



KOPEĆ & ZABOROWSKI

LAW FIRM

# Guideline

# EUROPEAN ARREST WARRANT

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## WHAT IS A EUROPEAN ARREST WARRANT?

A European Arrest Warrant (“ EAW ”) is a request issued by a judicial authority of one Member State of the European Union (“ EU ”) for the arrest and surrender by another EU Member State of a person identified in the EAW. It is prepared with the suspicion that a given person has committed a crime or in connection with the need to execute a penalty or a protective measure against such person. What is important here, based on this request, in principle, the authorities of the country to which it was sent become obliged to arrest the person covered by the EAW and surrender him or her to the country that has submitted that request.

At the European level, the EAW procedure is regulated by the provisions of Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, which entered into force on 1 January 2004.

In turn, in Poland, the procedure regarding the EAW is reflected in chapters 65a and 65b of the Act of 6 June 1997 – Code of Criminal Procedure. The first of these chapters covers a request submitted by a Polish judicial authority to an EU Member State to surrender a prosecuted person (**issuance of an EAW**). The second of these chapters refers to the procedure applied if other EU Member States ask Poland for the surrender of a prosecuted person (**execution of an EAW**).

## ISSUANCE OF AN EAW

### WHEN CAN A POLISH JUDICIAL AUTHORITY ISSUE AN EAW?

In Poland, the judicial authority competent to issue an EAW is the regional court having territorial jurisdiction. However, in order for this court to issue an EAW, the following conditions must be met:

- (1) there must be a suspicion that the person sought for an offense subject to the jurisdiction of Polish courts is staying in the territory of another EU Member State,
- (2) the interest of justice must justify the issuance of an EAW.



Moreover, **if an EAW is to concern a person sought in connection with pending criminal proceedings**, the offense concerned must be punishable with at least one year in prison, and in addition, in this case, the regional court issues an EAW at the request of the prosecutor.

However, **if the EAW is to concern a person sought to execute a custodial sentence or another detention order**, such penalty or measure must be not shorter than 4 months.

Taking into account the above-mentioned circumstances and when deciding on whether to issue or refuse to issue an EAW, the court schedules a session in this respect, and it is not obliged to notify the parties about that session (the absence of the person against whom an EAW is to be issued does not prevent its issuance). Nevertheless, the parties and their lawyers may participate in the session if they receive information about its date. **The result of this session is a decision to issue or refuse to issue the EAW, and this decision is not subject to any appeal.**

## WHAT'S NEXT AFTER THE EAW IS ISSUED?

After making a decision on the issuance of an EAW, in a situation where in judicial or enforcement proceedings the court and, in preparatory proceedings, the prosecutor **do not know the whereabouts of the person sought**, they send a copy of the EAW to the central unit of the Police cooperating with Interpol along with a request to initiate an international search.

However, suppose **the whereabouts of the person sought are known or have been established as a result of the above-mentioned international search**, the prosecutor, and in judicial or enforcement proceedings. In that case, the court that issued the EAW, forwards the EAW directly to the judicial authority of the country executing the EAW, where the person sought is most likely hiding, and forwards a copy of the EAW to the Minister of Justice.

After receiving the EAW, as indicated at the beginning, the authorities of the country to which it was sent become obliged to detain the person covered by the EAW and extradite him or her to the country that submitted such a request. In this case, however, it is recommended to use the assistance of a professional attorney, both Polish and from the country executing the EAW, because it is this country that will decide, in the form of a decision, on the surrender of the person sought to Poland, and thus examine if the EAW is justified. However, since this will be assessed based not only on the EU regulations, but also those in force in this country, the assistance of a foreign lawyer may prove indispensable.

## HOW CAN I DETERMINE WHETHER AN EAW HAS BEEN ISSUED AGAINST ME?

There is no central database where, after entering your data, you can determine whether you are sought under an EAW. However, this status can be determined and there are two solutions that can be used, depending on whether we have knowledge of the ongoing proceedings in connection with which we may be sought or not.

In the first case, if we have information about these proceedings, i.e. we know the case reference number, the prosecutor's office, or the before which the proceedings in connection with which we may be sought are or were pending, the best option will be to order a photocopy of the case files in the court in question, or the prosecutor's office (it is best to ask a professional representative, i.e. an attorney or a legal advisor, to make such a photocopy). Based on the photocopy obtained in this way, it will be possible to determine whether an EAW has been issued against us or not.



In the second case, if we do not have any specific information about these proceedings, the best solution will be to ask a professional attorney to submit an application to the National Criminal Register (“**KRK**”) on our behalf. The information obtained from the National Criminal Register will tell us whether we are sought under an arrest warrant, which precedes the search on the basis of the EAW. In addition, from the National Criminal Register we will also obtain detailed information about the proceedings in connection with which this arrest warrant was issued, which will enable us to order the files to be read by a professional attorney and obtain specific information about the issuance of an EAW against us.

## CAN AN EAW BE WITHDRAWN?

An EAW is withdrawn when the person sought is surrendered by the state executing the EAW to the Polish justice system or when any of the above mentioned conditions constituting the basis for its issuance ceases to exist.

## EXECUTION OF AN EAW

### HOW DOES POLAND EXECUTE AN EAW?

In practice, situations often arise in which Poland, as an EU Member State, becomes the recipient of an EAW sent by another EU Member State for execution. **However, the surrender of the person indicated in an EAW from Poland to another EU Member State may only take place for the purpose of conducting criminal proceedings against that person in the territory of the requesting state or for executing a custodial sentence or other detention orders imposed on that person.**

If an EAW is received, the prosecutor must first interrogate the requested person and then refer the case to the competent regional court. At the request of the prosecutor, the court may also subject such a person to a preventive measure in the form of provisional arrest for a total period of up to 100 days. It should be noted that the sole basis for applying provisional arrest is the existence of a final conviction or another decision constituting the basis for detaining the person sought issued in another EU Member State. Therefore, the basis for applying this measure may not be limited to the fact that criminal proceedings are pending against this person in another EU Member State. Both the defense counsel and the prosecutor may participate in the session regarding the application of this measure.

The court decides on the surrender itself in a session which may also be participated by the defense counsel and the prosecutor. In general, the court is obliged to issue this decision within 30 days from the date of arrest of the person sought, and physical surrender should usually take place within 10 days from the date this decision became final. A key factor is that the decision to surrender is subject to an appeal, and the deadline for such an appeal is 3 days from the date of announcement of the decision, and if the person sought has been detained and was not brought to the court session, the deadline is 3 days from the date of delivery of the decision. Also in this situation, it is recommended to use the assistance of professional attorneys from both Poland and the country that is the issuer of the EAW.

## CAN POLAND REFUSE TO EXECUTE AN EAW?

Even though Poland has received an EAW for execution, i.e. the extradition of the person sought under this EAW, it may happen that such person will not be surrendered. Polish regulations indicate situations where there is an absolute prohibition on surrendering such a person and situations where such a decision is at the court's absolute discretion.



**The first category includes situations in which:**

(1) **the crime** covered by the EAW, in the case of jurisdiction of Polish criminal courts, is subject to remission under amnesty,

(2) **a final judgment** has been issued in relation to the person sought in another country regarding the same acts, and in the event of conviction for the same acts, the person sought is serving or has served the sentence, or the sentence cannot be enforced according to the law of the country in which the conviction took place,

(3) **a final decision** to surrender the person sought to another EU Member State has been issued,

(4) under Polish law, the **requested person** covered by the EAW is not, due to age, criminally liable for the acts for which the EAW was issued,

(5) surrender would violate **the freedoms and rights** of a human and citizen,

(6) **the EAW was issued** in connection with a non-violent crime committed for political reasons;



The second category includes situations in which:

(1) the offense covered by the EAW is not a crime under Polish law, unless it is an act punishable in the country issuing the EAW with at least 3 years of imprisonment or an act being a crime for which another detention measure may be imposed for at least the same time, such as participation in an organized group or association aimed at committing crimes, crimes of a terrorist nature, human trafficking, crimes against sexual freedom or decency to the detriment of a minor, illegal production, processing or smuggling of narcotics, precursors, substitutes or psychotropic substances or trade in them, illegal trade in weapons, ammunition, explosives or radioactive materials, bribery and paid protection, fraud, introduction of property obtained from illegal or undisclosed sources into financial transactions, counterfeiting and trading in counterfeit money or other means of payment, crimes against security of data collected, stored, processed or transmitted via an IT system, crimes against the natural environment, including illegal trade in endangered species of animals and plants, providing assistance in illegal border crossing or stay, murder, causing serious damage to health, illegal trade in human organs and tissues, unlawful deprivation of liberty of a person, kidnapping a person for ransom, taking or keeping a hostage, crimes committed for reasons of nationality, ethnicity, race, religion or lack of religious denomination, robbery with the use of a firearm or threats of its use, extortion of a robbery with a firearm or threats of its use, illegal trade in cultural goods, misappropriation of other people's property, counterfeiting and trading in counterfeit products, forgery and trade in forged documents, illegal trade in hormones or similar substances, trade in stolen motor vehicles, rape, arson, crimes within the jurisdiction of the International Criminal Court, hijacking ships or aircraft, sabotage or an act that is not a crime due to the lack of or different regulations in Polish law related to appropriate fees, taxes, customs duties or foreign exchange rules - in such a case this condition does not apply,



(2) criminal proceedings are pending in Poland against the person sought under the EAW for an offense that is the basis of the EAW,

(3) a final ruling was issued to refuse to initiate proceedings or to discontinue the proceedings, or another ruling ending the proceedings in the case was issued, for the person sought in connection with the offense being basis for the EAW,

(4) under Polish law, the statute of limitations expired for prosecution or execution of a penalty, and the crimes concerned were subject to the jurisdiction of Polish courts;

(5) the EAW concerns crimes that, according to Polish law, were committed in whole or in part in the territory of Poland or on a Polish ship or aircraft;

(6) for the prohibited act covered by the EAW, a prison sentence may be imposed in the country issuing the EAW without the possibility of applying for its reduction.

What is important here, is if the EAW was issued **against a person sought who is a Polish citizen**, the execution of the EAW may take place provided that the act covered by the EAW was not committed in the territory of Poland or on a Polish ship or aircraft and was a crime under Polish law or would constitute a crime under Polish law if committed in the territory of Poland, both at the time it was committed and at the time the EAW was received.

The EAW will also not be executed if it was issued for the purpose of executing a penalty of deprivation of liberty or a measure involving deprivation of liberty **against a person sought who is a Polish citizen or enjoys the right of asylum in the Republic of Poland**, unless he or she consents to the surrender. However, in such a situation, the court decides on the execution of the penalty or measure imposed by the judicial authority of the country that issued the EAW.



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