code of the Republic of Lithuania Article 691. Issuance of the European arrest warrant for surrender of a person to the Republic of Lithuania 1. Seeking to take over a citizen of the Republic of Lithuania or other person against whom criminal prosecution has been initiated in the Republic of Lithuania from the European Union Member State, Prosecutor General's Office, upon receipt of the court's order on arrest of the person in question, issues the European arrest warrant &lt;....&gt;.</p> <p>2. In cases where a citizen of the Republic of Lithuania or other person who was sentenced to imprisonment by court's judgment of</p>	<p>Prosecutor General and for the purpose of execution of a sentence of imprisonment the issuing authorities are County Courts.</p>	<p>'issuing judicial authority', within the meaning of Article 6(1) of Framework Decision 2002/584, in so far as, in addition to the findings in paragraph 42 of the present judgment, his legal position in that Member State safeguards not only the objectivity of his role, but also affords him a guarantee of independence from the executive in connection with the issuing of a European arrest warrant (see, to that effect, judgment of 27 May 2019, PF, C-509/18 PPU, paragraph 56).</p>	<p>of a person to the Republic of Lithuania) paragraph 1 of the Code of Criminal Procedure of the Republic of Lithuania lays down the following: Seeking to take over a citizen of the Republic of Lithuania or other person against whom criminal prosecution has been initiated in the Republic of Lithuania from the European Union Member State, Prosecutor General's Office, upon receipt of the court's order on arrest of the person in question, issues the European arrest warrant and either directly or via prosecutor of the Prosecutor General's Office of the Republic of Lithuania who is the National Member for Lithuania at Eurojust (Deputy National Member for Lithuania at Eurojust) addresses a competent authority of</p>	<p>that Lithuanian Prosecutor General's Office competence to issue EAWs is not affected by the CJEU's judgments.</p>	
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	<p>conviction which has come into force has absconded from the serving of the sentence in a Member State of the European Union, the European arrest warrant shall be issued and a competent authority of a relevant state shall be directly addressed by a regional court &lt;....&gt;.</p>			<p>a Member State of the European Union for the surrender of a person indicated in the European arrest warrant.</p> <p>The law lays down that the European arrest warrant is always substantiated by a court order (judgement).</p> <p>Article 130 paragraph 1 of the Code of Criminal Procedure of the Republic of Lithuania lays down that the court order to impose detention on the basis of which the European arrest warrant is issued, may be appealed against to a higher court. This can be done by a person against whom detention has been imposed or by the said person's defence counsel. The appeal may be lodged within twenty days from the date of adoption of the order.</p> <p>Article 63 of the Code of Criminal Procedure of the Republic of</p>		
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				<p>Lithuania lays down the procedure of lodging an appeal against the procedural actions and decisions of the prosecutor. The procedural actions and decisions of the prosecutor may be appealed against by the persons against whom procedural measures of coercion have been applied, to a superior prosecutor. If the superior prosecutor dismisses the appeal, such decision may be appealed against to a pre-trial investigation judge.</p> <p>Article 51 of the Code of Criminal Procedure lays down that during the examination of the issue of the person's surrender on the basis of the European arrest warrant, the presence of the defence counsel is mandatory. A person arrested on the basis of the European arrest</p>		
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				<p>warrant has the right to have a defence counsel from the moment of arrest. If a person does not have a defence counsel, a defence counsel is appointed for the person.</p> <p>Article 10 of Directive 2013/48/ES is implemented in Article 711 of the Code of Criminal Procedure of the Republic of Lithuania which lays down that a citizen of the Republic of Lithuania or an alien whose surrender is requested from the Republic of Lithuania on the basis of the European arrest warrant, has the right to request for a defence counsel to be appointed at the state that issued the European arrest warrant before the person's surrender from the Republic of Lithuania. The person against whom the European arrest</p>		
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				<p>warrant has been issued must be notified about the said right in the language that he/she understands immediately after detention. Upon receipt of such a request, the Prosecutor General's Office of the Republic of Lithuania immediately notifies the competent authority of the state that issued the European arrest warrant about this, and upon receipt of the answer, immediately notifies the person and his/her defence counsel about this. A person's request for the appointment of a defence counsel in the state that issued the European arrest warrant does not suspend the procedure of examination of the issue of the person's surrender from the Republic of Lithuania on the basis of the European arrest</p>		
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				warrant, and the surrender procedure if the order for the person's surrender from the Republic of Lithuania on the basis of the European arrest warrant has become effective.		
 LU	<p>For the purposes of conducting a criminal prosecution, the EAW is issued or by an investigating judge or by a court (depending on the stage of the proceedings).</p> <p>For the execution of a custodial sentence, the EAW is issued by the Prosecutor General.</p>	Please see sub. 1.	<p>As mentioned above, EAW are only issued by a public prosecutor (i.e. the Prosecutor General) in the framework of the <u>execution of custodial sentences</u>.</p> <p>Article 70 of the law of 7 March 1980 on the organisation of the judiciary provides that the function of public prosecution belong to the Prosecutor General, under the authority of the Minister of Justice<sup>13</sup>. This provision does however not apply to particular cases or the</p>	n/a	The issuing authorities in Luxembourg are not affected by the CJEU's judgement. See however the developments under 3 above in respect of foreseen legislative changes.	n/a

<sup>13</sup> Art. 70 : Les fonctions du ministère public sont exercées, sous l'autorité du Ministre de la Justice, par le Procureur général d'Etat.(...)

			<p>execution of individual custodial sentences.</p> <p>Article 19 of the Criminal proceedings code<sup>14</sup> (CPC) provides that the Minister of Justice can require the Prosecutor general to initiate proceedings, but not to prevent or stop them<sup>15</sup>.</p> <p>This prerogative of the Minister of Justice does however not apply, given the wording of article 19 and its placement in the CPC - Title I<sup>16</sup> (authorities in charge of public prosecution and investigation) – to the execution of custodial sentences, regulated by Title IX of the CPC.</p>			
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<sup>14</sup> Code de procédure pénale, Art. 19. (L. 16 juin 1989) « Le ministre de la Justice peut dénoncer au procureur général d'Etat les infractions à la loi pénale dont il a connaissance, lui enjoindre d'engager des poursuites ou de saisir la juridiction compétente de telles réquisitions écrites que le ministre juge opportunes. »

<sup>15</sup> Constant jurisprudence, cf. p.ex. Ch. Des mises, 24 January 1972.



<sup>16</sup> Titre I: Des autorités chargées de l'action publique et de l'instruction.




			<p>It should further be noted that for approximately 30 years no Minister of Justice has made use of his prerogative under article 19 CPC. In order to adapt the constitutional and legislative framework to this constant practice, the following changes are currently foreseen:</p> <ul style="list-style-type: none"> <li>- Revision of the Constitution, new article 99 providing for the independence of the public prosecution service<sup>17</sup></li> <li>- Amendments of the CPC and the law on the organisation of the judiciary in the framework of the (draft) law on the creation of a Supreme Council of the Judiciary<sup>18</sup></li> </ul>			
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<sup>17</sup> Art. 99 (2): “Le ministère public exerce l’action publique et requiert l’application de la loi. Il est indépendant dans l’exercice de ses fonctions”. (Travaux Préparatoires 6030, index 27).





<sup>18</sup> Projet de loi n° 7323 du 22 juin 2018 portant organisation du Conseil suprême de la justice.


 <b>LV</b>	<p>In Latvia the Prosecutor General's Office is the only one competent authority to issue EAWs both for the purposes of prosecution and for the execution of custodial sentence. Therefore EAWs are issued only by Prosecutors who according to the Law on Prosecution Office are part of the judiciary.</p>	<p>The Prosecutor General's Office, respectively a Prosecutor of the Prosecutor General's Office</p>	<p>The Latvian national legislation provides a guarantee for independence of the Prosecution office from the executive. According to the Law on Prosecution Office the Prosecution Office is an institution of judicial power, which is independently exercising the supervision over the compliance to law within the limits of competence prescribed for by the legal enactments.</p> <p>Latvian Prosecutors are not exposed to the risk of being subject, directly or indirectly, to directions or instructions in a specific criminal case coming from the executive. The Law on Prosecution Office stipulates that a Prosecutor shall be independent in his/her activities from</p>	<p>The legal framework existing in Latvia for the issuance and appeal of EAW completely corresponds to the legal framework for the issuance and appeal of EAW in Sweden that by the CJEU's rulings in Case C-625/19 PPU XD is recognized as corresponding to the requirement towards effective judicial protection.</p> <p>A person, the extradition of whom is being requested on the basis of EAW, without any time limit has a right to appeal the decision on placement of a person in pre-trial custody, which can be done even after the issuance of the EAW and the arrest of the said person in the EAW executing State. If the decision on placement of a person in pre-trial custody is revoked, the EAW automatically loses its force as it was</p>	<p>In opinion of the Latvian Prosecutor General's Office Latvian prosecutors' competence to issue EAWs is not affected by the CJEU's judgments.</p>	 <p>EAW_Latvia_CJEU_prosecutor (002).pdf</p>
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			<p>any influence of other public and administrative institutions or officials and shall comply only with law.</p> <p>The Parliament, the Cabinet of Ministers, public and local government institutions, public and local government officials, enterprises and organizations of all types as well as individuals shall be prohibited from intervening into the work of the Prosecution Office in investigation of cases or during the performance of any other functions of the Prosecution Office.</p>	<p>based on the validity of the said decision (Section 50 of the abovementioned ruling).</p> <p>Any court of a higher instance reviewing an appeal against the decision on placement of a person in pre-trial custody shall also assess the proportionality of the issuing of EAW (Section 51 of the abovementioned ruling).</p> <p>In Section 52 of the abovementioned ruling there is laid down that subject to such procedural rules even in cases when it is not possible to separately appeal against the prosecutor's decision to issue EAW, the conditions for its issue, including the proportionality thereof, may be examined in court in the issuing Member State prior to or simultaneously with</p>		
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				<p>the issuance thereof (in deciding whether to issue an arrest warrant on the basis of which shall be issued the relevant EAW) or after its issuance.</p> <p>Article 10 of the Directive 2013/48/EU is implemented in the national legislation of Latvia.</p>		
 <b>MT</b>	<p>In Malta prosecutions are conducted by the Executive Police (in cases the punishment for which does not exceed 12 years' imprisonment), and, in cases the punishment for which exceeds 12 years' imprisonment, committal proceedings before the Court of Magistrates are conducted by the Executive Police, but it is then up to the Attorney General to issue the bill of indictment and actually prosecute before the Criminal Court (trial by jury, or, in some cases,</p>					n/a

	<p>trial before a Judge without a jury) once the compilation of evidence (committal proceedings) is concluded.</p> <p>Hence, in Malta, the prosecutor before the Court of Magistrates is the Executive Police, whilst the prosecutor before the Criminal Court is the Attorney General.</p> <p>None of these (neither the Executive Police nor the Attorney General) are deemed to be “judicial authorities” as per Framework Decision, hence none of them, as prosecutors, can issue an EAW. In Malta, the only authority that can issue an EAW is the Court of Magistrates. The Attorney General is the designated competent authority to administratively send and receive EAWs (and</p>					
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	<p>issue the relative certificates), but it is the Court of Magistrates (therefore, a judicial authority) which is competent to issue EAWs.</p> <p>Therefore, the concise and to-the-point reply to the question is: NO.</p>					
 <b>NL</b>	<p>In NL the public prosecutor is no longer the issuing judicial authority due to recent changes in the Dutch legislation.</p>	The investigative judge	<p>Not independent enough according to the ruling of the EUCJ (the MoJ may direct the prosecutor in individual cases, publicly announced, never occurred since 1997)</p>	n/a	<p>The Surrender of Persons Act was amended and entered into force on 13.07.2019 (see attached certificate in the next column). Since that date the investigative judge on request of the prosecutor is issuing the EAW.</p>	 NL_certificate.pdf   ST14979.XX19.DOCX
 <b>PL</b>	<p>Only court is allowed to issue EAW in Poland.</p>	<p>In Poland EAW is only issued by competent Circuit Court. In accordance with art. 607a of the Polish Code of Criminal Procedure, "a local circuit court, on a motion of the public prosecutor,</p>	<p>This situation does not apply to PL due to the regulation that the body issuing the EAW is a court</p>	n/a	<p>JCEU judgement did not affect PL regulation on EAW</p>	n/a



		or ex officio or on a motion of a competent district court in court and enforcement proceedings, may issue an European Arrest Warrant.”				
 <b>PT</b>	Prosecutors in Portugal are one of the competent issuing authorities for the EAW (the other being the investigative judge). During the trial phase and the execution of the sentence, the competent issuing authority in Portugal is the judge.	The prosecutors in the preliminary (investigative) phase of the proceedings, the judge during the subsequent procedural phases.	<p>According to the Portuguese Constitution, Prosecution Office is autonomous (independent) from the executive power and is integrated into the judicial power.</p> <p>Prosecutors are not exposed to the risk of being subject, directly or indirectly, to directions or instructions in a specific criminal case coming from the executive.</p> <p>The Portuguese Public Prosecution Statute is established by a Parliamentary Law and the powers conferred to the MoJ</p>	<p>In Portugal, there is no separate right to appeal against the decision of issuing an EAW for the purpose of prosecution. However, there are several procedural safeguards concerning the decision of issuing an EAW by the prosecutor, namely:</p> <p>An EAW (as any internal arrest warrant) can only be issued in cases where there is strong evidence of crimes punished with imprisonment for a term of 5 years, or exceeding 3 years- in cases of violent crime, highly organised crime, terrorism, grievous bodily injury, forgery of documents etc..</p>	Bearing in mind the previous answers, the response to this question is impaired.	n/a


			<p>don't include the possibility for issuing general or concrete instructions to the Prosecutors in criminal cases or anyway interfere in the criminal judiciary activity.</p>	<p>Also, as a rule and all coercive measures may only be imposed if the following requirements are met:</p> <ol style="list-style-type: none"> <li>1- Evasion or danger of evasion;</li> <li>2- Risk of disturbing the normal course of the inquiry or the investigative stage and, in particular, danger to the collection, preservation or veracity of evidence; or</li> <li>3- Risk, due to the nature and circumstances of the offence or of the defendant's personality, that he/she continues his criminal activity or gravely affects public order and peace.</li> </ol> <p>Furthermore, a warrant can only be issued :</p> <ol style="list-style-type: none"> <li>a) When there are well founded reasons to believe that the person subject to the warrant would not willingly present himself/herself before the competent</li> </ol>	
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				<p>judiciary authority if summoned to do so.</p> <p>b) If detention is the only coercive measure adequate to prevent the general risks already mentioned under 1), 2) and 3), or</p> <p>c) If detention is essential to the protection of victim's rights.</p> <p>According to the Portuguese Code of Criminal Procedure, after being surrendered to the portuguese issuing authorities, the requested person will appear before a judge in no more than 48 hours.</p> <p>The judge will decide about his/her pre-trial detention.</p> <p>There is a right of appeal against this decision.</p> <p>Both in criminal proceedings and EAW proceedings, the person arrested has the</p>		
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				mandatory right to a lawyer during the whole process and the right to have a third party informed upon his/hers deprivation of liberty.		
 <b>RO</b>	<p>No, the prosecutors can't issue an EAW or a national arrest warrant. Only the court is the issuing authority . Please see below the legal provisions :</p> <p>According to our legislation (Article 88 (3) of Law no.302/2004) European Arrest Warrants shall be issued:</p> <p>a) during the criminal prosecution stage, by the court having issued the provisional arrest warrant, ex officio or upon the notification by the prosecutor conducting or supervising criminal prosecution against the requested person;</p>	A court. Please see above.	The prosecutors are independent .	n/a	It is not the case. Please see above.	n/a



	<p>b) during the trial stage, by the court dealing with the case, ex officio or upon the notification by the prosecutor or the authority in charge of the enforcement for the provisional arrest warrant or the decision imposing the custodial measure;</p> <p>c) in the service stage, by the executing court, ex officio or upon notification by the prosecutor or the authority in charge of the enforcement for the detention order in relation to life detention or imprisonment or the decision imposing the custodial measure.</p>					
 <b>SE</b>	In Sweden a prosecutor is competent to issue an EAW after a court decision on detention.	The prosecutor in charge of the case.	Chapter 12 Section 2 of the Instrument of Government (the Constitution of Sweden) states that no public authority (government) nor the Swedish parliament (Riksdag) may influence or determine how an	The Swedish legal system contains procedural rules that allow for the proportionality of the decision of the public prosecutor to issue a European arrest warrant to be judicially reviewed before, or practically at the same	A certificate on the Swedish prosecutor being a judicial authority has been issued and signed by the Temporary Deputy Prosecutor-General, Ms Marie-Louise Ollén.	 SE_certificate.pdf

			<p>authority shall decide an individual case, nor how a rule of law is to be applied.</p> <p>Thus, a prosecutor is completely independent and free to make his or her own decisions.</p> <p>Nor is a prosecutor's head or the authority itself permitted to issue directives on how a matter is to be handled or what is to be decided.</p> <p>In Sweden, the role of the prosecutor has been devised so that the prosecutor has a central and independent role throughout the investigation process and legal proceedings in court. The prosecutor's independence is especially important with regard to the leading of criminal</p>	<p>time as, that decision is adopted, but also subsequently.</p> <p>According to the CJEU's ruling in C-625/19 the Swedish system satisfies the requirement of effective judicial protection.</p> <p>The Swedish legal system also guarantee the right to a lawyer during the criminal proceeding in general, this also includes the court proceedings adopting the national decision that may subsequently constitute the basis of the European arrest warrant.</p>	 <p><b>Certificate SE.pdf</b></p>	
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			<p>investigations and the taking of judicial decisions. It is the prosecutor, not the authority where he or she is employed, who takes decisions regarding whether legal proceedings are to be taken. It is the prosecutor who participates in court proceedings. The role of prosecutor is thereby exerted by an identifiable person with a personal responsibility.</p> <p>A prosecutor has the right to decide whether a suspect is to be detained. The detaining of a person must be reported to a court within three days in order for the detention to be examined.</p> <p>Thus a Swedish Prosecutor is not exposed to the risk of being subject, directly</p>			
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			or indirectly, to directions or instructions in a specific case from the executive, such as a Minister for Justice, in connection with the adoption of a decision to issue a European arrest warrant. This means that the European Court of Justice's judgments of 27 May 2019 in the cases C-508/18, 509/18 and C-82/19 does not affect the Swedish prosecutor's competence to issue European Arrest Warrant.			
 SI	Cooperation in Criminal Matters with the Member States of the European Union Act (ZSKZDČEU-1)" regarding jurisdiction in decision-making procedure of the execution of the EAW states that:  “(1) The investigating judge of the court	Competence for issuing of EAW is bestowed on the court.  This is defined in Art. 42 of Cooperation in Criminal Matters with the Member States of the European Union Act (ZSKZDČEU-1):	Given that prosecutors are not competent for issuing of EAW, the question is not relevant for Slovenia.  However, question of systemic role and functional independence of prosecutors in Republic of Slovenia	n/a	From the point of view of Republic of Slovenia as the issuing authority, the recent decision does not affect us, because prosecutors are not the issuing authority for EAW (this competence is reserved for courts).	In our view, issuing authorities of the countries, whose system was found wanting by the CJEU, should do their utmost to make the processing of such EAW by executing authorities as easy and as smooth as possible. Administrative

	<p>within the jurisdiction of which the requested person has a permanent or temporary residence, or within the jurisdiction of which the requested person is located, has jurisdiction to conduct proceedings for the surrender of such person to another Member State.</p> <p>(2) If the investigating judge who receives a warrant does not have territorial jurisdiction, he or she shall immediately forward such warrant to a judge who has jurisdiction, and notify the ordering judicial authority thereof." In this context the answer to your question is – no.</p>	<p>"(1) The national court conducting criminal proceedings, or the national court having jurisdiction for executing a sentence, shall issue a warrant on the form provided by Annex 1 of this Act.</p>	<p>was clarified by our Constitutional Court. In judgement No. U-I-42/12 Constitutional Court has confirmed that prosecutors as well as prosecutor offices in Republic of Slovenia are independent.</p>			<p>onus/burden regarding the validity of EAWs should not be pushed to executing authorities.</p> <p>EAWs are issued primarily in the interest of the authorities of the issuing country and, consequently, they should, as a matter of principle, inform the authorities of the executing country accordingly and supply them promptly with any supplemental documentation and any relevant subsequent decisions of the bodies deemed competent by the standards set by the CJEU.</p> <p>They should do so without delay, in order to avoid any risks of ex-officio</p>
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						release of persons detained on basis of EAWs issued by non-competent issuing authorities.
 <b>SK</b>	According to our legislation only a judge is competent to issue an EAW. In the preliminary proceedings a judge can issue an EAW upon a petition of a prosecutor.	Only a competent court can take the decision to issue an EAW.	According to our national law, the Prosecutor's Office is independent from the executive. Prosecutors are not exposed to the risk of being subject to directions or instructions from the executive in any case.	n/a	The Slovak Republic is not affected by the CJEU's judgement in question.	n/a
 <b>UK</b>	In the UK, a judge issues the EAW upon application from a prosecutor. Prosecutors cannot issue EAWs as we are not considered to be a judicial authority for EAWs	A court ultimately takes the decision to issue an EAW.	The UK has three public prosecution services (the Crown Prosecution Service covering England and Wales, the Crown Office covering Scotland and the Public Prosecution Service for Northern Ireland covering Northern Ireland). All bodies are entirely independent of the executive. As a common law system, much of this	n/a	The UK is not affected as issuing authority as only a court can issue an EAW.	n/a



			<p>independence is uncodified and based on the system of custom and precedence. However, the Prosecution of Offences Act 1985 that set up the Crown Prosecution Service and the Justice (Northern Ireland) Act 2002 which set up the Public Prosecution Service for Northern Ireland guarantee their independence from the executive. As noted in the questionnaire, Crown/Public prosecutors in the UK cannot issue EAWs as they are not regarded as judicial authorities for this purpose. EAWs can only be issued by a court upon the application of a prosecutor. The executive has no powers to issue instructions to issue an EAW.</p>			
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 <b>NO</b>	<p>The regional public prosecutors can issue an AW in Norway, prerequisites that the court has issued a warrant/order for somebodies arrest. The Norwegian Criminal Procedure Act section 175 states that "A decision to arrest may be made by the court if the suspect is staying abroad and the prosecuting authorities wishes to apply for his extradition, ...". The same goes for surrender. The same is also reflected in the Act on arrest and surrender to and from Norway in criminal matters on the cases of an arrest warrant, section 32.</p>	<p>The regional public prosecutor (under the same prerequisite as mentioned in answer no (1). Be aware that we under Norwegian legislation have prosecutors both within the police and in regional offices. The regional ones are the police prosecutors superior. It is solely the regional public prosecutors that can take the ultimately decision to issue an AW.</p>	<p>The Criminal Procedure Act section 55 states clearly that the Prosecution Authority is independent in a specific case. No one can instruct the Prosecution Authority in a specific case or reverse a procedural decision.</p>	<p>Under Norwegian legislation, the court issues a national arrest warrant, always including an assessment of proportionality of the arrest. A court decision is a prerequisite for the regional public prosecutor to issue an AW. The suspect will have the right of access to a lawyer in criminal proceedings and AW proceedings. The suspect / arrested person can request the court to reverse the decision on the national arrest warrant once arrested.</p>	<p>New legislation was adopted to meet the requirement on independence, more specifically the change in The Criminal Procedure Act section 55, mentioned above. It new legislation entered into force 1 November 2019.</p>	<p>(6) The Director of Public Prosecution issued 2 December 2019 a Certificate stating that the Prosecuting Authority is independent.</p> <div data-bbox="1809 571 1868 635" data-label="Image">  </div> <p>Declaratic</p>
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