The European Arrest Warrant (EAW) and its Implementation in the Member States of the European Union

International Research Questionnaire

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1. Constitutional issues

a. Please specify views of doctrine and judicature in your country concerning the legal character of the third pillar framework decisions (FD) issued on the basis of art. 34.2 TUE

It can be stated in brief, that the legal character of the framework decision is perceived in Polish jurisprudence in two ways: as one of the instruments of international law, a kind of a simplified international agreement, or as a sui generis instrument of Community law. However, there is no consensus among the doctrine experts, whereas perceiving the framework decision as an instrument of international law has been decided by the judgment of the Constitutional Court. On the other hand, the case law of the European Court of Justice (although not binding upon the Polish courts, regarding the Pupino case) seems to increasingly enhance the Community nature of this legal instrument.

b. Please indicate the position of the doctrine and courts in your country concerning the relation between the domestic norms being a result of implementation of framework decisions – and conventions on European cooperation in criminal matters, accepted within the EU/Council of Europe?

At present, it is difficult to judge unambiguously what kind of position will be elaborated on this subject by judicature. In Polish law, there is certain problem results from the fact that pursuant to art. 615 § 2 of the Code of Criminal Procedure (hereinafter: CCP), the provisions of the Code are applied only if the international agreements to which Poland is a party do not provide otherwise. This rule – *lege non distingente* – formally covers these provisions of the CCP, which result from the implementation of the UE Council framework decisions. Since both the implementation of the framework decision concerning the EAW and of other framework decisions in the area of criminal matters is pursued through adding new chapters to the CCP, the provisions of international treaties binding Poland should formally “precede” the provisions resulting from the implementation of framework decisions. Thence, e.g. the conventions of the Council of Europe and of the European Union concerning extradition or other forms of international cooperation, have the formal precedence before the special cooperation instruments created under the third pillar. In practice, however, without giving much thoughts to look for more profound justification, in mutual relations with EU Member States, the provisions of the CCP are being applied (particularly these concerning the EAW and joint investigation teams). In the case of the EAW, however, the notification presented to the Council of Europe by the Council of the European Union, to the effect that the conventions of the Council of Europe are not applicable in legal transactions with Member States. Thus the problem is of more theoretical nature.
c. Is the doctrine and judicature in your country opting for “pro-european” (“European – friendly”), interpretation of domestic law, including constitutional law? Is it also applied as regards third pillar instruments?

In the doctrine, there is an increasing body of opinion based on assumption that the pro-European interpretation should also be applied to the third pillar instruments, and that the provisions implementing framework decisions are of special character. This position emerges largely in opposition to the stated position of the Constitutional Court which opted for an absolute primacy of the Constitution of the Republic of Poland over the statutes implementing framework decisions.

d. What is the influence of ECJ judicial decisions on the implementation of domestic law (e.g. Pupino case)?

As regards the implementation of European law into Polish domestic law, the practice of totally consistent implementation (in line with the language and content of the framework decision). Moreover, the most recent amendment to the Constitution seems to indicate an opposite trend. In the jurisprudence of the Polish Supreme Court, the need to take a pro-Community interpretation of the provision implementing the framework decisions of the EU Council seems to solidify, as pronounced in one of the very recent decisions of this court concerning the enforcement of EAW originating in Belgium.

e. Is interpretation of domestic law implementing framework decisions in your country possible solely by referring to the wording or *inhalt* of the framework decisions? Is it possible also when a framework decision is not yet implemented into the domestic legal order?

To date, we have not dealt in Poland with a situation where courts would have been forced to refer directly to framework decisions not yet implemented because Poland had not been behind implementation deadline. However, there is no obstacle to courts referring to the content of framework decisions when interpreting domestic provisions. In practice, this is quite a frequent occurrence.

f. To what scope, if at all, is it possible to ask EJC preliminary questions as refers to the interpretation of framework decisions (art. 35 TUE). Can such question be asked by constitutional court (or equivalent)?

Poland has not submitted yet the declaration referred to in Article 35 TUE. The Polish Constitutional Court has no powers whatsoever do provide interpretation of laws, including the framework decisions. This does not affect the fact that it takes into account the framework decisions when ruling on the consistency of legislation with the Constitution when the legal acts under scrutiny result from the implementations of these framework decisions (which was the case when the court ruled on the EAW). The interpretation of framework decisions may, however, be provided by the Supreme Court under the institution of legal questions submitted thereto. The Supreme Court provides resolutions containing the interpretation of law (it is accepted in practice that it concerns not only the Polish statutes but also, to the extent necessary, the provisions of treaties and framework decisions), if the decision in a specific case depends upon such considerations. The interpretation so provided by the Supreme Court is not, however, binding *erga omnes.*
g. What is the technical form of implementation of the framework decision on EAW in your country (e.g. separate law, a part of the CCP, separate from extradition provisions, other ways)? When exactly did the law implementing the framework decision enter into force?

The implementation of the framework decision on the EAW has been done, as for any previous framework decisions in the area of international cooperation in criminal matters, through adding new provisions to the Code of Criminal Procedure now in force. Specifically, it was done through the Act of 4 March 2004 which went into effect on 1 May 2004 published in the Dziennik Ustaw (Journal of Laws) of 2004, No. 69 item 626, i.e. with the date of the accession of Poland to the European Union. By this act, two new chapters were added to the CCP, numbered as 65a and 65b, concerned with issuing the EAW, and executing the EAW, respectively.

h. Was the law implementation the framework decision and the framework decision itself subject of proceedings of the constitutional court in your country?

Yes, nevertheless the matter examined by the Constitutional Court, was limited to the issue of the consistency of the CCP provisions with the Polish Constitution in the context of Article 55 of the latter, which prohibited extradition of Polish citizens. The Court resolved that the handing over a person requested under the EAW is a type of extradition hence is paramount to extraditing its own citizens. The result of the Constitutional Court’s resolution was not, however, to amend the provisions of the CCP (because after such amendment, these provisions could not be made consistent with the content of the framework decisions), but to achieve it an amendment to Article 55 of the Constitution. This article so amended allows surrendering over Polish citizens under the EAW, although makes it subject to some further conditions which – as it seems – are not in compliance with the requirements stemming from the framework decision on the EAW.

i. Is the surrender procedure according to the EAW understood as a form of extradition or is it treated as a separate legal instrument?

See above under „h”. Yet the position of the Constitutional Court has not been universally accepted. There is also an opinion among some legal experts that the EAW is an instrument qualitatively different than extradition.

2. The implementation of the FD on the EAW in the domestic legal order

a. Are there differences between the way of implementation of the EAW in your country and the “pattern” provided by the framework decision? If so, do the differences concern:

- the negative premises (compulsory and optional) of surrender?

The negative mandatory premises for executing the EAW in Poland are governed by the provisions of Article 607 p CCP. The Polish Code treats this issue in a broader manner than the framework decision concerned, introducing an additional obligation to refuse the execution in the case when a valid decision had been issued with respect to this person on surrender to another EU Member State. Moreover, another negative mandatory premise is set out as any valid decision in another country, not necessarily in another EU Member State. When treated literally, this provision means that we would not be able to execute ANA when
the person concerned was validly sentenced in a foreign state (not necessarily a EU Member State).

Moreover even though the Code does not enumerate Polish citizenship among the mandatory obstacles to surrendering a person, the existence of such prohibition was derived by the Constitutional Court in its decision of 27 April 2005 (P1/05). It is thus tantamount to a broader catalogue of negative mandatory premises both with respect to the catalogue in the framework decision but also with the provision of Article 607 p CCP. However, the decision of the Constitutional Court precipitated the amendment to Article 55 of the Constitution (implemented by the statutes approved by the Sejm on 8 September 2006, and by the Senate on 14 September 2006) which although opening the possibility to surrender a Polish citizen under EAW, but introduced in this case such additional negative premises of EAW’s execution which cannot be reconciled fully with the content of the framework decision. These premises are: committing the act outside the national territory of the Republic of Poland, the absence of so-called double criminality of the act concerned as well as conviction that the surrender of a Polish citizen would prejudice his/her fundamental rights and freedoms.

The optional premises of the EAW execution were included in Article 607 r CCP. The full reception of the FD’s contents was granted only to the premises of Article 4 para 1 FD (the act being the grounds for the EAW does not constitute an offence under Polish law (nevertheless, see the preceding comments on surrendering a Polish citizen), Article 4 para 2 (the person involved in the EAW proceedings is also subject to criminal proceedings in Poland for the same offence as the one underlying the EAW), Article 4 para 3 (there was a valid judgment against the person subject to the EAW in connection with the act underlying the EAW: refusal to institute, discontinuation or other judgment concluding the proceedings in the case), and Article 4 para 7 a) (the EAW concerns the offences which were committed fully or partly within the national territory of Poland or on board of a Polish vessel or aircraft – but again see the comments above about surrendering a Polish citizen). The Polish legislator has adopted also, as optional grounds for non-execution of the EAW, the circumstance covered in Article 4 para 4 FD (prosecution or penalising the the person concerned by the EAW is prohibited by law, and the acts providing grounds for the EAW are also subject to the jurisdiction of the country of execution). The CCP has nevertheless restricted the circumstances under which the prosecution or penalising is prohibited to the sole condition of time limit for prosecution. On the other hand, the Polish Code did not include at all such grounds for the non-execution of the EAW as: The fact of issuing a valid judgment in a third country against the person concerned for the same offence (Article 4 para 5 FD); the European Arrest Warrant was issued in order to execute a custodial sentence or a precautionary measure, and the person concerned by a request is a citizen of the country of execution or resides there permanently, and this country takes upon itself the obligation to execute the penalty of deprivation of liberty or the preventive measure (Article 5 para 6 FD); acts concerned in the EAW were committed outside the territory of the country of execution and the law of this country prohibits their prosecution under the circumstances (Article 5 para 7 b FD). Finally the Polish CCP envisages one optional premise for non-execution of the EAW, not present in the framework decision. This is the case when, in the country of EAW’s issuance the offence is subject to the penalty of life imprisonment or other penal measure resulting in the deprivation of liberty without the possibility to apply for its curtailment (Article 607 r para 6 CCP).

b. the catalogue of “crimes” listed in art. 2.2. FD. Are all those “crimes” criminalized in your country. Please specify which are not criminalized?
In principle, this catalogue has been fully adopted by the Polish code in Article 607 CCP. All the acts described in the catalogue are also criminalised in Poland. Nevertheless some problems may arise because of the descriptive approach adopted in Article 2.2 FD, and also in Article 607 of the Polish CCP which follows it closely. For example, the Polish code adopted an equivalent of “grevious bodily injury” referred to in the framework directive under so-called “serious impairment to health i.e. an offence typified in w Article 156 of Polish Penal Code, which involves deprivation of a human being of sight, hearing, speech or the ability to procreate, or inflicting a serious crippling injury, an incurable or prolonged illness, an illness actually dangerous to life, a permanent mental illness, a permanent total or substantial incapacity to work in an occupation, or a permanent serious bodily disfigurement or deformation. It seems at least doubtful that the framework decision wording has narrowed the scope of the “grevious bodily injury” only to the results listed in the Polish Penal Code.

- the period of time for execution of the EAW?

Both the FD on EAW and the Polish CCP provide two basic time limits for the execution of the EAW. It is either 10 or 60 days, depending whether the person concerned by the requests consents to the surrender or not. Even though the time limits there seem quite matching, there is an essential difference between the regulation in the FD and the CCP. The framework decision sets the time limits for the final decision on the execution of EAW while the Polish CCP uses these time limits (Article 607 m) as concerning the first, i.e. yet not finally valid ruling on surrendering. In practice this may result in some differences between the time required in the framework decision and the time required under Polish law.

- other issues. Please specify.

The Polish Criminal Procedure Code permits the issuance of the EAW only for an offence committed within the territory of the Republic of Poland, a restriction not envisaged under the relevant framework decision. The lack of implementation concerning the SIS (the Schengen Information System results from inability on the part of Poland to enforce such regulations. Other differences in the Polish implementation can be inferred from the answers to further questions of this questionnaire. These are principally associated with the issuance of the EAW based on a sole request from a prosecutor (rather than from a court acting ex officio).

c. Can lack of dual criminality in cases other than mentioned in art. 2.2. FD constitute optional reason to refuse the execution of the EAW (to surrender)?

Yes, pursuant to Article 607 r § 1.1 CCP, and of Article 4.1 of the FD. After the Constitution has been amended by the Acts of Sejm (lower chamber of the Polish Parliament) of 9 September 2006 and of the Senate, the lack of the dual criminality has become the obligatory grounds for refusal of executing the EAW (surrendering a person) when involving a Polish citizen. This issue has not been addressed yet (as of 20 September 2006) in a relevant provision in the CCP.

d. Did your country make a proper notification to the Secretary of the CUE, concerning the waiver of the specialty rule (according to the art. 27.1 FD)?

No.
e. Did your country appoint a central authority (art. 7 FD). If so, which one? What is the scope and tasks it is supposed to perform and its practical meaning?

According to the notification submitted pursuant to Article 7 FD, the central authority which may act as an intermediary link in the passing to the competent prosecutors in Poland of the EAWs issued by the authorities in other Member States, as well as any other official correspondence associated with theme, the Minister of Justice – Prosecutor General.

3. The principle *ne bis in idem* and EAW

a. What is the meaning of the identity of an act in the context of the art. 3 FD (ground for refusal of the execution of EAW) – is it its description or legal qualification as made by the domestic court?

The regulation in Article 3 (2) of the framework decision was implemented through Article 607 p paragraph 2 CCP. It is based on the assumption that the legal qualification of the act is identified by its description (*idem factum*), rather than the legal qualification. Under the Polish legal doctrine of criminal law, the predominating opinion is that the concept of an act should be understood as a certain human activity undertaken towards the surrounding reality. Such activity, be, on the one hand characterised by the presence of certain features (i.e. actions) whereas on the other hand, by the absence of other features (nonfeasance). Each time the set of actions demonstrated is established against the uniformity of time and place of action; the identity of the legal interest (possibly of the person injured) and the uniformity of the perpetrator’s intent (goal). This opinion has prevailed also in the jurisprudence of the Supreme Court which stated on many occasions that the identity of an act is determined by factual frames of an event rather than by its description and legal grounds included in the indictment.

b. Is the valid judgement/conviction/discontinuance of the procedure in your country a mandatory ground for non – execution of the EAW?

Article 607 p paragraph 2 CCP includes a mandatory (negative) premise for executing the EAW vis-à-vis the *ne bis in idem* principle. Firstly, the refusal to execute the EAW occurs always when the “a valid judgment was issued in other country” against the requested person concerning the same acts. Secondly, the refusal will happen also in the case when the requested person having been validly sentenced for the same acts, either serves or has served the sentence, or the sentence could not be carried out according to laws in the country where the “convicting judgment” was issued)

The concept of “valid judgment” shall be construed as:

- a) the judgment of acquittal,
- b) the convicting judgment, and
- c) a ruling on substance, deciding the issue of responsibility for the act committed, issued by either a prosecuting authority or a court

In Article 607 p para 2, the legislator used the term „other country” without specifying it any further, i.e. without indicating whether it concerned a EU Member State or a country from outside the EU. Considering the provision of Article 3(2) of the framework decision it should be inferred that the concept of “other state” in Article 607 p para 2 includes also the EAW
executing Member State (e.g. if Poland is the state, a potential acquittal, convicting judgment or other decision on merit, deciding the issue of responsibility, issued in Poland – and concerning the same act – enables the execution of the EAW).

Apart from the above mandatory premise of refusal to execute the EAW, Polish law knows also an optional premise placed in Article 607 r § 1 para 3 CCP (which is an implementing provision of Article 4(3) FD, which provides that the refusal to execute the EAW is possible when the person requested for an act on which the EAW is based, a valid judgment was issued:

   a) refusing to institute of the proceedings,
   b) discontinuing the proceedings, or
   c) or other judgment concluding the proceedings.

The regulation included in Article 607 r § 1 para 3 CCP regards the situation when in an EU Member State (other than the issuing Member State) a judgment is pronounced without deciding the substantive responsibility for the act imputed to the person requested. The grounds for such decision could only be a formal issue, except for limitation statute which in the Polish CCP is provided as a separate reason for refusal to execute EAW (Article 607 r § 1 para 6 CCP).

c. Is the valid judgement/conviction/discontinuance of the procedure in other UE Member State the same ground for refusal as in “b”?

The discussion of the ne bis in idem principle and the concept of a ”valid judgment” issued by a judicial authority (broadly defined) of another EU Member State follows the same lines as in the case of a „valid judgment” issued by a Polish court or prosecutor. See above: Part 3, point. “b”.

d. What is the meaning and/or interpretation of “final disposal of the trial” in art. 54 SDU in your country?
   - Is such a disposal the valid decision on discontinuance of the criminal process because its legal inadmissibility?

In Poland there is no uniform interpretation of the phrase „the final disposal of the trial”. As deemed by some of the experts in legal doctrine, this term should be construed as including, apart from a sentencing or acquitting judgment, also other substantive decisions which determine the issues of responsibility for the acts committed (i.e. determining the issue of guilt of the perpetrator) e.g. decision on discontinuation of proceedings. On the one hand, the followers of this interpretation assume that the recognition of the decisions made by a judicial authority of one EU Member State by a judicial authority of another Member State may not be made conditional upon the fact that these judgments are made in some countries during the investigative phase of the proceedings (carried out by prosecutors) whereas in other countries – during the court stage. Given the diversity of legal systems among the EU Member States, these authors indicate, referring also to the case law of the ECJ: the judgment in joined cases Hüseyin Gözütok (C-187/01) and Klaus Brügge (C-385/01) of 11 February 2003 and the judgment in Filomena Mario Miraglii (C– 469/03) case of 10 March 2005) – that linking the ne bis in idem principle with the subject of the case and the person of the perpetrator can allow effective implementation of the principle. On the other hand, other authors emphasize that Article 54 of the SDU Convention implementing the Schengen Agreement of 14 June 1985 refers only to sentencing judgments (they refer also to the ECJ’s case law comments on
discontinuation of probationary nature”) to the exclusion of acquittals, refusals to institute proceedings of conditional discontinuances.

- Is such a disposal the valid decision on discontinuance of the criminal process because lack of advisability of prosecution?

Pursuant to the Polish Criminal Procedure Code, the state prosecutor has powers to issue an order on the refusal to institute or discontinue the preliminary proceedings (investigation or inquiry). In the event that such a decision is issued by the Police, its approval/ratification by a prosecutor is necessary (Article 305 § 3 CCP; Article 325e §§ 1 and 2 CCP).

e. Was the problem of the European application of the principle ne bis in idem a subject of judicial interpretation in your country (e.g. by the Supreme Court, Constitutional Court)?

Until now (i.e. 21 September 2006), there has been no request (legal question) submitted to either the Supreme Court or the Constitutional Court to interpret or elucidate the ne bis in idem as viewed from the European perspective. It does not mean, however, that the issue of the European is ne bis in idem is somewhat passed over in legal writings or practice. Apart from comments in para d above, it should be noted that under the provisions of Article 114 § 1 of the Polish Penal Code, the judgement rendered abroad does not prevent instituting or carrying out the criminal proceedings before a Polish court. This principle is not, however, an absolute one because in § 3 of the same provision contains some exceptions. One of them is essential as it says that the principle may not be applied if an international agreement binding the Republic of Poland stipulates otherwise” (Article 114 § 3 para 3 of the Polish Penal Code). Using the term „court judgments” prevents the application of this provision to, for example, prosecutors’ decisions of probationary nature. Such problems have been indicated by judges and prosecutors.

4. The issuing of the EAW

a. Which judicial authority in your country decides on the issuing of the EAW?

Pursuant to Article 607 a CCP, the only authority which can issue the European arrest warrant, irrespective of the stage of proceedings at which this necessity occurs, is the court of territorial jurisdiction over the place of proceedings.

b. Is, according to the domestic law, the decision on issuing of the EAW made on a motion (on request) of a national organ or ex officio. If the former, on which organ’s motion/request?

The court may not act ex officio even when the necessity to issue the European arrest warrant occurs only after the indictment is served on the prosecuted person. In any case (which is criticised in the legal doctrine) it is necessary that a prosecutor submits such request.

c. If a court is entitled to issue the EAW – of what rank and panel?

In each case it is a district court (sąd okręgowy), irrespective of the court of jurisdiction (under the Polish legal system, in the first instance, a district court considers major cases, whereas a precinct court (sąd rejonowy) considers minor cases).
d. Do the parties or other participants to the process have the right or duty to take part in the session?

The issue of participation by the parties (or other participants in the proceedings) in the procedural action where a decision on an EAW is sued has not been regulated by any special provision. For this reason no rules are applied whatsoever as to the participation of the parties in the procedural action is concerned. Thus, pursuant to the Article 96 § 2 CCP, the parties (in this case it concerns the prosecutor and the requested person) may participate in the procedural action if they put on the appearance, which means that they are not notified of the date and place of the of the procedural action, but if they themselves appear, they create the right to participate in it (together with the right to present their opinions on all matters being decided) through the fact of the appearance. However if the issue of applying preliminary detention or its extension is considered (which is the basis for the EAW), the issue of the right to participate in the procedural action changes. The prosecutor and the defence counsel for the requested person (Article 249 § 5 CCP), who are then notified of the date of such session (Article 117 § 1 CCP) have the right to participate.

e. Is evidence procedure made in the proceedings on the issuing of the EAW?

Again there are no special legal regulations governing this issue. Under general principles the court may, however, undertake some verification measures aimed at elucidation of factual circumstances (Article 97 CCP). These do not concern, however, the circumstances underlying the decision to deprive a prosecuted person of his or her liberty, which provide grounds for the issue of EAW. These circumstances are examined during a hearing or court session when the decision is made and may not be later verified in connection with issuing an EAW. It does not preclude though issuing EAW in the same session where the decision is taken on preliminary detention. In such event there is full verification of the factual grounds for EAW takes during that session.

f. Who (party, other participant), if anyone, is entitled to appeal against the decision on the issuing (accordingly: rejecting issuing) of the EAW? Which judicial authority reviews these decisions?

Polish law does not provide for an appeal measure concerning the issuance of the EAW (this was confirmed by a Supreme Court resolution of 20 January 2005, I KZP 29/04). The challenges are however available against any procedural decisions which provide grounds for issuing the EAW, such as ruling on applying or extending the preliminary detention, or confining the person concerned in a psychiatric institution).

g. Can the EAW be issued retroactively? (as regards to crimes allegedly committed before the implementation of the EAW)?

There are no procedural impediments to issuing an EAW with respect to persons who committed an offence prior to 1 May 2004. According to Polish legal doctrine, the procedural law, in a contrast to substantive criminal law, captures matters „in passing”.

h. How many EAWs were issued in your country until the day mentioned above in point 1g of the questionnaire?
Until 30 June 2006 Poland have issued 2756 EAWs (2005 – 1448). Such a number is undesirable situation when the EAW in Poland mostly aims at searching the prosecuted person, which place of residence is unknown, and not serves as a measure sent directly to competent judicial authority of the executing Member State.

i. Which “crimes” mentioned in art. 2.2. of the FD on EAW were subject to issuing the EAW in your country? If possible, please specify exact numbers?

j. Were the EAW’s issued in your country subject to crimes other than “crimes” mentioned in art. 2.2. FD. If so, in how many cases?

k. How many such request were rejected by the deciding judicial authority? (applies only if EAW’s are issued on request)

l. Which information channels are used before/along with the issuing of the EAW in your country (SIS, EJN, Europol, other means)? Is EAW issued only if the exact place of residence of the requested person is known? If not, what is the procedure if the place of residence of the requested person is not known?

m. How many EAW’s issued by the judicial authority in your country were executed in other Member States? In how many cases was the requested person effectively surrendered?

Until 30 June 2006 the judicial authority in other Member States have executed 167 EAWs

n. In how many cases did the executing of the EAW issued by judicial authority in your country refuse? What were the grounds for refusal?

The Ministry of Justice responded that no such data has been collected centrally. Mainly the grounds for refusal were nationality of the requested person and lack of formal prerequisites.

5. Executing of the European Arrest Warrant

a. Which judicial authority in your country decides on executing of the EAW?

The decision is always taken by the court having territorial jurisdiction (Article 607 k § 2 CCP), irrespective of the judicial authority of another EU Member State which issued the EAW.
b. Is the decision on execution of the EAW performed ex officio or on request of other domestic judicial authority. If yes – what is that judicial authority?

The court issues the ruling always upon the motion from the prosecutor (Article 607 k § 2 CCP), also when the EAW delivered by the judicial authority of another Member State was addressed to the court.

c. Does your domestic law envisage a period in which the decision on the execution of the EAW should be made? If so, what is that period of time?

Yes, such a deadline is envisaged. The ruling on surrendering shall be issued within 60 days of the date of arresting the prosecuted person, and in the event that the person consents to surrender or to waving the restriction of not prosecuting him or her for offences other that those underlying the EAW – the time limit is 10 days. In justified cases, when meeting these deadlines is not possible the decision on surrender may be taken within 30 more days of the date of these deadlines passing. All the time limits concern, however, the rulings issued in the first instance. In practical terms this may mean that more time could pass before the decision on surrender becomes valid. Furthermore, when Polish law makes the prosecution of the person requested under the EAW conditional upon an approval of the competent authority, the time limits do not run for the time needed to obtain such approval (Article 607 m CCP).

d. Can the judicial authority deciding upon the execution of the EAW verify the information provided in the EAW? Can it perform evidence?

Polish law does not provide the direct option of verifying the information communicated in an EAW request by the adjudicating court. The court may, however, request supplements. Thus, in the event that information provided in the EAW is not sufficient for the decision on surrendering the requested person, the Polish court may request the court issuing the EAW to supplement it within a prescribed period. After that time lapses without effect, the EAW is subject to consideration based on the earlier information (Article 607 z CCP). In the resolution of 20 July 2006, I KZP 21/06, the Polish Supreme Court stated that before examining the premises of admissibility of the EAW execution and the circumstances under which the execution can be refused, specified in Articles 607 p, 607 r and 607 s, the court has to examine whether the judicial authority which issued the EAW fulfilled the premises specified in the law of the country of issue. As the Supreme Court underlined in the reasons for the resolution, the refusal to execute the EAW on the grounds of not meeting the prerequisites for issuing should be reserved to exceptional cases e.g. when the EAW has been issued by an unauthorized body, or when the EAW was issued for the purpose other that the criminal proceedings. It is not, however allowed to verify the grounds for prosecution of a person by means of EAW, e.g. by examining the evidentiary basis of the decision to take the person into custody, issued in the country of issue.

e. How, if at all, does your domestic law regulate the solution of the concurrent EAWs?

The issue of concurrent EAWs has been regulated by the provision of Article 607 x CCP. In the event that the orders are submitted before decision is made on any of them, the court shall examine both warrants jointly. When adjudicating on the surrendering the person requested to a certain country, the court should take into consideration the
circumstances of the underlying offences, the gravity and place where committed, the time sequence of the EAWs, as well as their purposes. When the next warrant comes after the decision has been made in the first instance on the earlier one, the court shall adjourn the examination of the second warrant till the first decision on EAW becomes valid. In the event that the appeal court quashes the decision and returns for re-examination in further proceedings both warrants shall be then examined together.

f. Does the domestic law in your country envisage the collision of an EAW and extradition procedure? If so, please clarify.

The Code resolves the issue in Article 607 y CCP. The court receiving the EAW and the request for extradition to a foreign country, after examining the warrant decides on the admissibility of its execution then stays the proceedings and notifies the Minister of Justice about the contents of its decision. Should the Minister of Justice decide about extraditing the person requested under the EAW was issued, the proceedings on the EAW execution shall be discontinued. In the event that extradition request in rejected, the court reopens the proceedings and gives the order concerning surrendering the person.

g. Is the EAW issued in other Member State of the EU a sole legal basis for the deprivation of liberty for the sake of procedure of execution of the EAW, or is a separate judicial authority decision on arrest (preliminary detention) required?

In Poland, the EAW issued in another country is not a legal basis for the deprivation of liberty of the prosecuted person. There is obviously an option of preliminary detention of such a person for the period of pending proceedings but this requires a relevant decision from a Polish court which adjudicates on the execution of the EAW (Article 607 l § 1 CCP). The Polish code does not envisage any special grounds for preliminary detention to be ordered. So the arrest will be possible only after the conditions normally required under Polish law are met. These are: 1/ securing the proper conduct of the proceedings (Article 249 § 1 CCP), 2/ existence of evidence indicating a high probability that the accused has committed the offence (Article 249 § 1 CCP); 3/ existence of other specific premises, such as justified fear that the accused will try to escape or go into hiding, or justified fears that the accused will try to influence others to give false testimonies or explanations, and finally the need to secure proper proceedings in view of severe penalty threatening the accused.

h. What is the maximum period for the arrest of the requested person before his or her effective surrender?

As the Code does not provide any specific provisions on the duration of preliminary detention during the proceedings concerning the execution of the EAW, similarly there are no provision for the maximum period for the application of this measure. It is obvious, however, that it would not be admissible to prolong extend the period of preliminary detention over the time required to complete the proceedings of the execution of the EAW, extended by the time for its effective performance in the event of positive decision on execution.

i. What rank – and panel – of the court decides on surrender (the execution of the EAW)?
j. Do parties or other participants of the proceedings have the right or duty to take part in the session?

In accordance with the provisions of Article 607 l CCP, the prosecutor and the defence counsel may participate in the session of the court considering the execution of the EAW. The Code does not, however, regulate the issue of the participation of the prosecuted person in such a session.

It is fairly often, that such a person is subject to compulsory appearance in the session. It would be so in the event that the prosecutor submits the request for the execution of the EAW together with the request for preliminary detention of the person covered by the EAW. According to the provision of Article 249 § 3 CCP, the prior hearing of the accused is a prerequisite for applying the preliminary detention.

k. Can the decision on surrender be complained. Who has the right to complaint? Which judicial authority reviews this decision?

Yes. The complaint against the decision on surrender may be brought by the prosecutor, the prosecuted person (or his/her defence counsel). The complaint shall be examined by the appellate court sitting in the panel of three career judges (Article 607 l § 3 CCP).

l. Does the person in question have the right to:

- the assistance by the defense lawyer?

Yes, according to the general rules. It means that the prosecuted person can retain the defence lawyer himself, may request the court to appoint a defence lawyer indicating that he/she is unable to pay the defence costs without prejudice to his and his family's necessary support and maintenance. The prosecuted person may also give up retaining any lawyer and take upon himself the duties of defence. However, if the person concerned is deaf, blind, mute, juvenile or if the court has the doubts as to his mental soundness – then, in absence of a retained lawyer, the court has to appoint a defence lawyer ex officio.

- the right to interpreter?

Yes, according to the general rules. The prosecuted person uses the services of an interpreter free of charge, if he/she does not have a sufficient command of the Polish language. The interpreter should be present at any action performed with the participation of the prosecuted person. Additionally, the prosecuted person should be given a translated version of the arrest warrant and the decision concluding the proceedings on the arrest warrant, as well as any other judgement issued in the course of such proceedings which is subject to review (Article 72 CCP).

m. Does the domestic law in your country envisage any barriers as refers to the surrender of own nationals?
The Code has not introduced any general prohibition of surrendering of its own citizens requested under the EAW. In Article 607 it envisaged only that the surrender of a Polish citizen might be combined with a requirement that after the valid conclusion of the case such a person should be sent back to the territory of the Republic of Poland. The prohibition to surrender Polish citizens under the EAW has been, however, derived by the Constitutional Court from the Article 55 of the Constitution which stipulates that “the extradition of a Polish citizen is prohibited”. For more on this issue, see para 2a of this questionnaire.

n. How many EAWs issued by other MS was executed by your country from the date mentioned in 1g of the questionnaire. In how many cases was the person effectively surrendered?

Until 30 June 2006 in Poland 159 EAWs (2005 – 80) have been executed. The Ministry of Justice does not have adequate statistics behind the first half 2006.

o. In how many cases did judicial authority in your country refuse to execute the EAW. What were the grounds for non-execution?

The Ministry of Justice does not have such statistics.

Poland courts have effectively refused the execution of EAW for the following reasons:

- *lis pendens*;
- *ne bis in idem* (the fact that an offence has been committed in whole or in part in the territory of Poland);
- the sentence is currently being served;
- the European arrest warrant has been issued for the purposes of execution of a custodial sentence where the requested person is a Polish national who did not consent to surrender

p. For what “crimes” listed in art. 2.2 of the FD were EAWs executed in your country. If possible, please specify by providing exact numbers.

Mainly the EAW applies to crimes live or health and against property (for example, fraud)

q. Was the EAW executed for crimes other than listed in the above mentioned art. 2.2. FD? If so, in how many cases?

We do not have such statistics.

r. Were there cases in your country, in which courts rejected the executing of the EAW because of possible violation of quarantines of the requested person in the country of issuing of the EAW (esp. human rights)?

We do not have such statistics.

s. How often does the requested person consent to the “fast track” surrender procedure?
We do not have such statistics. The “fast track” has often practical applications.

t. In how many cases was the decision on the execution of the EAW subject of the judicial control? What were the results of such control? In how many cases was the decision on the execution of the EAW revoked?

We do not have reliable statistics. In practice the decisions on the execution of the EAW were revoked and cases were sent to judicial review.

u. What is the average period of time between the execution of the EAW and the effective surrender of the requested person?

We do not have such statistics. In effect the period of time between the execution of the EAW and the effective surrender of the requested person is not invade.

6. Others

   a. Are there any special difficulties in putting the EAW into practice, resulting from particularities of legal system in your country (esp. common law countries)?

      None.