

CJEU: EAWs Issued from Austrian Public Prosecutor's Office Valid



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News

After the CJEU decided on 27 May 2019 that the German public prosecution offices lack independence to issue European Arrest Warrants (see joined cases C-508/18 (O.G.) & C-82/19 PPU (P.I.), [euclid 1/2019](#), pp. 31-33), the CJEU came to a different result as regards the Austrian public prosecutor's offices in a judgment of 9 October 2019. In the case at issue ([case C-489/19 PPU](#)), the *Kammergericht Berlin* had doubts whether – following the judgment of May – it could accept EAWs from Austria, because Austrian public prosecutors are subject to discretion or instruction from the executive, i.e. the Austrian Federal Minister of Justice.

The CJEU sees one main difference to the German situation. Under Austrian law, the public prosecutor's decision to issue a national arrest warrant and to issue an EAW must be endorsed by a court before their transmission. In the absence of endorsement, the arrest warrants do not produce legal effects and cannot be transmitted. If the following additional conditions are met, the concept of "issuing judicial authority" in Art. 6(1) of the EAW Framework Decision can be affirmed:

- The court's review of the public prosecutor's decision is *ex officio*, independent, and objective;
- The court has access to the entire criminal file to which any specific directions or instructions from the executive are added;
- The court is able to review the conditions of issue and the proportionality of the arrest warrants, thus adopting an autonomous decision which gives them their final form.

According to the CJEU, the Austrian law and procedure fulfil all these criteria. Nonetheless, the decision on the German public prosecution offices triggered several uncertainties. Additional references for preliminary rulings on the independence of other EU Member State's public prosecution offices in the EAW context are pending (see also [euclid 2/2019](#), p. 110).

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