

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

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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 EJM 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.