

## Executive Summary: Poland

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### Executive Summary

#### Issuing Procedures

- **Questions related the lack of independence of the issuing judicial authority in Poland.** Within the meaning of the provisions of the Polish Code of Criminal Procedure (Article 607a of the CCP), the EAW is issued by the competent regional court. Considering that it is regional court that is competent to issue a decision on the EAW, it is important to emphasize the current problems related to the execution of EAWs issued by Polish courts due to the so-called reforms in the judiciary carried out in the years 2015-2019 in Poland (this is particularly evident in cooperation with the Netherlands where the District Court of Amsterdam raised doubts about the legitimacy of executing Polish EAWs) which undermined judicial independence by increasing political influence on judges, especially in the procedure of their appointments and promotions.
- **The principle of proportionality at the issuing stage.** It is worth noting that the Polish Code of Criminal Procedure provides for a proportionality clause (art. 607b of the CCP), which makes it necessary to assess the admissibility of issuing the EAW through the prism of proportionality.

#### Executing Procedures

- **Qualifications of authorities issuing an EAW.** It was emphasized in the jurisprudence of the Supreme Court of Poland that every court responsible for executing EAW is obliged to examine whether an EAW originates from an authority designated as authorized by the individual issuing state. Anyway the executing Member State may verify whether the authority which has issued the EAW designated by the Member State actually meets the conditions for being recognized as a competent authority only in very exceptional situations, i.e. when in the course of proceedings it is claimed that issuing authority is not independent.

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- **The use of pre-trial detention in connection with the execution of the EAW.** In the Article 607k § 3 of the CCP is foreseen a self-sufficient ground for pre-trial arrest in the context of the EAW, i.e. the existence, in another Member State of the EU, of a final and legally binding judgment of conviction or any other decision constituting the basis for the deprivation of liberty of the person prosecuted. According to the decision of 26 June 2014 the Supreme Court, the Polish executing authority does not have to examine the evidentiary basis of the warrant. In this situation it is possible to reject the execution of the EAW based on considerations related to human and citizen freedoms and rights (Article 607p § 1(5) of the CCP).
- **Protecting fundamental rights at the executing stage.** In the Article 607p § 1(5) of the CCP has been included a “fundamental rights” clause as a mandatory ground for refusal. In this context it should be emphasized that a claim that the execution of the EAW would violate human rights must be supported by specific facts and circumstances. It cannot be the result of abstract considerations, and should take into account the specific procedural situation.

### Key interpretation and implementation challenges

- **Changes made in Polish law in the area of justice and related steps taken towards Poland at the EU level in relations to concerns about the rule of law, in particular as regards the independence and impartiality of the Polish judiciary, had and impact of cross-broader judicial cooperation under the EAW Framework Decision, in cases where Poland acted as issuing state.** Judicial authorities in several EU Member States are increasingly doubting whether the Polish EAWs should be executed. In some EU countries, concerns that general deficiencies in the judiciary in Poland can undermine the right to have a case heard by the independent court, and hence to the fair trial, led to a systemic refusal to execute Polish EAWs (e.g. the decision of the District Court in Amsterdam of 10 February 2021 highlights a general lack of confidence in the independence of the judiciary in Poland and reflects rising concerns about risks the fundamental rights of a person to be surrender under the Polish EAW in a specific will be infringed).
- From the Polish perspective, **the position of CJEU is of key importance** because **the CJEU developed a line of jurisprudence imposing judicial authorities in the executing state to perform a verification of the EAW and its assessment in relation to the state issuing the EAW**, not only *in abstracto*, but also *in concreto*. In this case, **it is necessary to carry out a two-steps test**, in which it must be first determined that there are systematic and generalized deficiencies in the state of the issuing authority as regards the independence of the judicature, and then that there are substantial grounds for believing that, on account of those deficiencies, the person will run a real risk of breach of his or her right to a fair trial once he or she is surrender to those authorities.
- In analysed matter, **the main problem is the functioning of the National Council of the Judiciary in its current normative form.** Until this issue is resolved, it seems that there are no grounds to stabilize the situation in terms of the existing general doubts regarding the independence of judiciary and impartiality of judges in Poland, which will often be a problem in the cooperation regarding the execution of Polish EAWs.
- Analysis of the case law regarding the issuance of EAW shows that the **Polish courts quite often refer to the principle of proportionality by refusing to issue EAW.** However, it should be noted that **there is a lack of statutory requirement in Polish law to assess proportionality at the executing stage.**
- **In relation to the execution of EAWs issue by other Member States, jurisprudential practices in Poland show a high degree of compliance with the principle of mutual recognition of judgments.**

At the same time, it should be noted that **automatism in the execution of EAWs is combined with the verification of existence of grounds for refusal or surrender** based on the EAW.

- While adjudicating on the execution of the EAW in view of the allegations raised by the defence **in the context of assessing the infringement of human and citizen freedoms and rights, Polish courts have considered issues relating to concerns about guaranteeing the right to a fair trial**. The analysis on Polish jurisprudence on the execution of EAWs shows that **there are a few cases on refusal based on fundamental rights grounds**.
- **In no situations Polish courts refused to surrender a prosecuted person because of deficiencies in the independence of issuing Member States' judicial authorities**. Polish courts have not questioned the independence and have not referred to the problem of possible subordination of the courts of other EU Member States. Doubts have been raised with respect to the possibility to qualify as judicial authority the prosecuting bodies notified by some countries as competent to issue the EAW. However, such doubts have not led to refusals of surrender.