



Board of Prosecutors-general

BRUSSELS

THE CHAIRMAN

FILE TREATED BY

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To whom it may concern

DATE

04/07/2019

MY REFERENCE

A.II.1.0

YOUR REFERENCE

ANNEX

COPY TO

COMPG

CONCERNS: Information on Belgian public prosecutor acting as issuing authorities of European Arrest Warrants

To whom it may concern,

In Belgium, a EAW for prosecution purposes is generally issued by an investigative judge immediately after the latter has issued a national arrest warrant.

A prosecutor can only issue a EAW in the following situations:

- following an arrest warrant issued by a court in the trial phase; or
- for the purpose of prosecution of minors and based on a detention order issued by a court competent in juvenile matters.

Furthermore, a prosecutor is the only competent authority for issuing a EAW for the purpose of the execution of sentences.

Before issuing any EAW, assessment of necessity and proportionality will always be considered.

The Belgian Constitution guarantees the independence of the Belgian public prosecutor within the framework of individual investigations and prosecutions (art. 151, §1 of the Constitution).

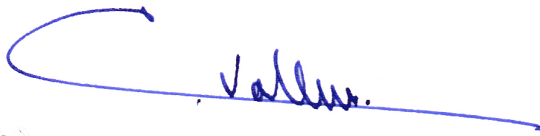
This independence is not affected by the possibility of the Minister of Justice to order to launch a prosecution before the Belgian courts. The competency of the Minister of Justice does not entail the possibility to give specific instructions on how the investigation should be conducted, nor any powers related to investigative measures, including the issuing of a European arrest warrant. This competency is moreover merely related to facts and can never be directed against a specific person.

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).

Therefore the College of Prosecutors General is of the opinion that European Arrest Warrants issued by a Belgian public prosecutor are to be regarded as issued by a “judicial authority” in the sense of Art. 6 § 1 of the Framework Decision 2002/584/JHA, as interpreted by the European Court of Justice in its judgments of 27 may 2019 in the joined cases C-508/18 and C-82/19 PPU.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'C. De Valkeneer', with a long horizontal flourish extending to the right.

C. De Valkeneer
Chairman of the Board of Prosecutors-general