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NOTE

From: Presidency
To: Delegations

Subject: Judgments of the CJEU of 27 May 2019 in joined cases C-508/18 and C-82/19 PPU and in case C-509/18 - public prosecutors offices acting as judicial authorities
- Exchange of views on the follow-up
= Paper by the Presidency

Following the issuing of 9974/19, the General Secretariat received some other notes that were issued by Member States further to the judgments of the CJEU of 27 May 2019. These notes are set out in the Annex.

Further, the document also contains a message from the NO Ministry of Justice (at the end).

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Notes / messages distributed by Member States and Norway

(appearance in the order in which the notes were received by the General Secretariat)

1. Bulgaria
2. Denmark
3. Croatia
4. Spain
5. Germany
6. Norway

BULGARIA



REPUBLIC OF BULGARIA MINISTRY OF JUSTICE

Reference: The independence of the Bulgarian prosecutors as an “issuing judicial authority” in the context of the Court of Justice of the European Union judgments in joined cases C-508/2018 and C-82/2019, and in case C-509/2018

The Constitution of the Republic of Bulgaria proclaims that the prosecutors are part of the independent judiciary and when performing their functions the prosecutors (as well judges, jurors and investigative magistrates) are subservient only to the law (Constitution, Chapter Six “Judiciary”, Article 117, para.2).

The Prosecutors College of the Supreme Judicial Council has the power to appoint, promote, transfer and release from office the prosecutors, to carry out the appraisals of the prosecutors and to decide on the acquisition of tenure, as well as to decide on the disciplinary responsibility of the prosecutors. (Articles 129, para.1 and 130a, para. 5, Constitution and Articles 30, para. 5 and 160, Law on Judiciary). ~~The executive neither supervises nor participates in process of taking the decisions on prosecutors’ appointment, career, attestation and discipline.~~

The Bulgarian prosecutors are empowered to pursue criminal investigation in order to bring persons to court and to execute convictions envisaging the punishment of deprivation of liberty which have entered into force. In this sense, they are deemed to be authorities taking part in the administration of criminal justice. As an authority in charge of criminal proceedings, the Bulgarian prosecutors are bound by the main principles of the Criminal Procedure Code (CPC), namely: independence of the authorities of criminal proceedings (Article 10, CPC); obligation to disclose the objective truth, including through the obligation to gather and assess aggravating and mitigating evidence (Article 13, CPC); taking decisions as per one’s inner conviction (Article 14, CPC) and respect for the inviolability of the individual (Article 17, CPC). Again, the executive does not have any means to supervise, instruct or control the actions of the prosecutors, including on a specific criminal case. The decision on how a criminal case should be proceeded is a sole responsibility of the prosecutor in charge in accordance with the law and his or her inner conviction.

Under the Law on the Extradition and European Arrest Warrant the prosecutor is designated as an “issuing judicial authority” of an EAW in two cases – on the pre-trial stage of the criminal proceedings, for an accused person, or for a sentenced person. At the pre-trial stage the prosecutor takes a decision for issuing an EAW based on a warrant issued by him/her with a guarantee that after surrendering of the requested person he/she will be brought to the court for confirmation or substitution of the restrain measure. The EAW can also be issued by the prosecutor based on a decision of the court to impose a restrain measure to the accused

person. Where the EAW is issued for the purpose of enforcing a sentence, the prosecutor's decision is based on the enforceable sentence, pronounced by a court.

The Constitutional guarantees for the prosecutors' independence, reinforced by the provisions of the Law on Judiciary and the Criminal Procedure Code ensures the complete independence of the Bulgarian prosecutors from the executive when performing their duties, including when exercising their powers as "issuing judicial authorities" under the Law on the Extradition and the European Arrest Warrant and the Framework Decision 2002/584/JHA. Therefore, the Bulgarian prosecutors meet the requirements of objectivity laid down in § 73 of the judgment in joined cases C-508/2018 and C-82/2019 and in § 51 of the judgment in case C-509/2018.

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DENMARK

To whom it may concern



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INITIALS: LWF

Certification that the Danish Director of Public Prosecutions is a judicial authority in accordance with article 6.1 of the Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States

According to the European Court of Justice's judgement of 27 May 2019 in the joined cases C-508/18 and C-82/19 PPU, the concept of an issuing judicial authority, within the meaning of article 6(1) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as not including public prosecutors' office of a Member State that are exposed to the risk of being subject, directly or indirectly, to directions or instructions in a specific case from the executive, such as the Ministry of Justice, in connection with the adoption of a decision to issue a European Arrest Warrant.

The judgement has prompted the Director of Public Prosecutions to assess whether or not our current procedure for issuing European arrest warrants is in accordance with the Framework Decision Article 6 (1) as read in conjunction with the abovementioned judgement.

In accordance with Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the Surrender Procedures between Member States (2002/584/JHA) article 6.3 the Danish Ministry of Justice has appointed the Director of Public Prosecutions as issuing and executing judicial authority. As part of the appointment, it is explicitly stated that decision made by the Director of Public Prosecutions cannot be appealed to the Minister of Justice.

According to the Danish Administration of Justice Act the Minister of Justice can issue instructions to the public prosecutors under certain conditions.

However, in light of the EU judgement of 27 May 2019, the Danish authorities inter alia the Danish Director of Public Prosecutions are obliged to interpret the Danish legislation in such a way that the powers of instruction does not apply to the issuance of European Arrest Warrants.

Against this background, it is hereby certified that the Danish Director of Public Prosecutions is a judicial authority in accordance with Article 6.1 of the framework decision on the European Arrest Warrant, and that the Danish Prosecution service is not at risk of direct or indirect instructions in rendering a decision to issue a European Arrest Warrant

Moreover, the decision by the Director of Public Prosecutions to issue a European Arrest Warrant is subject to court proceedings, which meet in full the requirements inherent in effective judicial protection.

Furthermore, the Public Prosecutors' capability and responsibility of exercising their duties objectively is ensured by the Administration of Justice Act (Section 96 para. 2,), and the Public Prosecutors are obliged to take into account all incriminatory and exculpatory evidence.

A European Arrest Warrant issued by the Director of Public Prosecutions is always based on a court decision; either as a national arrest warrant or an enforceable judgement. When issuing a European Arrest Warrant the Public Prosecutor is obliged to apply the principle of proportionality and continuously assess whether the requirements for issuing the European Arrest Warrant are still met.

Yours faithfully,



Jan Reckendorff

Director of Public Prosecutions

CROATIA



REPUBLIC OF CROATIA
STATE ATTORNEY'S OFFICE OF
THE REPUBLIC OF CROATIA

Num: A-362/2019
Zagreb, June 7, 2019.
SLJ

Reference: Court of Justice Judgments in Joined Cases C-508/18 and C-82/19

OFFICIAL NOTE

-in the Republic of Croatia state attorney is a judicial authority in accordance with Article 6.1 of the Framework Decision on the EAW

On 27 May 2019, the Court of Justice of the European Union (CJEU) interpreted in Joined Cases *OG* (C-508/18) and *PI* (C-82/19 PPU) and Case *PF* (C-509/18) 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 State attorney in the Republic of Croatia is an "issuing judicial authority", within the meaning of Article 6(1) EAW FD, as interpreted in the CJEU judgments in Joined Cases *OG* (C-508/18) and *PI* (C-82/19 PPU) and Case *PF* (C-509/18).

Namely, the State Attorney in the Republic of Croatia is an "issuing judicial authority" due to the following reasons:

1) Pursuant to the Article 125 (1) of the Constitution of the Republic of Croatia the state attorney is an independent and autonomous judicial authority.

In the Republic of Croatia the state attorney is an independent and autonomous judicial authority authorized and obliged to act against the perpetrators of crimes and other punishable offences, to take legal action to protect the property of the Republic of Croatia and to submit legal remedies for the protection of the Constitution and the law (Article 125(1) of the Constitution of the Republic of Croatia).

2) The State Attorney issues EAW during investigation/pretrial criminal proceedings, on the basis of the court's ruling on investigative detention. This ruling court renders when all the conditions proscribed by the Criminal Procedure Act are fulfilled (there is a reasonable ground for suspicion that the suspected person committed the crime and that he/she fled).

Therefore, in the Republic of Croatia due to the autonomous and independent status of the state attorney's office, in a specific case of the issuance of the EAW, he/she cannot be directed or instructed, directly or indirectly, by the executive.

Thus, the European Court of Justice's judgments of 27 May 2019 in the cases C-508/18, 82/19 does not affect the Croatia state attorney's competence to issue European Arrest Warrant.

DEPUTY ATTORNEY GENERAL OF THE
REPUBLIC OF CROATIA

Sani Ljubičić



SPAIN

THE INDEPENDENCE OF THE SPANISH PROSECUTION OFFICE AND ITS LACK OF COMPETENCE AS ISSUING AUTHORITY FOR EUROPEAN ARREST WARRANTS

The Spanish Prosecution Office is a constitutional body regulated in Article 124 of the Constitution, pursuant to which

“1. The Office of the Public Prosecutor, without prejudice to the functions entrusted to other bodies, has as its mission that of promoting the operation of justice in the defence of the rule of law, of citizens' rights and of the public interest as safeguarded by the law, whether ex officio or at the request of interested parties, as well as that of protecting the independence of the Courts and securing through them the satisfaction of social interest.

2. The Office of Public Prosecutor exercises its duties through its own bodies in accordance with the principles of unity of action and hierarchical dependency, subject in all cases to the principles of the rule of law and of impartiality.

3. The organic statute of the Office of the Public Prosecutor shall be regulated by law.

4. The State Public Prosecutor shall be appointed by the King on being nominated by the Government, after consultation with the General Council of the Judiciary.”

The Prosecution Service is a fully independent and autonomous body, fully detached from the public Administration with respect to its constitutional mandate, functions and tasks. According to Article 1 of the Law 50/81 on the organic statute of the Prosecution Service “the mission of the Prosecution Service is to further justice in the defense of law and order, citizens’ rights and the public interest protected under law, ex officio or at the request of the parties concerned, and safeguard the independence of the courts while securing the social interest through their intervention” and Article 2 states that it is “a body of constitutional significance with legal personality, integrated in the Judiciary but operating independently thereof. It pursues its mission with its own resources in keeping with the principles of uniformity in service provision and hierarchical accountability and subject at all times to those of legality and impartiality”.

Neither the Government, nor other public administrative authorities can address any orders or instructions to the Prosecution Service, it can only request the Prosecutor General to take action in defence of the public interest, if such circumstance occurs, the

Prosecutor General will consult with the Board of High Prosecutors and will decide on the request (Article 8 of the Law 50/81 on the organic statute of the Prosecution Service).

Having said so, in Spain the prosecutor has no competence to issue or execute a European arrest warrant. According to Article 34 of the Law 23/2014 on mutual recognition of judicial decisions within the European Union, which compiles in one single piece of legislation all mutual recognition instruments, the court which is in charge of the investigation (investigative judge), the trial phase (sentencing court) or the execution phase (enforcement court) is the only competent authority to issue the European investigation order.

Despite the fact that the competent authority is the judge or court in charge of the case, the prosecutor will participate at an earlier stage; as a way to grant the principle of proportionality in the European arrest warrant, it can only be issued upon request of the prosecutor in charge of the case or the private accusation (Article 39 (3)).

GERMANY

Message from the DE Ministry of Justice

Since ECJ rendered its judgement on May 27, 2019, German state prosecutors no longer issue EAWs. Since then issuing authorities are only local, regional or higher regional courts or the Federal Court of Justice. German law already provides for a legal basis for courts to make such decisions.

Germany is going to change the notification relating to Article 6 paragraph 3 of the FD 2002/584/JI accordingly.

The judgement of the ECJ has an effect on existing EAWs which have been issued by German public prosecutors. All EAWs will be replaced by new EAWs issued by a court. As this concerns more than 5.300 existing EAWs the replacement may take some weeks. As a priority German prosecutors and courts will work on cases in which a person had been arrested or found in another member state. Second priority are cases of most serious crimes, third priority all other cases.

The ECJ did not rule explicitly on the question whether the EAWs issued by a prosecutor are automatically void or invalid. In Germany's view they are (only) deficient and have to be replaced by new EAWs issued by a German court. However a deficient EAW may form a legal basis for an arrest. Germany could be informed on the arrest and asked to send a new EAW within a short time frame. Germany is aware that the arrest could be possible according to the law of some but not of all member states. There already have been some cases in which searched persons have not been arrested or have been released from prison.

In case of an arrest or positive result of a search Germany asks to inform the competent prosecutor who is in charge of the investigations and not the issuing court. The prosecutor is competent to execute the court's decision. He will have hold of the file. Only the prosecutor could assist at a short notice. Germany has asked the prosecutors to include their data at the end of field (i) in the form of the EAW.

In urgent cases in which the prosecutor cannot be reached in time the Handbook on the EAW proposes in 4.4.2 to either contact the EJN, Eurojust or SIRENE Germany. Those contact points will inform a prosecutor on duty.

NORWAY

Message from the NO Ministry of Justice

Norway is aware of the recent judgments from the Court of Justice of the European Union regarding the interpretation of the concept of an “issuing judicial authority”. With reference to Norway’s notifications to the 2006 EU-IS-NO Surrender Agreement, our current assessment is that they do not need to be revised but that some internal legislative amendments need to be made. We intend to propose these to Parliament at the end of September and they will hopefully be adopted later this autumn.

We would appreciate if the EU MS which will have to modify their notifications regarding issuing judicial authority with regards to the EAW, at the same time provide updated notifications to the Surrender Agreement.

From the Norwegian point of view, we look forward to the entry into force of the Surrender Agreement, hopefully late autumn 2019.