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From:	Presidency
To:	Delegations
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Subject:	Impact of the CJEU Judgments of 27 May 2019 in Joined Cases *OG* (C-508/18) and *PI* (C-82/19 PPU) and Case *PF* (C-509/18) - Questionnaire by Eurojust and compilation of replies

Following the judgments of the Court of Justice of the European Union of 27 May 2019 in joined cases OG (C-508/18) and PI (C-82/19 PPU) and in case PF (C-509/18), relating to the concept of "issuing judicial authority" in the context of the European arrest warrant, Eurojust issued a questionnaire.

Delegations will find attached the questionnaire (Annex I), as well as the replies provided by the Member States (Annex II).

QUESTIONNAIRE ON THE IMPACT OF THE CJEU JUDGMENTS IN JOINED CASES *OG* (C-508/18) AND *PI* (C-82/19 PPU) AND CASE *PF* (C-509/18)

COMPILATION OF REPLIES

Background

On 27 May 2019, the CJEU interpreted in Joined Cases *OG* (C-508/18) and *PI* (C-82/19 PPU) (retrievable here) and Case *PF* (C-509/18, retrievable here) the concept of "an issuing judicial authority" within the meaning of Article 6(1) Framework Decision 2002/584/JHA on the European Arrest Warrant **and the surrender procedures between the Member States** (EAW FD). The CJEU held that the concept of an "issuing judicial authority", within the meaning 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 a European arrest warrant;*

- *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 a European arrest warrant.*

When assessing whether Article 6(1) EAW FD includes a public prosecutor of a Member State, the CJEU took into consideration *inter alia* the following elements:

- **Participation in the administration of criminal justice (*see* paras 29-42 *PF*; paras 50-63 *OG & PI*)**: e.g. be 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 be in charge of the organisation and direction of criminal investigations; and/or have power to issue an indictment.
- **Objectivity (*see* para 51 *PF*; para 73 *OG & PI*):** 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.
- **Independence (*see* paras 51-52 *PF*; paras 73-74 *OG & PI*):** The prosecutor's legal position in that Member State affords him/her a guarantee of independence from the executive in connection with the issuing of an EAW. The prosecutor is not exposed to any risk of being subject to external directions or instructions, in particular from the executive, in a specific case.
- **Legal remedy (*see* para 53 *PF*; paras 75 *OG & PI*)**: The prosecutor's decision to issue an EAW (and the proportionality of this decision) may be the subject of court proceedings which meet the full requirements inherent in effective judicial protection.

Questionnaire

These judgments have raised many questions amongst practitioners in relation to the legal position of public prosecutors in the Member States in the context of issuing EAWs for the purpose of prosecution. Already prior to the judgments, the Swedish desk at Eurojust raised the question "*Can prosecutors issue an EAW in your country*?". The replies to this questionnaire are integrated in the compilation of the present questionnaire (*see* question 1 below). The publication of the judgments raised some important additional questions.

Against this background and in view of supporting the national authorities in the Member States with the execution of EAWs in the aftermath of the recent judgments, Eurojust prepared a follow-up questionnaire:

(1) [Can prosecutors issue an EAW in your country? *Please only reply to this question in case you would like to amend or replace your answer to the Swedish Desk's questionnaire.]*

(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) 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?

(5) Do you have, in view of the above mentioned judgments, any other **additional comments** that you would like to share with the other Member States?

Outcome

All Member States (MSs) provided a reply to question 1 (Swedish questionnaire). 26 MSs provided a reply to the follow-up questionnaire (AT, BE, BG, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, NL, PL, PT, RO, SE, SI, SK, UK).

The full compilation of all the replies is available in the tables below. If needed, the compilation can be updated in the future.

Overview of full responses to the questions

Member State	Question 1	Question 2	Question 3	Question 4	Question 5
AT	Prosecutors issue an EAW but only if it is authorized by a judge. § 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 ultimate decision to issue an EAW lies therefore with a judge.	The AT Minister of Justice can issue instructions to the prosecutor in individual cases.	Due to the fact that a judge ultimately takes the decision to issue an EAW, AT is not affected by the CJEU's judgement as an issuing state.	The competent person in our MoJ would like to add that in his opinion the sentence 'The prosecutor's decision to issue an EAW (and the proportionality of this decision) may be the subject of court proceedings which meet the full requirements inherent in effective judicial protection.' does not exactly reflect the wording of paragraph 75 of the judgment justice. In his opinion, the

					wording in our document slightly blurs the opinion of the CJEU that court control (under the circumstances laid down in the paragraph) of the decision of also a prosecutor who is subject to instructions is sufficient. Our authorities furthermore explicitly welcome the efforts taken by Eurojust to clarify the situation that came to exist as a consequence of the CJEU's judgment. And finally, our MoJ is also working on a certificate as it was issued by in other MS in order to elaborate on the legal situation in Austria.

BE	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. A prosecutor can only issue an EAW - following an arrest warrant issued by a court in the trial phase - for the purpose of prosecution of minors. Furthermore, a prosecutor is the competent authority for issuing an EAW for the purpose of the execution of sentences.	See the response to the first question.	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). 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 moreover merely related to facts and can never be directed against a specific person. The Minister of Justice may also issue binding	n/a	n/a

			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).		
BG	According to the Bulgarian Law on the EAW at pre-trial proceedings only the case prosecutor is responsive for drafting an EAW. In accordance with the Bulgarian Constitution the Prosecutors are part of the judicial system in my country.	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	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. There are not any provisions stipulated the Ministry of justice to issue an instruction or orders to the Prosecution office.	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.	n/a

		it; b/At the trial phase only the court can take a decision for issuing an EAW against the accused person; c/At the execution phase of serving of penalty the prosecutor takes a decision for issuing a EAW against the sentenced person.	The employer of each prosecutor is the Supreme Judicial Council. The meetings of the Supreme Judicial Council are chaired by the Minister of justice who does not have any right to vote. Therefore the Prosecution office is fully independent of the Ministry of justice.		
CY	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. 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.				
CZ	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.	Does not apply.	n/a
DK	In Denmark the Prosecutor General's Office – Rigsadvokaten - is the only competent authority to issue EAWs both for the purposes of prosecution – here on the basis of a detention order from a court - and for the execution of custodial sentences. Rigsadvokaten is	The Office of the Prosecutor General (but always on the basis of a domestic arrest order issued by a court).	The Prosecution service forms part of the executive and is subordinate to the MoJ. However, in accordance with the Administration of Justice Act instructions to prosecutors as to the handling of specific cases, including EAW cases, can	The actual situation is still under consideration by the MoJ and the Prosecutor General´s Office.	n/a

	also competent for deciding on incoming EAWs.		only be given in writing accompanied by the motivation for such a decision. The President of the Parliament must in all cases be informed about such an instruction. Documents related to the instruction will be included in the casefile and be accessible to the persons concerned and their counsel. This possibility of giving instructions is hardly ever used.		
DE	According to the current ruling of the CJEU EAWs issued from German prosecutors are not in compliance with Art. 6 para. 1 FD EAW. EAWs will be issued by Local, Regional or Higher Regional Court or the Federal Court of Justice from now on. Germany is going to change the notification with respect to Art. 6 FD EAW.	The decision will be taken by a court from now on.	Until today there had been no direct or indirect influence by a Ministry of Justice on state level or federal level regarding the issuing of EAWs. Nevertheless sec. 146 and 147 Courts Constitution Act have the following wording: Section 146 The officials of the public prosecution office must	The German Federal Ministry of Justice has informed practitioners that the ruling of the CJEU should be interpreted as meaning, that a court has to decide on issuing an EAW. There will be a conference taking place on Wednesday, June 5, which aims at discussing the follow up of the ruling. Public Prosecutors who have issued an EAW in the last years which is still valid	According to our view existing EAWs could still be used as basis for a provisional arrest. When informed about an arrest German prosecutors and courts will handle the case as top priority. The prosecutor who had issued the EAW will get into contact with the competent court and ask to decide on the EAW as soon as possible. A new version of the EAW will

			comply with the official instructions of their superiors. Section 147 The right of supervision and direction shall lie with: 1. the Federal Minister of Justice and Consumer Protection in respect of the Federal Prosecutor General and the federal prosecutors; 2. the Land agency for the administration of justice in respect of all the officials of the public prosecution office of the Land concerned; 3. the highest-ranking official of the public prosecution office at the Higher Regional Courts and the Regional Courts in respect of all the officials of the public prosecution office of the given court's district.	have been informed of the ruling. It was proposed to enter into contact with the competent court and ask to issue a new EAW. German Higher Regional Courts which are competent to decide on the admissibility of a surrender, have been informed of the decision. The Federal Ministry of Justice is going to inform those courts on the answers from other member states to this questionnaire. Further experiences and the results from a COPEN meeting on June 19 dealing inter alia with this situation will be spread accordingly.	be sent  Germany Working Paper.pdf

			According to those articles there is a risk of interference by a ministry - which had not been used in any case related to an EAW.		
EE	The answer for Estonia is YES. It is the same as in Sweden, a prosecutor is competent to issue an EAW after a court decision on detention.	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 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.	Prosecutor's Office Act § 1 (1^1) states that the prosecutor's office is independent in the performance of its functions arising from law, and it acts pursuant to this Act, other Acts, and legislation issued on the basis thereof. Prosecutor's Office Act § 2 (2) states that prosecutors shall be independent in the performance of their duties and act only pursuant to law and according to their conscience. According to Prosecutor's Office Act § 9 (1), the Ministry of Justice shall exercise supervisory control over the prosecutor's office. The supervisory control over the prosecutor's office exercised by the Ministry	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.	n/a

			of Justice does not extend to the activities of the prosecutor's office in planning of surveillance, pre-trial criminal proceedings and representing of public prosecution in court. Therefore, Estonian national law clearly states that pubic prosecutors are independent from the executive power.		
EL	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. According to the Greek Constitution, prosecutors are members of the judiciary.	According to art. 4 of the Law 3251/2004: “Competent judicial authority for issuing a European arrest warrant in Greece 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: a) for the trial concerning the offence for which the	According to the Greek Constitution, (articles 87 & 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. Articles 87 of the Greek Constitution and 24 of the Law 1756/1988 guarantee a genuinely independent status for the Judiciary.	Having in mind the answers provided above Greece is not affected by the CJEU’s recent judgments.	n/a

		arrest and surrender of the extraditee is requested, b) for the execution of the custodial sentence or the detention order. ”	Both judges and prosecutors, as “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”. According to art. 24 par. 4c of Law 1756/1988: “Prosecutors in the execution of their duties and the expression of their views act 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. 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 & 5: 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 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".		
ES	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 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.	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 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	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 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)

			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.		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.
FI	Yes. In Finland the position and the competence of prosecutor is quite the same as in Sweden. Prosecutor is competent to issue an EAW after a court decision on detention.	Prosecutor (as he/she will sign the EAW).	According to the Act on the Prosecution Service (439/2011) prosecutors are autonomous and independent in the consideration of charges and any measure related thereto. It is the duty of a prosecutor to impartially secure criminal liability in a case under his/her consideration in a manner consistent with the legal safeguards of the parties and the public interest. Due to the autonomous and independent status of the prosecutor he/she may not be directed or instructed in a specific case or otherwise by the executive, such as a Minister for Justice or the	No measures are planned at a moment.	Interpretation of legal remedy might cause problems and delays. The Finnish Office of the Prosecutor General issued a Memorandum:  Memorandum_by_the_Office_of_Prosecut

			police in connection with deciding to issue an EAW.		

FR	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 of custodial sentences of four months or more pronounced by the trial courts.	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.	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. 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.	n/a	n/a
HR	In Croatia a prosecutor is competent to issue an EAW after a court decision on detention. Prosecutors in Croatia are part of the judiciary.	Prosecutors (state attorneys) and judges.	According to the Croatian Constitution, Prosecution Office is autonomous (independent) from the executive power and is part of the judicial power.	Taking into account the previous answers, no measure needs to be taken.	n/a

			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.		
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 own. Despite that the HU PPOs are considered as judicial authorities in Hungary.	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, neither generally, nor in individual cases.	Does not concern Hungary.	n/a

IE	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". http://www.irishstatutebook.ie/eli/1974/act/22/enacted/en/print.html 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 Prosecutions in Ireland for the running of her office. Accordingly, there exists no risk from the office of the Director of Public	n/a	n/a

			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.		
IT	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 final and the penalty has to be executed.	According to the Italian Constitution, Prosecution Office is autonomous (independent) from the executive power and it is integrated into the judicial power. 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 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 that has competence in the field of appointments,	Taking into account the previous answers, no measures need to be taken.	n/a

			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”. 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 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.		

			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 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 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.		

LT	For the purposes of prosecution the issuing authority in Lithuania is Prosecutor General's Office of the Republic of Lithuania. 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 <....>. 2. In cases where a citizen of the Republic of Lithuania	For the purpose of prosecution the issuing authority is the Office of the Prosecutor General and for the purpose of execution of a sentence of imprisonment the issuing authorities are County Courts.	The CJEU stated the Prosecutor General of Lithuania may be considered to be an '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).	Based on the CJEU judgment of 27 May 2019, PF, C-509/18 PPU, we can indicate that Lithuanian Prosecutor General's Office competence to issue EAWs is not affected by the CJEU's judgments.	n/a

	or other person who was sentenced to imprisonment by court's judgment of 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 <....>.				
LU	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). For the execution of a custodial sentence, the EAW is issued by the Prosecutor General.	Please see above sub. 1.	As mentioned above, EAW are only issued by a public prosecutor (i.e. the Prosecutor General) in the framework of the execution of custodial sentences. 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 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

			the authority of the Minister of Justice[1]. This provision does however not apply to particular cases or the execution of individual custodial sentences. Article 19 of the Criminal proceedings code[2] (CPC) provides that the Minister of Justice can require the Prosecutor general to initiate proceedings, but not to prevent or stop them[3]. 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[4] (authorities in charge of public prosecution and investigation) – to the		

[1] Art. 70 : *Les fonctions du ministère public sont exercées, sous l'autorité du Ministre de la Justice, par le Procureur général d'Etat.(…)*

[2] 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.* »

[3] Constant jurisprudence, cf. p.ex. Ch. Des mises, 24 January 1972.

[4] Titre I: *Des autorités chargées de l'action publique et de l'instruction.*

			execution of custodial sentences, regulated by Title IX of the CPC. 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: - Revision of the Constitution, new article 99 providing for the independence of the public prosecution service[5] - Amendments of the CPC and the law on the organisation of the judiciary in the framework of the (draft) law on the		

[5] 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).

			creation of a Supreme Council of the Judiciary[6]		
LV	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.	The Prosecutor General's Office, respectively a Prosecutor of the Prosecutor General's Office	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. 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	In opinion of the Latvian Prosecutor General's Office Latvian prosecutors' competence to issue EAWs is not affected by the CJEU's judgments.	n/a

[6] Projet de loi n° 7323 du 22 juin 2018 portant organisation du Conseil suprême de la justice.

			his/her activities from any influence of other public and administrative institutions or officials and shall comply only with law. 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.		
MT	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, commital 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, trial before a Judge without a jury) once the compilation of evidence (committal proceedings) is concluded. 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. 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 issue the relative certificates), but it is the Court of Magistrates (therefore, a judicial authority) which is competent to issue EAWs. Therefore, the concise and to-the-point reply to the question is: NO.				
NL	Yes the Dutch prosecutors do have that power.	The prosecutor.	No, no absolute guarantee of independance, as the Minister of Justice may direct the prosecutor in a specific case (never done, but it is possible).	New legislation is being prepared in a special fast legislative procedure, probably by involving a judge who has to permit the prosecutor to issue the EAW.	n/a
PL	Only court is allowed to issue EAW in Poland.	In Poland EAW is only issued by competent Regional Court at the pre trial phase of criminal procedure on the	This situation does not apply to PL due to the regulation that the body issuing the EAW is a court	JCEU judgement did not affect PL regulation on EAW	n/a

		motion of the prosecutor, at the trial phase of the criminal procedure EAW is issued by the court from the office. at the execution phase also on the District Court motion.			
PT	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.	According to the Portuguese Constitution, Prosecution Office is autonomous (independent) from the executive power and is integrated into 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 Portuguese Public Prosecution Statute is established by a Parliamentary Law and the powers conferred to the MoJ don't include the	Bearing in mind the previous answers, the response to this question is impaired.	n/a

			possibility for issuing general or concrete instructions to the Prosecutors in criminal cases or anyway interfere in the criminal judiciary activity.		
RO	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 : According to our legislation (Article 88 (3) of Law no.302/2004) European Arrest Warrants shall be issued: 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;	A court. Please see above.	The prosecutors are independent.	It is not the case. Please see above.	n/a

	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; 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.				
SE	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	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.	n/a

			influence or determine how an authority shall decide an individual case, nor how a rule of law is to be applied. Thus, a prosecutor is completely independent and free to make his or her own decisions. 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. 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 investigations and the taking of judicial decisions. It is the	 Certificate SE.pdf	

			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. 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. Thus a Swedish Prosecutor is 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 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 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.	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): "(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.	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 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.	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 onus/burden regarding the validity of EAWs should not be pushed to executing authorities. 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

	(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.				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. They should do so without delay, in order to avoid any risks of ex-officio release of persons detained on basis of EAWs issued by non-competent issuing authorities.
SK	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.	The Slovak Republic is not affected by the CJEU´s judgement in question.	n/a
UK	In the UK, a judge issues	A court ultimately takes	The UK has three public	The UK is not affected as	n/a

	the EAW upon application from a prosecutor. Prosecutors cannot issue EAWs as we are not considered to be a judicial authority for EAWs	the decision to issue an EAW.	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 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	issuing authority as only a court can issue an EAW.	

			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.		