

## EAW Procedure Poland – bullet points

### Code of Criminal Procedure of Poland (CCP)

**Poland as an issuing state**, chapter 65a of the Code of Criminal Procedure of Poland (“CCP”), articles 607a – 607j

- art. 607a CCP: Relevant (territorially appropriate) regional court may issue an EAW
  - Pre-trial - at the request of the prosecutor;
  - Trial and enforcement - *proprio motu* or at the request of the territorially appropriate district court;
- art. 607b(1) CPC: EAW is not possible if it is not in the interest of justice – as amended in July 2015
  - Moreover, as in art. 2 FD, EAW cannot be issued: (1) in connection with criminal proceedings conducted against the requested person for an offence carrying a penalty of imprisonment of up to a year or (2) for the purpose of executing a penalty of imprisonment of up to four months or any other measure involving deprivation of liberty not exceeding four months;
- EAW content are detailed in art. 607c CCP (which reflects the text of art. 8 FD);
- Transmission of the EAW
  - Location of the person unknown – prosecutor/court via central unit of the Police to Interpol (art. 607d§1 CCP);
  - Location established – prosecutor/court to the judicial authority of the executing state; copy of the EAW goes to the Minister of Justice (MoJ)(art. 607d§2 CCP);
- Specialty rule (art. 607e CCP/art. 27 FD): a surrendered person cannot be prosecuted for offences other than those which formed basis for surrender, nor can the punishment of imprisonment imposed on this person or other custodial measure be executed;
- art. 607e § 3 CCP – sets out exceptions from the Specialty rule;
- art. 607f CCP The time spent in pre-trial detention time in the executing state in relation to the EAW – can be deducted from the sentence;
- art. 607g CCP - final judgement, notification of the sentence served – sent by the relevant court to the judicial authority of the executing state;
- art. 607h CCP, determines the framework for handing over of property;
- art. 607i CCP concerning subsequent surrenders is a faithful implementation of European provisions (art. 28 FD);
- art. 607j concerns conditional surrenders. In the case of a conditional surrender whereby the executing state reserves execution of the penalty for itself, the executive proceedings are not initiated in Poland;

**Poland as an executing state**, chapter 65b of CCP, art. 607k – 607zc CCP

- art. 607k:
  - EAW received (SIS/INTERPOL) - Prosecutor interviews the person sought by an EAW
  - Prosecutor submits a request to relevant regional court
  - Regional Court, at the request of the Prosecutor may impose on the person pre-trial detention (max 100 days), unless in a different MS an arrest warrant or a prison sentence was issued against that person (independent grounds for pre-trial detention)
  - Prior to receiving an EAW the court may impose pre-trial detention for up to 7 days, if a relevant authority has requested this (SIS/Interpol)

- If the issuing state requested the person sought by EAW to be interrogated, the interrogation takes place prior to consideration of the EAW (interrogation takes place in the presence of a person indicated in the EAW)
- art. 607l CCP (adjudication – mainly written, limited evidence proceedings)
  - Admissibility of the EAW – considered by the regional court during a hearing (person sought and defence counsel may be present)
  - EAW delivered to the person sought together with a notification on the hearing (summons to appear)
  - Court puts in the record of the case whether the person agrees to the transfer; gives or not his/her permission to be potentially prosecuted for other criminal acts than those covered by the EAW following his/her transfer
  - 40 days to decide on the transfer of the person (as of arrest)
  - Appeal within 3 days
- art. 607m CCP: timeframe to decide on the EAW (40 days counted from the date of the arrest of the person; or 3 days counted from the date of a statement of the person); final decision should be taken within 60 days counted from the date of the arrest or 10 days counted from the date of a statement of the person; in special situations, the proceedings may be extended for 30 more days. Delays need to be notified to the issuing authority;
- art. 607n CCP: timeframe to transfer the person: 10 days (as a general rule);
- art. 607o CCP: Postponement of surrender ;
- art. 607p CCP: Obligatory reasons for denial of execution of the warrant;
- art. 607r CCP: Facultative reasons for denial of execution of the warrant;
- art. 607s CCP: European warrant issued for the purpose of executing a penalty of imprisonment or other measure involving deprivation of liberty against a requested person who is either a Polish citizen or was granted the right of asylum in the Republic of Poland, shall not be executed, unless the requested person consents to the surrender;
- art. 607t CCP: Conditional surrender of a Polish national/asylum holder;
- art. 607w CCP: Lack of legal qualification in Poland;
- art. 607wa CCP: Seizure and surrender of evidence;
- art. 607x CCP: Joint examination of warrants:
 

If another EAW concerning the same person issued by another Member State, is filed before the decision of the first instance on surrender is issued, the court examines both EAW jointly. (§1). If another EAW concerning the same person is filed after the decision of the first instance with respect to the previous EAW, examination of the subsequent EAW is postponed until the decision with regard to the first EAW becomes final and binding (§ 2). If the appellate court reverses the decision mentioned in § 2 and refers EAW to the first instance for re-examination, the provisions of § 1 apply accordingly (§ 3);
- art. 607y CCP: Circumstances of suspension and discontinuation:
 

EAW and extradition request from a third State – the court, after having examined EAW, decides on the admissibility of its execution, suspends the proceedings and notifies the Minister of Justice of the decision. If the Minister of Justice decides that a person against whom a European warrant was issued should be extradited to a third State, the proceedings concerning the European warrant is discontinued. If the extradition is refused, the court resumes the suspended proceedings and issue a decision on surrender;
- art. 607z CCP: Request for supplementary information (within a specified time limit, if not observed, the EAW is examined on the basis of the initially received information).

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24 September 2018