

# Follow-up to the CJEU's Judgments on the Concept of "Issuing Judicial Authority"



## News

Thomas Wahl

On 27 May 2019, the CJEU delivered its landmark judgments in the case C-509/18 (PF) and Joined Cases C-508/18 (O.G.) & C-82/19 PPU (P.I.), clarifying the criteria as to when public prosecution offices can be regarded as judicial authority within the meaning of Art. 6(1) FD EAW, meaning that they are entitled to issue EAWs (see [eucrim 1/2019](#), pp. 31-34). In the Joined Cases C-508/18 & C-82/19 PPU, the CJEU denied the necessary independence of German public prosecution offices and cancelled their judicial authority status in the sense of the FD. As for the "Lithuanian case" (C-508/18), the CJEU left the final assessment to the referring Irish court.

Following the judgments, Austria, Denmark, Italy, and Sweden issued notes clarifying the status of their public prosecution offices, which are to be regarded as judicial authorities in the opinion of these Member States. The notes are [available on the EJN website](#).

Germany, which is directly and most greatly affected by the judgments, also issued a note *inter alia*, states: "[...] Germany will adjust the proceedings to issue a European Arrest Warrant. From now on, European Arrest Warrants will only be issued by the courts. This can be achieved without changing the existing laws. We have already informed the courts and public prosecutors about the ECJ judgement." Germany will also review its notification on Art. 6(1) FD EAW.

Nonetheless, practice in Germany remains confused at the moment. Some local and regional courts have rejected public prosecutors' applications to issue EAWs for lack of a legal basis. Other courts broadly interpret the provisions on arrest notices in the German Code of Criminal Procedure and affirm the court's competence to issue EAWs.

For the possible impact of the CJEU's judgments on the hotly debated e-evidence proposals, see the CCBE statement of 29 May 2019 under "Law Enforcement Cooperation".

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