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Commission Notice – Handbook on how to issue and execute a European Arrest Warrant

(C/2023/1270)

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List of abbreviations

Charter	Charter of Fundamental Rights of the European Union
CISA	Convention Implementing the Schengen Agreement
CoE	Council of Europe
EAW	European Arrest Warrant
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EFTA	European Free Trade Association
EIO	European Investigation Order
EJN	European Judicial Network
ESO	European Supervision Order
FRA	European Union Agency for Fundamental Rights
Framework Decision on EAW	Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States
SIRENE	Supplementary Information Request at the National Entries
SIS	Schengen Information System
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

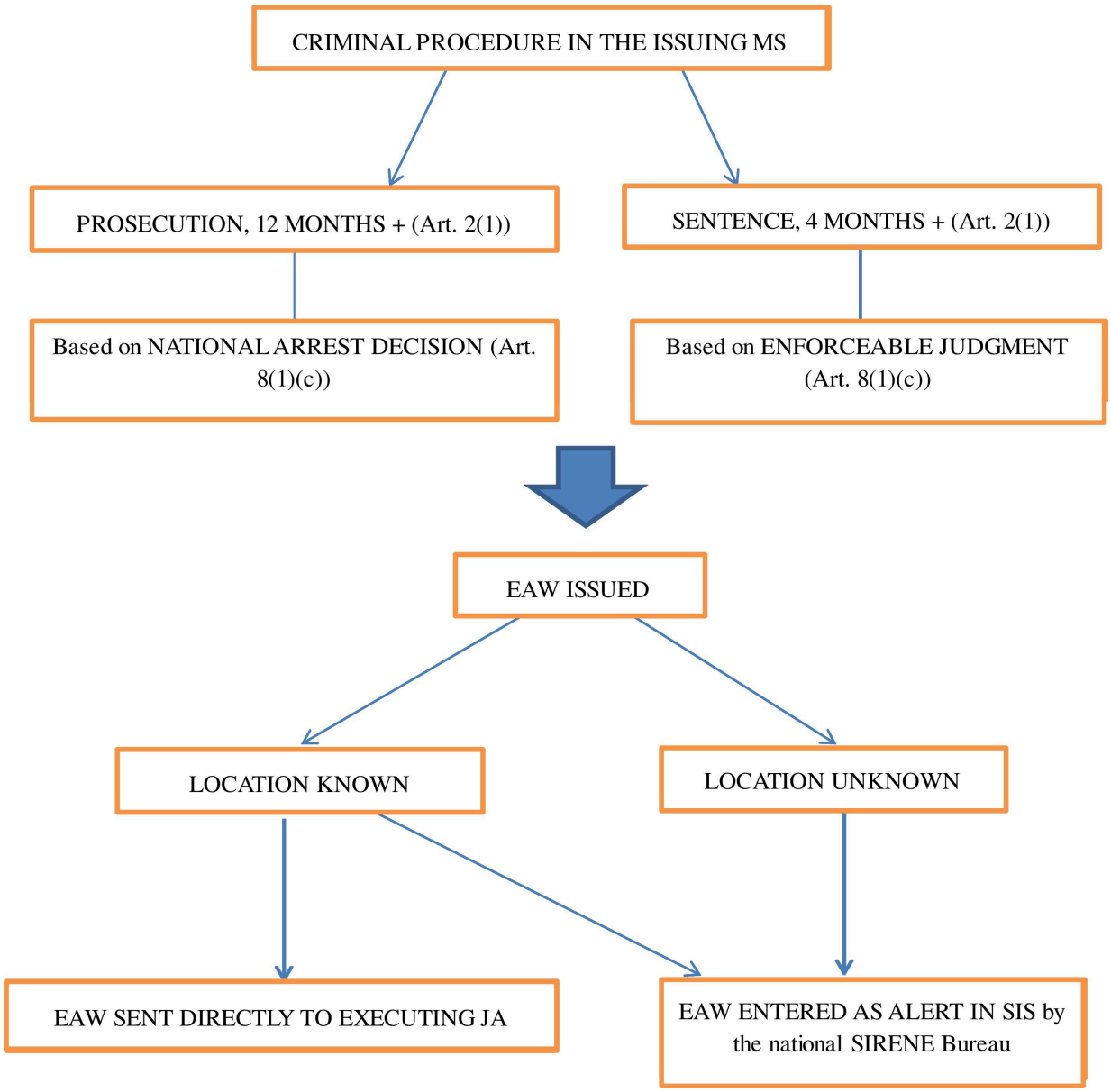
Disclaimer:

This handbook is neither legally binding nor exhaustive. It is without prejudice to existing Union law and its future development. It is also without prejudice to the authoritative interpretation of Union law which may be given by the Court of Justice of the European Union.

ISSUING A EUROPEAN ARREST WARRANT

Main steps

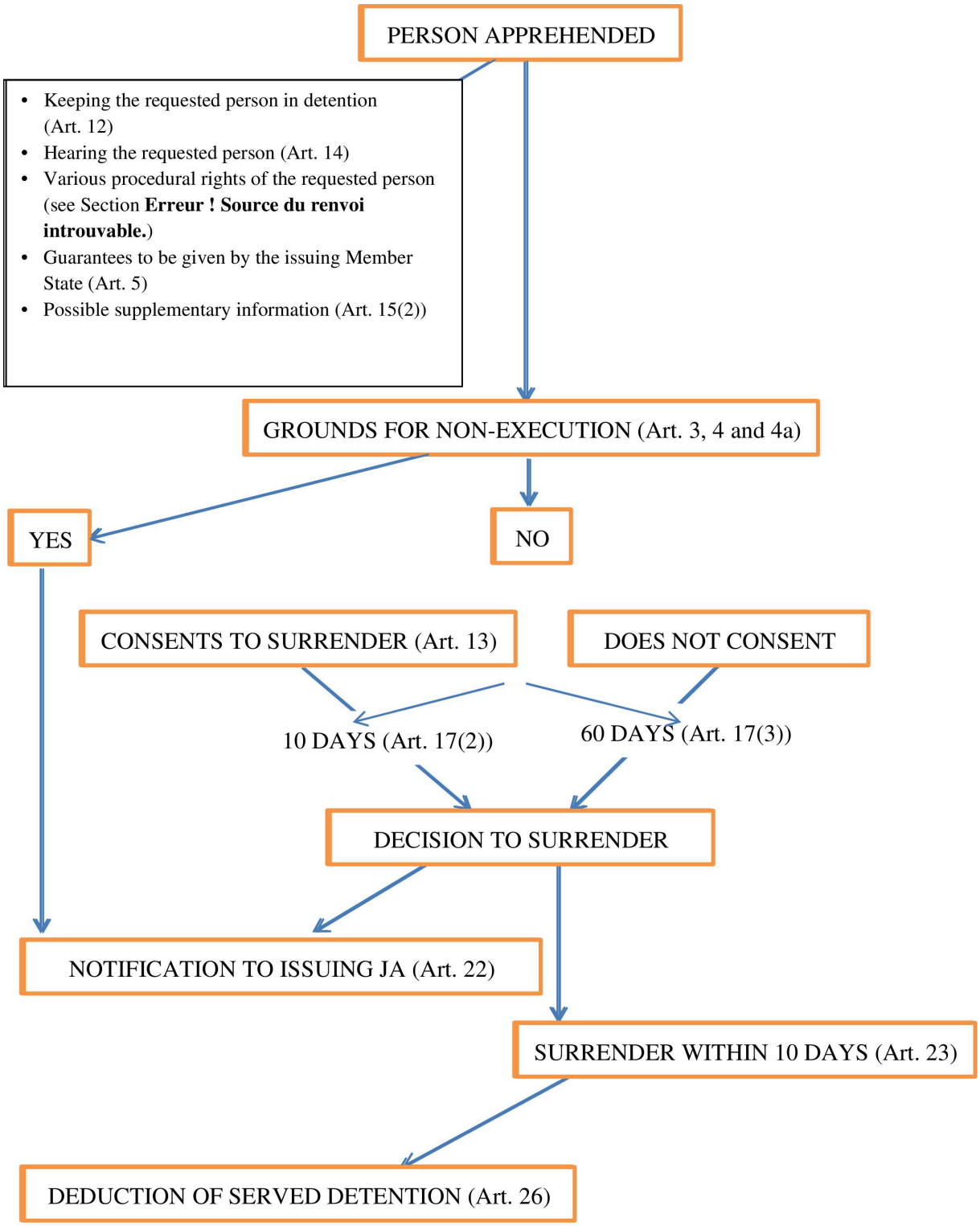
(JA = Judicial authority; MS = Member State)



EXECUTING A EUROPEAN ARREST WARRANT

Main steps

(JA = Judicial authority)



PREFACE

The European handbook on how to issue a European arrest warrant ('EAW') was first issued by the Council in 2008 ([1]) and revised in 2010 ([2]). Following the end of the 5-year transitional period under the Treaty of Lisbon concerning the so-called ex-third pillar legal instruments ([3]), including Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States ([4]) ('the Framework Decision on the EAW'), the Commission took over the task of updating and revising the handbook. This handbook is a revised version of the handbook issued by the Commission in 2017 ([5]).

This handbook takes into account the experience gained over the past 20 years in applying the EAW in the Union. Since the end of the transitional period of the Treaty of Lisbon, the number of EAW judgments by the Court of Justice has substantially increased. The purpose of this revision is to update the handbook by including new judgments issued until 31 July 2023 and addressing certain issues faced by practitioners such as detention conditions. To prepare this latest version of the handbook, the Commission consulted various stakeholders and experts, including Eurojust, the Secretariat of the European Judicial Network, and Member States' government experts and judicial authorities.

This revision has also taken into account the results of the ninth round of mutual evaluations and the recommendations made in the Council conclusions 'The European arrest warrant and extradition procedures - current challenges and the way forward' ([6]), the report of the European Parliamentary Research Service ([7]), the European Commission implementation report on the EAW ([8]) and the European Parliament resolution on the EAW and surrender procedures between Member States ([9]).

The handbook is available on the internet at: https://e-justice.europa.eu in all official languages of the Union.

([1]) Council document 8216/2/08 REV 2 COPEN 70 EJN 26 EUROJUST 31.
([2]) Council document 17195/1/10 REV 1 COPEN 275 EJN 72 EUROJUST 139.
([3]) Protocol (No 36) on transitional provisions.
([4]) OJ L 190, 18.7.2002, p. 1.
([5]) Commission Notice of 28 September 2017, Handbook on how to issue and execute a European Arrest Warrant, C(2017)6389 final, OJ C 335, 6.10.2017, p. 1.
([6]) https://data.consilium.europa.eu/doc/document/ST-13684-2020-INIT/en/pdf
([7]) https://www.europarl.europa.eu/RegData/etudes/STUD/2020/642839/EPRS_STU(2020)642839_EN.pdf
([8]) https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2020:270:FIN
([9]) European Parliament resolution of 20 January 2021 on the implementation of the European Arrest Warrant and the surrender procedures between Member States https://www.europarl.europa.eu/doceo/document/TA-9-2021-0006_EN.pdf.

INTRODUCTION

1. OVERVIEW OF THE EUROPEAN ARREST WARRANT (EAW)

1.1. Background of the EAW

The Framework Decision on EAW was adopted by the Council on 13 June 2002 and Member States were required to take the necessary measures to comply with it by 31 December 2003. From 1 January 2004, the new surrender regime has, with a few exceptions, replaced extradition arrangements. As far as surrender between Member States is concerned, the corresponding provisions of the following conventions have been replaced:

(a) the European Convention on Extradition of 13 December 1957 (ETS No 024), its Additional Protocol of 15 October 1975 (ETS No 086), its Second Additional Protocol of 17 March 1978 (ETS No 098) and the European Convention on the Suppression of Terrorism of 27 January 1977 (ETS No 090) as far as extradition is concerned;

(b) the Agreement between the 12 Member States of the European Communities on the simplification and modernisation of methods of transmitting extradition requests of 26 May 1989;

(c) the Convention of 10 March 1995 on simplified extradition procedure between the Member States of the European Union ([10]);

(d) the Convention of 27 September 1996 relating to extradition between the Member States of the European Union ([11]);

(e) Title III, Chapter 4 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders ([12]).

1.2. Definition and main features of the EAW

The EAW is a judicial decision enforceable in the Union that is issued by a Member State and executed in another Member State on the basis of the principle of mutual recognition.

The EAW replaced the traditional system of extradition with a simpler and quicker mechanism for the surrender of requested persons for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order. An EAW may be issued for the purposes of:

(a) a criminal prosecution in relation to acts punishable under domestic law by a custodial sentence or detention order for a maximum period of at least 12 months (during the investigation, examining and trial stages, until the conviction is final);

(b) the execution of a sentence or detention order of at least 4 months.

Points (a) and (b) are not cumulative.

To make requests simpler and easier to comply with, they are issued in a uniform way by filling in an EAW form. It is, however, always necessary that a national enforceable judgment or a national arrest warrant or similar judicial decision has been issued prior to and separately from the EAW (see Section 2.1.4).

Central authorities, which used to play a significant role in the extradition process, are excluded from the decision-making process in EAW procedures. They cannot substitute that central authority for the competent judicial authorities (see Section 2.1.2) in relation to the decision to issue the EAW ([13]). However, Article 7 of the Framework Decision on EAW provides that Member States may designate central authorities to assist and support the judicial authorities, especially for receiving and transmitting EAWs.

([10]) OJ C 78, 30.3.1995, p. 2.
([11]) OJ C 313, 23.10.1996, p. 12.
([12]) OJ L 239, 22.9.2000, p. 19.
([13]) Judgment of the Court of Justice of 10 November 2016 *Poltorak*, C-452/16 PPU, ECLI:EU:C:2016:858; Judgment of the Court of Justice of 10 November 2016 *Kovalkovas*, C-477/16 PPU, ECLI:EU:C:2016:861.

In the Member States where the Schengen Information System (SIS) is in operation (i.e. all Member States ([14])) the national SIRENE Bureaux play an important role in the EAW process when a corresponding alert has been created in the SIS. The rules and procedures for Member States' cooperation concerning alerts for arrest based on EAWs are set out in Articles 24 to 31 of Regulation (EU) 2018/1862 ([15]) (the 'SIS Police Regulation'), Chapters 6 and 7 of the Commission Implementing Decision laying down detailed rules for the tasks of the SIRENE Bureaux ([16]) (the 'SIRENE Manual – Police') and the Commission Implementing Decision on laying down the technical rules necessary for entering, updating, deleting and searching data in the SIS ('the Commission Implementing Decision on SIS data entry') ([17]). In addition, further explanations on SIS alert management can be found in the 'SIS Handbook' ([18]).

The Framework Decision on EAW reflects a philosophy of integration in a common judicial area. It is the first legal instrument involving cooperation between the Member States on criminal matters based on the principle of mutual recognition. The issuing Member State's decision must be recognised without further formalities and solely on the basis of judicial criteria.

The surrender of nationals is a principle and a general rule, with few exceptions. These exceptions concern the enforcement of custodial sentences in one's home country and apply equally to residents. In practice, about one fifth of all surrenders in the Union concern a country's own nationals.

The grounds for refusal of execution are, in principle, limited and listed in Articles 3, 4 and 4a of the Framework Decision on EAW. There is no verification of double criminality as a ground for non-execution and non-surrender with regard to 32 categories of offences listed in Article 2(2) of the Framework Decision on EAW, as defined by the issuing Member State, where those offences are punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 3 years.

If the offences in question are not regarded by the competent authority of the issuing Member State as offences falling within Article 2(2) of the Framework Decision on EAW, double criminality may still apply. It was held by the Court of Justice in its judgment in Case C-289/15 *Grundza* ([19]) that, when assessing double criminality, the competent authority of the executing Member State is required to verify whether the factual elements underlying the offence would also, per se, be subject to a criminal penalty in the executing Member State if they were present in that State. In its judgment in Case C-168/21 *Procureur général près la cour d'appel d'Angers* ([20]), the Court of Justice confirmed that the condition of double criminality under Articles 2(4) and 4(1) of the Framework Decision on EAW will be met where the EAW is issued for the purpose of enforcing a custodial sentence for acts which relate, in the issuing Member State, to an offence requiring that those acts impair a legal interest protected in that Member State, even when the impairment of a corresponding legal interest is not a constituent element of the criminal offence under the law of the executing Member State. (see Section 5.3).

([14]) The last Member State to be connected was Cyprus, which was connected in July 2023.

([15]) Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU OJ L 312, 7.12.2018, p. 56.

([16]) Commission Implementing Decision of 18 November 2021 laying down detailed rules for the tasks of the SIRENE Bureaux and the exchange of supplementary information regarding alerts in the Schengen Information System in the field of police cooperation and judicial cooperation in criminal matters ('SIRENE Manual – Police') (notified under document C(2021) 7901).

([17]) Commission Implementing Decision of 15 January 2021 laying down the technical rules necessary for entering, updating, deleting and searching data in the Schengen Information System (SIS) and other implementing measures in the field of police cooperation and judicial cooperation in criminal matters (notified under document C(2021) 92).

([18]) Commission Recommendation of 31 March 2023 establishing a Practical Handbook to be used by Member States' competent authorities and SIRENE Bureaux when carrying out tasks related to the Schengen Information System ('SIS Handbook') (C(2023) 2152).

([19]) Judgment of the Court of Justice of 11 January 2017, *Grundza*, C-289/15, ECLI:EU:C:2017:4, paragraph 38.

([20]) Judgment of the Court of Justice of 14 July 2022, *Procureur général près la cour d'appel d'Angers*, C-168/21, ECLI:EU:C:2022:558.

Since 28 March 2011, the Framework Decision on EAW has been amended by Council Framework Decision 2009/299/JHA ([21]), which deleted Article 5(1) and inserted a new Article 4a on decisions rendered in the absence of the person concerned at the trial (trial *in absentia*).

1.3. **The EAW form**

The EAW is a judicial decision issued in the form laid down in an annex to the Framework Decision on EAW. The form is available in all the official languages of the Union. **Only this form may be used** and it must not be altered. The intention of the Council was to create a working tool that can be easily filled in by the issuing judicial authorities and recognised by the executing judicial authorities.

Use of the form avoids lengthy and expensive translations and makes the information more accessible. Since the form in principle constitutes the sole basis for the arrest and subsequent surrender of the requested person, it should be filled in with particular care in order to avoid unnecessary requests for supplementary information.

The form can be filled in either directly online by using the European Judicial Network (EJN) Compendium e-tool available on the EJN website (https://www.ejn-crimjust.europa.eu/ejn/EJN_Compendium/EN/ff/EAW), or in a Word format which can be downloaded from the EAW section of the Judicial Library on the EJN website (https://www.ejn-crimjust.europa.eu; please visit Judicial Library □ Legal Framework □ EU Judicial Cooperation □ European arrest warrant □ EAW Forms). The forms are available in all EU languages.

Using the Compendium is as easy as filling in a Word form but has several modern, useful and user-friendly features, such as:

(a) the possibility of directly importing the competent executing judicial authority from the EJN Judicial Atlas tool;

(b) obtaining the form in the language(s) accepted by the executing Member State;

(c) saving and sending it by email.

PART I: ISSUING AN EAW

2. REQUIREMENTS FOR ISSUING AN EAW

2.1. **Scope of the EAW**

A judicial authority may issue an EAW for two purposes (Article 1(1) of the Framework Decision on EAW):

(a) criminal prosecution; or

(b) execution of a custodial sentence or detention order.

Point (a) concerns criminal procedures where the requested person can be prosecuted (see Section 2.1.1).

Point (b) concerns enforceable custodial sentences or detention orders for criminal offences issued by a court (see Section 2.1.3). Issuing an EAW is not possible for all crimes but is limited to those of sufficient severity, as explained in more detail below.

An EAW can only be issued by a judicial authority which satisfies the concept of judicial authority within the meaning of the Framework Decision (see Section 2.1.2) and only once an enforceable domestic judicial decision has been taken (see Section 2.1.4). Either this national decision or the decision to issue the EAW must meet the requirements of effective judicial protection prior to the surrender of the requested person by the executing Member State (see Section 2.1.5).Issuing judicial authorities must consider whether, in the particular case, issuing an EAW would be proportionate (see Section 2.4). Moreover, they are advised to consider whether any less coercive Union measure could be used to achieve an adequate result (see Section 2.5).

([21]) Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial (OJ L 81, 27.3.2009, p. 24).

2.1.1. *Criminal prosecution*

An EAW may be issued for the purposes of conducting a criminal prosecution in relation to acts punishable under domestic law by a custodial sentence or a detention order for a maximum period of **at least 12 months** (Article 2(1) of the Framework Decision on EAW).

This refers to the maximum possible punishment for the offence laid down in the national law of the issuing Member State. The maximum punishment in the law of the executing Member State is not relevant in this regard.

Order of the Court of Justice in Case C-463/15 PPU, *Openbaar Ministerie* v *A* ([22])

'Article 2(4) and Article 4(1) of Council Framework Decision 2002/584 (…) must be interpreted as precluding a situation in which surrender pursuant to a European arrest warrant is subject, in the executing Member State, not only to the condition that the act for which the arrest warrant was issued constitutes an offence under the law of that Member State, but also to the condition that it is, under that same law, punishable by a custodial sentence of a maximum of at least twelve months.'

'Conducting a criminal prosecution' includes the pre-trial stage of criminal proceedings. However, the purpose of the EAW is not to transfer persons merely for questioning them as suspects. For that purpose, other measures, such as a European Investigation Order (EIO), could be considered instead. In Section 2.5 other measures of judicial cooperation are briefly presented.

2.1.2. *The concepts of issuing and executing judicial authority*

Article 6(1) of the Framework Decision on EAW provides that the issuing judicial authority shall be the judicial authority of the issuing Member State which is competent to issue an EAW by virtue of the law of that Member State. It should also be noted that, in accordance with Article 33 of Regulation (EU) 2017/1939, the handling European Delegated Prosecutor may issue or request the competent authority of that Member State to issue a European Arrest Warrant in accordance with Council Framework Decision 2002/584/JHA, where it is necessary to arrest and surrender a person who is not present in the Member State ([23]).

As noted by the Court of Justice in its judgments in Case C-452/16 PPU *Poltorak* ([24]) and Case C-477/16 PPU *Kovalkovas* ([25]), it follows from Article 1(1) of the Framework Decision on EAW that the EAW constitutes a 'judicial decision', which must be issued by a 'judicial authority' within the meaning of Article 6(1) of the Framework Decision on EAW ([26]).

The Court of Justice ruled that the term 'judicial authority', contained in Article 6(1) of the Framework Decision on EAW, is not limited to designating only the judges or courts of a Member State. It may also extend, more broadly, to the authorities participating in the administration of criminal justice in the legal system concerned, as distinct from ministries or police services that are part of the executive.

In its judgment in Case C-509/18 *PF* ([27]), the Court of Justice thus ruled that the Prosecutor General of a Member State who, while institutionally independent from the judiciary, is responsible for the conduct of criminal prosecutions and whose legal position, in that Member State, affords him a guarantee of independence from the executive in connection with the issuing of EAW, can be regarded as an 'issuing judicial authority' within the meaning of Article 6(1) of the Framework Directive on EAW.

([22]) Order of the Court of Justice of 25 September 2015, *A.*, C-463/15 PPU, ECLI:EU:C:2015:634.
([23]) OJ L 283, 31.10.2017, p. 1..
([24]) Judgment of the Court of Justice of 10 November 2016, *Poltorak*, C-452/16 PPU, ECLI:EU:C:2016:858.
([25]) Judgment of the Court of Justice of 10 November 2016, *Kovalkovas*, C-477/16 PPU, ECLI:EU:C:2016:861.
([26]) For a compilation of competent issuing judicial authorities in the Member States, see Eurojust's and EJN's Updated Questionnaire and Compilation on the Requirements for Issuing and Executing Judicial Authorities in EAW Proceedings pursuant to the CJEU's Case-Law, 24 November 2021, 5607/3/21 REV 3, https://data.consilium.europa.eu/doc/document/ST-5607-2021-REV-3/en/pdf.
([27]) Judgment of the Court of Justice of 27 May 2019, *PF*, C-509/18, ECLI:EU:C:2019:457.

The Court of Justice also ruled in its judgment in Joined Cases C-508/18 and C-82/19 PPU *OG and PI* ([28]) that public prosecutors' offices, which are competent in criminal proceedings to prosecute a person suspected of having committed a criminal offence, must be regarded as participating in the administration of justice of the relevant Member State but can only be regarded as an 'issuing judicial authority' within the meaning of Article 6(1) of the Framework Decision on EAW if they are not exposed to the risk of being subject, directly or indirectly, to directions or instructions in a specific case from the executive, such as a Minister for Justice, in connection with the adoption of a decision to issue an EAW.

According to the Court of Justice's judgment in C-489/19 *NJ* ([29]), the concept of an EAW referred to in Article 1(1) must be interpreted as meaning that EAWs issued by the public prosecutor's offices of a Member State fall within that concept, despite the fact that those public prosecutor's offices are exposed to the risk of being subject, directly or indirectly, to directions or instructions in a specific case from the executive, such as a Minister for Justice, in the context of the issue of those EAWs, provided that those arrest warrants are subject, in order to be transmitted by those public prosecutor's offices, to endorsement by a court which reviews independently and objectively, having access to the entire criminal file to which any specific directions or instructions from the executive are added, the conditions of issue and the proportionality of those arrest warrants, thus adopting an autonomous decision which gives them their final form.

In Joined Cases C-566/19 PPU and C-626/19 PPU *JR and YC* ([30]), the Court of Justice confirmed that the public prosecutors of a Member State, who are responsible for conducting prosecutions acting under the direction and supervision of their hierarchical superiors are covered by the term 'issuing judicial authority' provided that their status affords them a guarantee of independence, in particular in relation to the executive in connection with the issuing of an EAW. This was reiterated by the Court of Justice in Case C-813/19 PPU *MN* ([31]).

As highlighted by the Court of Justice in Case C-414/20 PPU *MM* ([32]), Article 6(1) of the Framework Decision on EAW must be interpreted as meaning that the status of 'issuing judicial authority', within the meaning of that provision, is not conditional on there being a review by a court of the decision to issue the EAW and of the national decision upon which that warrant is based. Indeed, it follows from the Court of Justice's settled case-law that if an EAW is issued by an authority other than a court, judicial review is not a condition for classifying that authority as an issuing judicial authority since judicial review does not fall within the scope of the statutory rules and institutional framework of that authority, but concerns the procedure for issuing the EAW ([33]).

In Joined Cases C-354/20 PPU and C-412/20 PPU *L and P* ([34]), the Court furthermore ruled that systemic or generalised deficiencies concerning the independence of the issuing Member State's judiciary do not, however serious, enable an executing judicial authority to consider that all the courts of that Member State fail to fall within the concept of an 'issuing judicial authority' within the meaning of Article 6(1) of the Framework Decision on EAW.

Moreover, the Court of Justice held in Case C-158/21 *Puig Gordi and Others* ([35]) that the executing judicial authority may not verify whether an EAW has been issued by a judicial authority, which had jurisdiction for that purpose, and refuse to execute that EAW where it considers that that is not the case.

([28]) Judgment of the Court of Justice of 27 May 2019, *OG and PI*, C-508/18 and C-82/19 PPU, ECLI:EU:C:2019:456.
([29]) Judgment of the Court of Justice of 9 October 2019, *NJ*, C-489/19 PPU, ECLI:EU:C:2019:849.
([30]) Judgment of the Court of Justice of 12 December 2019, *JR and YC*, C-556/198 PPU and C-626/19 PPU, ECLI:EU:C:2019:1077.
([31]) Order of the Court of Justice of 21 January 2020, *MN*, C-813/19 PPU, ECLI:EU:C:2020:31.
([32]) Judgment of the Court of Justice of 13 January 2021, *MM*, C-414/20 PPU, ECLI:EU:C:2021:4.
([33]) Judgment of the Court of Justice of 10 March 2021, *PI*, C-648/20 PPU, ECLI:EU:C:2021:187.
([34]) Judgment of the Court of Justice of 17 December 2020, *L and P*, C-354/20 PPU and C-412/20 PPU, ECLI:EU:C:2020:1033.
([35]) Judgment of the Court of Justice of 31 January 2023, *Puig Gordi and Others*, C-158/21, ECLI:EU:C:2023:57.

Article 6(2) of the Framework Decision on EAW provides that the executing judicial authority shall be the judicial authority of the executing Member State which is competent to execute an EAW by virtue of the law of that State.

The Court of Justice confirmed in Case C-510/19 *AZ* ([36]) that the concept of 'executing judicial authority' within the meaning of Article 6(2) of Framework Decision on EAW must be interpreted in the same manner as the concept of 'issuing judicial authority' within the meaning of Article 6(1) of that Framework Decision.

In Case C-492/22 PPU *CJ* ([37]), the Court of Justice clarified that Article 24(1) of the Framework Decision on EAW must be interpreted as meaning that the decision to postpone surrender constitutes a decision on the execution of an EAW which, under Article 6(2) of that framework decision, must be taken by the executing judicial authority.

In Case C-804/21 PPU *C and CD* ([38]), the Court of Justice further clarified that the intervention on the part of the executing judicial authority for the purpose of assessing whether there is a situation of *force majeure* and, as the case may be, setting a new surrender date, cannot be made the responsibility of a police service of the executing Member State. The finding of a situation of *force majeure* by the police services of the executing Member State, followed by the setting of a new surrender date, without intervention on the part of the executing judicial authority does not in fact meet the formal requirements laid down in Article 23(3) of Framework Decision 2002/584, irrespective of whether that situation actually exists. It follows that, in such circumstances, the time limits laid down in Article 23(2) to (4) of the Framework Decision cannot be validly extended pursuant to paragraph 3 of that article.

2.1.3. *Execution of a sentence or detention order*

An EAW may be issued for the purposes of execution of a sentence or detention order of at **least 4 months** (Article 2(1) of the Framework Decision on EAW). However, in situations where only a short period of the sentence remains to be served, competent judicial authorities are required to consider whether issuing an EAW would be a **proportionate** measure (see Section 2.4).

Domestic rules on early or conditional release, probation or other similar rules resulting in shorter effective imprisonment which may apply following the surrender to the issuing Member State are not relevant when determining the minimum period of 4 months.

There is no link between the length of the actual and potential punishment. This means that where a person has already been sentenced to a combined custodial sentence for multiple offences and that sentence is 4 months or more, the EAW may be issued regardless of the maximum possible sentence for each of the individual offences.

Where the person is known to reside in another Member State, the competent authorities of the issuing Member State are advised to consider the possibility of transferring the enforceable sentence to the Member State of residence, instead of issuing an EAW, taking into account the person's social ties and chances for better rehabilitation in that Member State and other requirements in accordance with Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union ([39]) (see Section 2.5.2).

2.1.4. *The requirement for an enforceable judicial decision*

The issuing judicial authorities must always ensure that there is an enforceable domestic judicial decision before issuing the EAW. The nature of this decision depends on the purpose of the EAW.

([36]) Judgment of the Court of Justice of 24 November 2020, *AZ*, C-510/19, ECLI:EU:C:2020:953.
([37]) Judgment of the Court of Justice of 8 December 2022, *CJ*, C-492/22 PPU, ECLI:EU:C:2022:964.
([38]) Judgment of the Court of Justice of 28 April 2022, *C and CD*, C-804/21 PPU, ECLI:EU:C:2022:307.
([39]) OJ L 327, 5.12.2008, p. 27.

When the EAW is issued **for the purposes of prosecution**, a national arrest warrant or any other enforceable judicial decision having the same effect must have been issued by the competent judicial authorities of the issuing Member State (Article 8(l)(c) of the Framework Decision on EAW) prior to issuing an EAW. It was confirmed by the Court of Justice in its judgment in Case C-241/15 *Bob-Dogi* ([40]) that the national arrest warrant or other judicial decision is distinct from the EAW itself.

As the Court of Justice noted in Case C-241/15 *Bob-Dogi*, the EAW system entails a dual level of protection for procedural rights and fundamental rights which must be enjoyed by the requested person – judicial protection provided at the first level, at which a national judicial decision, such as a national arrest warrant, is adopted, and the protection that is afforded at the second level, at which an EAW is issued. That dual level of judicial protection is, in principle, lacking in a situation where no domestic judicial decision, on which the EAW will be based, has been taken by a national judicial authority before the EAW is issued.

The term 'judicial decision' (that is distinct from the EAW itself) within the meaning of Article 8(1)(c) of the Framework Decision on EAW was further clarified by the Court of Justice in its judgment in Case C-453/16 PPU *Özçelik* ([41]), where it was concluded that a confirmation by the public prosecutor's office of a national arrest warrant that was issued by the police, and on which the EAW is based, is covered by the term 'judicial decision'.

Judgment of the Court of Justice in Case C-453/16 PPU, *Özçelik*

'Article 8(1)(c) of the Council Framework Decision 2002/584/JHA (…) must be interpreted as meaning that a confirmation, such as that at issue in the main proceedings, by the public prosecutor's office, of a national arrest warrant issued previously by a police service in connection with criminal proceedings constitutes a "judicial decision", within the meaning of that provision.'

In its judgment in Case C-414/20 *MM* ([42]), the Court of Justice further specified the meaning that must be given to the concept '[national] arrest warrant or any other enforceable judicial decision having the same effect':

'[A] national measure serving as the basis for a European arrest warrant must, even if it is not referred to as a "national arrest warrant" in the legislation of the issuing Member State, produce equivalent legal effects, namely the legal effects of an order to search for and arrest the person who is the subject of a criminal prosecution. That concept does not therefore cover all the measures which initiate the opening of criminal proceedings against a person, **but only those intended to enable, by a coercive judicial measure, the arrest of that person** with a view to his or her appearance before a court for the purpose of conducting the stages of the criminal proceedings.'

In this case, the Court of Justice ruled that it is for the national court in the issuing Member State to determine, in the light of national law, what consequences the absence of a valid national arrest warrant as a legal basis for the EAW may have on the decision whether or not to keep the person already surrendered in pre-trial detention.

When the EAW is issued **for the purposes of execution of a custodial sentence** or a detention order, there must be an enforceable domestic judgment to that effect. In some Member States' legal systems, an EAW for the execution of a custodial sentence or a detention order can be issued even if the sentence is not final and still subject to judicial review. In other Member States' legal systems, this type of EAW can be issued only when the custodial sentence or detention order is final. It is recommended that the executing judicial authority recognises the issuing judicial authority's classification for the purpose of execution of the EAW, even if it does not correspond to its own legal system in this regard.

The existence of the domestic judicial decision or arrest warrant must be indicated on the EAW form when the EAW is issued (Article 8(l)(c) of the Framework Decision on EAW and see Section 3.2). The decision or warrant does not need to be attached to the EAW.

([40]) Judgment of the Court of Justice of 1 June 2016, *Bob-Dogi*, C-241/15, ECLI:EU:C:2016:385.
([41]) Judgment of the Court of Justice of 10 November 2016, *Özçelik*, C-453/16 PPU, ECLI:EU:C:2016:860.
([42]) Judgment of the Court of Justice of 13 January 2021, *MM*, C-414/20 PPU, ECLI:EU:C:2021:4.

In Case C-488/19 *JR* ([43]), the Court of Justice specified that an EAW may be issued on the basis of a judicial decision of the issuing Member State ordering the execution, in that Member State, of a sentence imposed by a court of a third State where, pursuant to a bilateral agreement between those States, the judgment in question has been recognised by a decision of a court of the issuing Member State. However, the issuing of the EAW is subject to two conditions: (i) a custodial sentence of at least 4 months has been imposed on the requested person; and (ii) the procedure leading to the adoption in the third State of the judgment recognised subsequently in the issuing Member State has complied with fundamental rights and, in particular, with the obligations arising under Articles 47 and 48 of the Charter of Fundamental Rights of the European Union ('the Charter').

2.1.5. *The requirement of ensuring an effective judicial protection*

In its judgment in Case C-241/15 *Bob-Dogi* ([44]), the Court of Justice confirmed that the EAW system entails a dual level of protection for procedural and fundamental rights, in particular in light of Article 47 of the Charter, which must be enjoyed by the requested person (see Section 2.1.4). In addition to the judicial protection provided at the first level, at which a national judicial decision, such as a national arrest warrant, is adopted, this includes the protection that must be afforded at the second level, at which an EAW is issued.

In its judgments in Joined Cases C-508/18 and C-82/19 PPU *OG and PI* ([45]) and in Case C-509/18 *PF* ([46]) the Court of Justice held that a decision meeting the requirements inherent in effective judicial protection should be adopted, **at least at one of the two levels** of that protection. The Court of Justice ruled that where the law of the issuing Member State confers the competence to issue an EAW on an authority that, although participating in the administration of justice in that Member State, is not itself a court, the decision to issue such an arrest warrant and, *inter alia*, the proportionality of such a decision must be capable of being the subject, in the Member State, of court proceedings that meet in full the requirements inherent in effective judicial protection.

It follows from the Court of Justice's case-law that a person who is the subject of an EAW for the purpose of criminal prosecution must be afforded effective judicial protection **before being surrendered to the issuing Member State**, at leastat one of the two levels of protection required by that case-law.

In its judgments in Joined Cases C-566/19 PPU and C-626/19 PPU *JR and YC* ([47]) and in Case C-625/19 PPU *XD* ([48]), the Court of Justice held that the inclusion, within the legal system of the issuing Member State, of procedural rules according to which the proportionality of the decision of the public prosecutor's office to issue an EAW may be subject to judicial review **before or almost at the same time as the EAW is issued and, in any event, after it has been issued** meets the requirement of effective judicial protection. In the cases that gave rise to those judgments, that finding was based on the existence of a set of procedural provisions guaranteeing the involvement of a court as soon as the national arrest warrant was issued against the requested person and, therefore, before the requested person was surrendered.

In Case C-625/19 PPU *XD* ([49]), the Court of Justice ruled that it is for the Member States to ensure that their legal orders effectively safeguard the level of judicial protection required by the Framework Decision on EAW, as interpreted by the Court's case-law, by means of the remedies which they provide and which may vary from one system to another. In particular, introducing a separate right of appeal against the decision to issue an EAW taken by a judicial authority other than a court is just one possibility in that regard.

([43]) Judgment of the Court of Justice of 17 March 2021, *JR*, C-488/19, ECLI:EU:C:2021:206.
([44]) Judgment of the Court of Justice of 1 June 2016, *Bob-Dogi*, C-241/15, ECLI:EU:C:2016:385.
([45]) Judgment of the Court of Justice of 27 May 2019, *OG and PI*, C-508/18 and C-82/19 PPU, ECLI:EU:C:2019:456.
([46]) Judgment of the Court of Justice of 27 May 2019 *PF*, C-509/18, ECLI:EU:C:2019:457.
([47]) Judgment of the Court of Justice of 12 December 2019, *JR and YC*, C-556/198 PPU and C-626/19 PPU, ECLI:EU:C:2019:1077.
([48]) Judgment of the Court of Justice of 12 December 2019, *XD*, C-625/19 PPU, ECLI:EU:C:2019:1078.
([49]) Judgment of the Court of Justice of 12 December 2019, *XD*, C-625/19 PPU, ECLI:EU:C:2019:1078.

However, in Case C-414/20 *MM* ([50]) the Court of Justice clarified that, while the Framework Decision on EAW leaves the national authorities some discretion, in accordance with the procedural autonomy which they enjoy, as to the specific manner of implementation of the objectives it pursues, with respect *inter alia* to the possibility of providing for a certain type of appeal against decisions relating to an EAW, the Member States must nevertheless ensure that they do not frustrate the requirements flowing from that framework decision, in particular regarding the judicial protection which underlies it. Accordingly, where the procedural law of the issuing Member State does not provide for a separate legal remedy allowing a court to review the conditions under which the EAW was issued and its proportionality, **whether before, after, or at the same time as its adoption**, the Framework Decision on EAW, read in the light of the right to effective judicial protection enshrined in Article 47 of the Charter, must be interpreted as meaning that a court which is called upon to give a ruling **at a stage in the criminal proceedings which follows the surrender of the requested person** must be able to carry out an indirect review of the conditions under which that warrant was issued if the validity of that warrant has been challenged before it.

In Case C-648/20 *PI* ([51]), the Court of Justice ruled that Article 8(1)(c) of the Framework Decision on EAW, read in the light of Article 47 of the Charter, must be interpreted as meaning that the requirements inherent in the effective judicial protection that must be afforded to a person who is the subject of an EAW for the purpose of criminal prosecution are not satisfied **where both the EAW and the judicial decision on which that warrant is based are issued by a public prosecutor** – who may be classified as an 'issuing judicial authority' within the meaning of Article 6(1) of the Framework Decision on EAW – **but cannot be reviewed by a court in the issuing Member State prior to the surrender** of the requested person by the executing Member State.

A judicial review of a prosecutor's decision to issue an EAW which takes place only after the requested person has been surrendered does not satisfy the obligation of the issuing Member State to implement procedural rules allowing a court to review, prior to that surrender, the lawfulness of the national arrest warrant, where adopted by a prosecutor, or of the EAW.

Where an EAW is issued for **the purposes of executing a custodial sentence**, the Court of Justice ruled in Case C-627/19 PPU *ZB* ([52]) that such a warrant is, as is apparent from Article 8(1)(c) and (f) of Framework Decision on EAW, based on an enforceable judgment imposing a custodial sentence on the person concerned, by which the presumption of innocence enjoyed by that person is rebutted in judicial proceedings that must meet the requirements laid down in Article 47 of the Charter. In such a situation, the judicial review referred in judgments *OG and PI* ([53]), which meets the need to ensure effective judicial protection for the person requested on the basis of an EAW issued for the purposes of executing a sentence, is carried out by the enforceable judgment. Furthermore, where an EAW is issued for the purposes of executing a sentence, it follows that it is proportional from the sentence imposed, which, as is clear from Article 2(1) of Framework Decision on EAW, must consist of a custodial sentence or a detention order of at least 4 months.

2.2. **The list of 32 offences which give rise to surrender without verification of double criminality**

Before issuing the EAW, the competent judicial authority should determine whether one or more of the offences belong to one of the 32 categories in respect of which the verification of double criminality does not apply. The list of offences is in Article 2(2) of the Framework Decision on EAW and also on the EAW form, where offences belonging to the list should be 'ticked'.

([50]) Judgment of the Court of Justice of 13 January 2021, MM, C-414/20 PPU, ECLI:EU:C:2021:4.
([51]) Judgment of the Court of Justice of 10 March 2021, *PI*, C-648/20 PPU, ECLI:EU:C:2021:187. This was reconfirmed by the Court of Justice in its Order of the Court of Justice of 22 June 2021, *VA*, C-206/20, ECLI:EU:C:2021:509.
([52]) Judgment of the Court of Justice of 12 December 2019, *ZB*, C-627/19 PPU, ECLI:EU:C:2019:1079.
([53]) Judgment of the Court of Justice of 27 May 2019, *OG and PI*, C-508/18 and C-82/19 PPU, ECLI:EU:C:2019:456.

It is the issuing Member State's law which is decisive. This was confirmed in the judgment in Case C-303/05 *Advocaten voor de Wereld* ([54]) where the Court of Justice held that Article 2(2) of the Framework Decision on EAW is not incompatible with the principle of the legality of criminal offences and penalties and does not breach the principle of equality and non-discrimination.

The executing judicial authority can only verify double criminality in respect of offences that are not in the list of 32 offences (see also Section 5.3).

2.3. **Accessory offences**

The 1957 European Convention on Extradition contains a provision on accessory offences:

'Article 2

Extraditable offences

1. Extradition shall be granted in respect of offences punishable under the laws of the requesting Party and of the requested Party by deprivation of liberty or under a detention order for a maximum period of at least one year or by a more severe penalty. Where a conviction and prison sentence have occurred or a detention order has been made in the territory of the requesting Party, the punishment awarded must have been for a period of at least four months.

2. If the request for extradition includes several separate offences each of which is punishable under the laws of the requesting Party and the requested Party by deprivation of liberty or under a detention order, but of which some do not fulfil the condition with regard to the amount of punishment which may be awarded, the requested Party shall also have the right to grant extradition for the latter offences.'

In the Framework Decision on EAW, there is no similar provision. It does not regulate surrender for offences punishable by a lower sanction than the threshold set out in Article 2(1) when they are accessory to the main offences that meet that threshold. In practice, some Member States have decided to allow such surrender but others do not.

Annex VIII contains a list of Member States whose legal system provides for the possibility to surrender for accessory offences.

The issuing judicial authority may include such accessory offences on the EAW form with the aim of obtaining the executing Member State's consent for prosecuting those offences. However, the EAW must always be issued for at least one offence that meets the threshold set out in Article 2(1) of the Framework Decision on EAW.

If the executing Member State does not surrender for accessory offences, the rule of speciality (Article 27 of the Framework Decision on EAW) might preclude the issuing Member State from prosecuting those offences (see Section 2.6).

2.4. **Proportionality**

An EAW should always be proportional to its aim. Even where the circumstances of the case fall within the scope of Article 2(1) of the Framework Decision on EAW, the Court of Justice ruled in Joined Cases C-508/18 and C-82/19 PPU *OG and PI* ([55]) as well as in Case C-414/20 *MM* ([56]) that the issuing judicial authorities must review whether, in the light of the particular circumstances of each case – taking into account all incriminatory and exculpatory evidence,– it is proportionate to issue the EAW (see also Section 2.1.5).

The Court of Justice ruled in Case C-627/19 PPU *ZB* ([57]) that, where an EAW is issued for the purposes of executing a sentence, it follows that it is proportional from the sentence imposed, which (as is clear from Article 2(1) of Framework Decision on EAW) must consist of a custodial sentence or a detention order of at least 4 months.

([54]) Judgment of the Court of Justice of 3 May 2007, *Advocaten voor de Wereld*, C-303/05, ECLI:EU:C:2007:261.
([55]) Judgment of the Court of Justice of 27 May 2019, *OG and PI*, C-508/18 and C-82/19 PPU, ECLI:EU:C:2019:456.
([56]) Judgment of the Court of Justice of 13 January 2021, *MM*, C-414/20 PPU, ECLI:EU:C:2021:4
([57]) Judgment of the Court of Justice of 12 December 2019, *ZB*, C-627/19 PPU, ECLI:EU:C:2019:1079.

Considering the severe consequences that the execution of an EAW has for the requested person's liberty and the restrictions on free movement, the issuing judicial authorities should consider assessing a number of factors in order to determine whether issuing an EAW is justified.

In particular the following factors could be taken into account:

(a) the seriousness of the offence (for example, the harm or danger it has caused);

(b) the likely penalty imposed if the person is found guilty of the alleged offence (for example, whether it would be a custodial sentence);

(c) the likelihood of detention of the person in the issuing Member State after surrender;

(d) the interests of the victims of the offence.

Furthermore, issuing judicial authorities should consider whether other judicial cooperation measures could be used instead of issuing an EAW. Other Union legal instruments on judicial cooperation in criminal matters provide for other measures that in many situations, are effective but less coercive (see Section 2.5).

On a more general note, applying the proportionality check before issuing an EAW can reinforce mutual trust among Member State's competent authorities. Therefore, it significantly contributes to the effective operation of the EAW throughout the Union.

2.5. **Other measures available under Union legal instruments on judicial cooperation in criminal matters**

Before deciding to issue an EAW, the issuing judicial authorities are advised to give due consideration to other possible measures.

There are several measures available under Union legal instruments on judicial cooperation in criminal matters, based on the principle of mutual recognition, that complement the EAW. In some situations, these measures might be more appropriate than the EAW. Such measures include, in particular:

(a) the European Investigation Order;

(b) the transfer of prisoners;

(c) the transfer of probation decisions and alternative sanctions;

(d) the European Supervision Order;

(e) the enforcement of financial penalties.

The scope of these measures is explained briefly in Sections 2.5.1 to 2.5.5. In addition, competent authorities may take into account the possibilities offered by other international measures, such as the Council of Europe Convention on the Transfer of Proceedings in Criminal Matters of 15 of May 1972 (ETS No 073) as explained briefly in Section 2.5.6.

More information on the practical application of Union legal instruments on judicial cooperation in criminal matters can be found on the EJN website: *www.ejn-crimjust.europa.eu*.

The Judicial Library section of the EJN website contains comprehensive and practical information about each legal instrument, including texts published in the *Official Journal of the European Union*, amending acts, status of implementation, forms in Word format, notifications, statements, reports, handbooks and other practical information. For easy access to the Union legal instruments on judicial cooperation and to the status of their implementation in the Member States, there are separate entry points (shortcuts) on the homepage of the EJN website.

The following measures in particular might be considered at the pre-trial stage of criminal proceedings:

(a) issuing an alert in the SIS for the purpose of discreet checking - discreetly collecting as much information concerning the suspect's location, place, time and reason for the check, travel, destination, any associates and possessions as possible (discreet check alerts can be issued following the provisions in Article 36 of the SIS Police Regulation and are executed in line with Article 37 of the SIS Police Regulation ([58]));

(b) issuing a European Investigation Order (EIO) for a suspect to be heard via a video link in another Member State;

(c) issuing a European Investigation Order (EIO) for a suspect to be heard in another Member State by the competent authorities of that Member State;

(d) issuing a European Supervision Order (ESO) for a non-custodial supervision measure concerning the suspect, which is to be executed by the Member State of residence of the suspect in the pre-trial stage;

(e) issuing an alert in the SIS for the purpose of communicating the place of residence or domicile of a person (see Article 34 of the SIS Police Regulation ([59])). Such alerts differ from the alerts for arrest that are described under Section 3.3.1 and should be issued only in situations where issuing an EAW and alert for arrest in the SIS is disproportionate or impossible. As soon as the place of residence or domicile has been provided to the issuing judicial authority, that authority needs to delete the alert from the SIS (see Article 55(3) of the SIS Police Regulation) and take the necessary follow-up measures (such as requiring the suspect to appear before a relevant authority responsible for criminal proceedings). The taking of these follow-up measures is, however, not the objective of this type of SIS alert.

(f) requiring a suspect located in the executing Member State to appear before a relevant authority responsible for criminal proceedings in the issuing Member State;

(g) inviting a person to attend the criminal procedure voluntarily.

The following measures, in particular, might be considered at the post-trial stage, once the sentence has been passed:

(a) transferring a custodial sentence to the Member State of residence of the convicted person to be executed by that Member State;

(b) transferring an alternative sentence (for example, community service) or a probation order to the Member State of residence of the convicted person to be executed by that Member State.

2.5.1. *European Investigation Order (EIO)*

Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters ([60])

The EIO can be used for obtaining evidence from another Member State. The EIO covers any investigative measure, with the exception of setting up joint investigation teams. The goal is to allow one Member State to request another Member State to carry out investigative measures or to obtain evidence that is already in the possession of the executing authority on the basis of mutual recognition. EIOs concerning investigative measures that do not exist or are not available in the executing Member State can nonetheless be executed by way of recourse to an alternative investigative measure.

([58]) OJ L 312, 7.12.2018, p. 56.
([59]) OJ L 312, 7.12.2018, p. 56.
([60]) OJ L 130, 1.5.2014, p. 1. See also Report on Eurojust's casework in the field of the European Investigation Order, 10 November 2020, 2020/00282, https://www.eurojust.europa.eu/report-eurojusts-casework-field-european-investigation-order-0.

The EIO replaces the corresponding provisions of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union ([61]) and the previous patchwork of legal provisions in this area. Incorporating the existing measures into a single new instrument aims to make judicial cooperation faster and more efficient. The EIO can be used in criminal proceedings including those brought by administrative authorities with judicial validation when there is a criminal dimension. In this context, it should be noted that in Case C-584/19 *A and Others* ([62]) the Court clarified that Article 1(1) and Article 2(c) of Directive 2014/41/EU must be interpreted as meaning that the concepts of 'judicial authority' and 'issuing authority', within the meaning of those provisions, include the public prosecutor of a Member State or, more generally, the public prosecutor's office of a Member State, regardless of any relationship of legal subordination that might exist between that public prosecutor or public prosecutor's office and the executive of that Member State and regardless of the exposure of that public prosecutor or public prosecutor's office to the risk of being directly or indirectly subject to orders or individual instructions from the executive when adopting an EIO.

Member States must decide on the recognition or execution of an EIO within 30 days of receipt of the EIO by the competent executing authority and carry out the investigation measure within 90 days following the taking of that decision.

In some situations, an EIO might be issued for questioning the suspect via video link in order to determine whether or not to issue an EAW for the purposes of prosecuting him.

Example 1: Pierre has recently moved from Member State A to Member State B. There is evidence to suggest that he was an accomplice in a serious offence in A. However, the authorities of A need to question him before being able to decide whether to prosecute him. The judicial authority of A can issue an EIO for questioning Pierre via a video link in B.

Example 2: Alternatively, given the facts of Example 1, the judicial authority of A could issue an EIO requesting the competent authorities in B to question Pierre and produce a written transcript of the hearing.

2.5.2. *Transfer of prisoners*

Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union ([63])

Framework Decision 2008/909/JHA provides a system for transferring convicted prisoners back to the Member State of their nationality or habitual residence or to another Member State with which they have close ties. Framework Decision 2008/909/JHA also applies where the sentenced person is already in that Member State. The consent of the sentenced person to such a transfer is no longer a prerequisite in all cases. This Framework Decision has, for Member States, replaced the Council of Europe Convention on the Transfer of Sentenced Persons of 21 March 1983 (ETS No 112) and its additional Protocol of 18 December 1997 (ETS No 167).

In certain situations, instead of issuing an EAW for the surrender of the person to serve the sentence in the Member State where the sentence was handed down, Framework Decision 2008/909/JHA could be used to execute the sentence in the place where the convicted person resides and might have better chances of rehabilitation.

Article 25 of Framework Decision 2008/909/JHA also contains a specific provision concerning the enforcement of custodial sentences in the executing Member State in cases falling under Articles 4(6) and 5(3) of the Framework Decision on EAW (see Sections 5.5.2 and 5.9.2 on the link between the two Framework Decisions). In cases where Article 4(6) or 5(3) of the Framework Decision on EAW is applied, Framework Decision 2008/909/JHA must also be applied for transferring the sentence to the Member State where it is executed.

([61]) Convention established by the Council in accordance with Article 34 of the TEU, on Mutual Assistance in Criminal Matters between the Member States of the European Union (OJ C 197, 12.7.2000, p. 3).

([62]) Judgment of the Court of Justice of 8 December 2020, *A and Others*, Case C-584/19, ECLI:EU:C:2020:1002.

([63]) OJ L 327, 5.12.2008, p. 27.

Example 1

Jerzy is a national of, and habitually lives in, Member State B. During his visit to Member State A, he commits an offence. He is sentenced in A to two years in prison.

The authorities in A may transfer the sentence for execution in B without Jerzy's consent, if this improves the chances of his rehabilitation and other conditions of Framework Decision 2008/909/JHA are met.

Example 2

Gustav is a national of Member State B but lives in Member State A where he has a permanent job and where his family also lives. In Member State B he is convicted for a tax offence and receives a custodial sentence. Instead of issuing an EAW for the execution of the sentence, the authorities in Member State B may transfer the custodial sentence to be served in Member State A if Member State A consents to the forwarding of the judgment.

2.5.3. *European Supervision Order (ESO)*

Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention ([64])

Framework Decision 2009/829/JHA introduced the possibility of transferring a non-custodial supervision measure from the Member State where a non-resident is suspected of having committed an offence to the Member State where the person is resident. This allows a suspect to be subject to a supervision measure in his or her normal environment until the trial takes place in the other Member State. The European Supervision Order ('ESO') may be used for all non-custodial pre-trial supervision measures (for example, travel restrictions and the duty to report regularly).

The prosecuting Member State will determine whether or not an order to transfer a decision on supervision measures is made. The types of supervision measures covered are set out in Framework Decision 2009/829/JHA and the subsequent declarations by each Member State ([65])). The transfer of a supervision measure requires the consent of the person subject to the measure.

Example: Sonia lives and works in Member State B. She is temporarily staying in Member State A where she is being investigated for fraud. The judicial authority in A knows where Sonia resides in B and considers that the risk of her absconding before trial is low. Instead of holding her in pre-trial detention in A, the judicial authority in A can issue an order obliging her to report regularly to the police authority in B. In order to allow Sonia to return and stay in B until the trial takes place in A, the competent authority in A can, with Sonia's consent, issue an ESO to have the obligation to report recognised and enforced in B.

2.5.4. *Transfer of probation decisions and alternative sanctions*

Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition of judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions ([66])

Framework Decision 2008/947/JHA introduces the application of the principle of mutual recognition to alternatives to custody and measures facilitating early release ([67]). It relates to the post-trial stage.

It provides that a probation decision or other alternative sanction may be executed in a Member State other than the one in which the person was sentenced as long as the person has consented.

([64]) OJ L 294, 11.11.2009, p. 20.

([65]) Listed on the EJN website *https://www.ejn-crimjust.europa.eu*; please visit Judicial Library → Legal Framework → EU Judicial Cooperation → Supervision Measures → 2009/829/JHA: Council Framework Decision 2009/829/JHA of 23 October 2009 for supervision measures → Supervision Measures-Notifications

([66]) OJ L 337, 16.12.2008, p. 102.

([67]) This Framework Decision has been interpreted in the Judgment of the Court of Justice of 26 March 2020, *A.P.*, C-2/19, ECLI:EU:C:2020:237.

Example: Anna is a national of Member State A but is on holiday in Member State B. She is convicted of an offence in B and sentenced to carry out community service instead of a custodial sentence. She can return to A, whereupon the authorities in A are obliged to recognise the community service order and supervise Anna's completion of it in Member State A.

2.5.5. *Financial penalties*

Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties ([68])

Framework Decision 2005/214/JHA applies the principle of mutual recognition to financial penalties imposed by judicial or administrative authorities. The purpose is to facilitate the enforcement of such penalties in a Member State other than the one in which the penalties were imposed. It enables a judicial or administrative authority to transmit a financial penalty directly to an authority in another Member State and to have that penalty recognised and executed without any further formality.

The scope of Framework Decision 2005/214/JHA covers all criminal offences (Article 1(a)(i) and (ii)) and also 'infringements of rules of law', on the condition that an appeal is possible before 'a court having jurisdiction in criminal matters' ([69]).

The procedure applies in cross-border situations where a financial penalty is imposed in one Member State and is expected to be executed in the Member State where the perpetrator resides or has property or income.

In some Member States' systems, an unpaid financial penalty might be converted into a custodial sentence. In these situations, an EAW might be issued for the execution of the custodial sentence. It is advised that, where possible, Framework Decision 2005/214/JHA is considered as one of the methods for enforcing payment before converting the financial penalty into a custodial sentence, thus avoiding the need to issue an EAW.

2.5.6. *Transfer of criminal proceedings*

The transfer of criminal proceedings to the Member State where the suspect is residing should be considered in relevant cases. The legal basis for the transfer is the 1972 Convention on the Transfer of Proceedings in Criminal Matters. For those Member States that have not ratify this Convention, the transfer can be based on ordinary jurisdiction in the receiving Member State to initiate a criminal investigation. In that case, a request is normally based on Article 21 of the Council of Europe Convention on Mutual Assistance in Criminal Matters of 20 April 1959 (ETS No 030).

In 2003, Eurojust issued non-binding guidelines for deciding 'which jurisdiction should prosecute', which were revised in 2016 ([70]). These guidelines suggest factors to be taken into consideration in cases where more than one Member State would have jurisdiction to prosecute. Since their adoption, they have helped the competent national authorities and Eurojust determine which jurisdiction is best placed to prosecute in cross-border cases.

On 5 April 2023, the Commission adopted a proposal for a regulation on transfer of proceedings in criminal matters ([71]). The proposal sets out the procedure for the transfer of criminal proceedings from one Member State to another, where the objective of an efficient and proper administration of justice would be better served by conducting criminal proceedings in the other Member State.

2.6. **Rule of speciality – possible prosecution for other offences**

In general, a person surrendered may not be prosecuted, sentenced, or otherwise deprived of his or her liberty for an offence committed prior to the surrender other than that for which the person was surrendered. This is the rule of speciality, set out in Article 27 of the Framework Decision on EAW.

([68]) OJ L 76, 22.3.2005, p. 16.
([69]) Judgment of the Court of Justice of 14 November 2013, *Balaz*, C 60/12, ECLI:EU:2013:733.
([70]) 2016_Jurisdiction-Guidelines_EN.pdf (europa.eu).
([71]) COM/2020/712 final.

The rule of speciality is subject to a number of exceptions. The Framework Decision on EAW gives a possibility to Member States to notify that, in their relations with other Member States that have given the same notification, they renounce the rule of speciality, unless in a particular case the executing judicial authority states otherwise in its decision on surrender (see Article 27(1) of the Framework Decision on EAW). According to the information available to the Commission, only Estonia, Austria and Romania have sent such notifications.

In addition, Article 27(3) of the Framework Decision on EAW lists other situations where the rule of speciality does not apply:

(a) when the person having had an opportunity to leave the territory of the Member State to which he or she has been surrendered has not done so within 45 days of his or her final discharge, or has returned to that territory after leaving it;

(b) the offence is not punishable by a custodial sentence or detention order;

(c) the criminal proceedings do not give rise to the application of a measure restricting personal liberty;

(d) when the person could be liable to a penalty or a measure not involving the deprivation of liberty, in particular a financial penalty or a measure in lieu thereof, even if the penalty or measure may give rise to a restriction of his or her personal liberty;

(e) when the person consented to be surrendered, where appropriate at the same time as he or she renounced the speciality rule, in accordance with Article 13;

(f) when the person, after his/her surrender, has expressly renounced entitlement to the speciality rule with regard to specific offences preceding his/her surrender. Renunciation shall be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's domestic law. The renunciation shall be drawn up in such a way as to make clear that the person has given it voluntarily and in full awareness of the consequences. To that end, the person shall have the right to legal counsel.

In other cases, it is necessary to request the original executing Member State's consent for prosecution or enforcement of the other offences (Article 27(3)(g) of the Framework Decision on EAW).

In its judgment in Case C-388/08 PPU *Leymann and Pustovarov* ([72]), the Court of Justice examined how to establish whether the offence under consideration is an 'offence other than' that for which the person was surrendered within the meaning of Article 27(2) of the Framework Decision on EAW. The Court held:

'(…) it must be ascertained whether the constituent elements of the offence, according to the legal description given by the issuing State, are those in respect of which the person was surrendered and whether there is a sufficient correspondence between the information given in the arrest warrant and that contained in the later procedural document. Modifications concerning the time or place of the offence are allowed, in so far as they derive from evidence gathered in the course of the proceedings conducted in the issuing State concerning the conduct described in the arrest warrant, do not alter the nature of the offence, and do not lead to grounds for non-execution under Articles 3 and 4 of the Framework Decision.'

In the same judgment, the Court of Justice also clarified that:

'The exception in Article 27(3)(c) (…) must be interpreted as meaning that, where there is an "offence other" than that for which the person was surrendered, consent must be requested, in accordance with Article 27(4) of the Framework Decision, and obtained if a penalty or a measure involving the deprivation of liberty is to be executed. The person surrendered can be prosecuted and sentenced for such an offence before that consent has been obtained, provided that no measure restricting liberty is applied during the prosecution or when judgment is given for that offence. The exception in Article 27(3)(c) does not, however, preclude a measure restricting liberty from being imposed on the person surrendered before consent has been obtained, where that restriction is lawful on the basis of other charges which appear in the European arrest warrant.'

([72]) Judgment of the Court of Justice of 1 December 2008, *Leymann and Pustovarov*, C-388/08 PPU, ECLI:EU:C:2008:669.

Procedure for renouncing the rule of speciality by consent of the executing judicial authority

The request for consent must be submitted by the same procedure and must contain the same information as a normal EAW. Thus, the competent judicial authority transmits the request for consent directly to the executing judicial authority, which surrendered the person.

The information contained in the request must, as provided in Article 8(1) of the Framework Decision on EAW, be translated under the same rules as an EAW. The executing judicial authority must take the decision no later than 30 days after receipt of the request (Article 27(4) of the Framework Decision on EAW).

The executing authority must give its consent when the offence for which the consent is requested is itself subject to surrender in accordance with the Framework Decision on EAW unless a mandatory or optional ground for non-execution applies.

Where applicable, the executing judicial authority may subject its consent to one of the conditions concerning custodial life sentences and the return of nationals and residents laid down in Article 5 of the Framework Decision on EAW (see Section 5.9). In such cases, the issuing Member State must give the appropriate guarantees (Article 27(4) of the Framework Decision on EAW).

The Court held in its judgment in Case C-168/13 PPU *Jeremy F* ([73]). that a Member State could provide, in its national law, an appeal with suspensive effect against the decision referred to in Article 27(4) of the Framework Decision on EAW, if the final decision is taken within the time limits laid down in Article 17 of the Framework Decision on EAW (see Section 4.1).

In its judgment in Case C-195/20 PPU *XC* ([74]), the Court of Justice clarified that in a situation where the person was surrendered by a first Member State on the basis of an EAW, then left the territory of the issuing Member State of the first warrant voluntarily and has been surrendered back there by a second Member State in execution of another EAW issued after that departure, the only surrender that is relevant for assessing compliance with the rule of speciality is that of the executing judicial authority of that second EAW and the consent required in Article 27(3)(g) must therefore be given only by the executing judicial authority of the Member State that surrendered the prosecuted person on the basis of that EAW.

In Case C-510/19 *AZ* ([75]), the Court of Justice clarified that the consent to renounce the application of the rule of speciality under Article 27(3)(g) and Article 27(4) of the Framework Decision on EAW must be given by a judicial authority that fulfils the requirements set out in Article 6(2) thereof (see Section 2.1.2).

In its judgment in Joined Cases C-428/21 and C-429/21 PPU ([76]), *HM and TZ*, the Court of Justice interpreted Article 27(3)(g) and (4) and Article 28(3) of the Framework Decision on EAW in light of the right to effective judicial protection guaranteed by Article 47 of the Charter. Consequently, a person who has been surrendered to the issuing judicial authority in execution of an EAW has the right to be heard by the executing judicial authority when a request for consent to renounce the rule of speciality is made. The Court clarified that the effective exercise of this right does not require the direct involvement of the executing judicial authority, provided that it ensures that it has sufficient information, in particular on the position of the person affected, to take a decision. It may thus suffice if the person affected can make their views known to the issuing judicial authority and this information is recorded in writing and passed on to the executing judicial authority. In principle, such information must be considered by the executing judicial authority as having been collected in compliance with the requirements of Article 47 of the Charter. If necessary, the executing judicial authority must ask for the provision of additional information without delay.

3. PROCEDURE FOR ISSUING AN EAW

3.1. **Other pending criminal procedures and EAWs concerning the same person**

3.1.1. *In the issuing Member State*

Before issuing an EAW, the competent judicial authority is advised to check whether other criminal procedures have been initiated or other EAWs issued concerning the requested person in the issuing Member State.

([73]) Judgment of the Court of Justice of 30 May 2013, *Jeremy F.*, C-168/13 PPU, ECLI:EU:C:2013:358.
([74]) Judgment of the Court of Justice of 24 September 2020, *XC*, C-195/20 PPU, ECLI:EU:C:2020:749.
([75]) Judgment of the Court of Justice of 24 November 2020, *AZ*, C-510/19, ECLI:EU:C:2020:953.
([76]) Judgment of the Court of Justice of 26 October 2021, *HM and TZ*, Joined Cases C-428/21 PPU and C-429/21 PPU, ECLI:EU:C:2021:876.

If there are other criminal proceedings pending or enforceable custodial sentences against the requested person in the issuing Member State, it is advisable to communicate and, where possible, coordinate with other national authorities before issuing an EAW. It is important to ensure that the EAW covers all offences for which the requested person will be prosecuted or has been sentenced in the issuing Member State. This is advisable in particular because the rule of speciality may prevent prosecution or sentencing for offences other than those for which the person was surrendered by the executing Member State (see Section 2.6). Although consent by the requested person or the executing Member State to prosecution or execution of the sentence for these offences may be requested after the surrender (see Article 27(3)(f) and (g) of the Framework Decision on EAW), practice has shown that obtaining such consent can be slow or cumbersome.

If possible, all offences should be included in one EAW, as this makes the procedure in the executing Member State quicker and more efficient. If there is a prior EAW issued in respect of the same person, that EAW could , whenever possible, be replaced by a new EAW which covers both the offences from the previous EAW and the new offences. If there is a prior alert for arrest issued in respect of the person, it should be updated to include the new EAW. It is possible to enter more than one EAW per alert for arrest (see Article 27(1) of the SIS Police Regulation ([77])).

Additionally, in Case C-203/20 *AB and Others* ([78]), the Court of Justice held that Article 50 of the Charter must be interpreted as not precluding the issue of an EAW against a person who was subject to a criminal prosecution that was initially discontinued by a final judicial decision adopted on the basis of an amnesty but resumed following the adoption of a law revoking that amnesty, in the case where that judicial decision was adopted before any determination as to the criminal liability of the person concerned.

3.1.2. *In another Member State*

If there are indications of other pending criminal proceedings or enforceable custodial sentences against the requested person in another Member State or other Member States, it might be advisable to contact the authorities of the other Member State(s) before issuing the EAW ([79]). In these cases, the authorities of the different Member States could explore the possibility of coordinating which Member State should issue the (first) EAW and the possibility of transferring criminal proceedings to one, or at least fewer, Member States.

The competent authorities should verify in the SIS whether an alert for arrest has been issued in respect of the same person by another Member State. Several Member States may enter an alert for arrest in respect of the same person. In the event of an arrest, the SIRENE Bureau of the executing Member State will simultaneously inform each Member State concerned (see Article 32(3) of the SIRENE Manual – Police) ([80]).

The competent authorities can also contact Eurojust or the EJN contact points (or both) or directly contact the competent authority of another Member State ([81]).

It should be noted that, if the executing Member State has received multiple EAWs in respect of the requested person, it must in any event decide where the requested person is to be surrendered first (see Section 5.12). Therefore, it might be more efficient to seek agreement among the issuing judicial authorities on which of the Member States the requested person should be surrendered to first before issuing multiple EAWs. Although the executing judicial authority is not bound by agreements relating to concurrent EAWs reached between issuing judicial authorities, the executing judicial authority should take them into consideration.

([77]) OJ L 312, 7.12.2018, p. 56.

([78]) Judgment of the Court of Justice of 16 December 2021, *AB and Others*, C-203/20, ECLI:EU:C:2021:1016.

([79]) This is in accordance with Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings, which lays out the procedure whereby competent national authorities should contact each other when they have reasonable grounds to believe that parallel proceedings are being conducted in another Member State.

([80]) Commission Implementing Decision C(2021) 7901.

([81]) For a general introduction on the tasks of Eurojust and the EJN, see document 'Assistance in International Cooperation in Criminal Matters for Practitioners – European Judicial Network and Eurojust – What can we do for you?'. This is available on both the EJN website (https://www.ejn-crimjust.europa.eu) and the Eurojust website (http://www.eurojust.europa.eu).

It is therefore also advisable to complete section 'f' (other circumstances relevant to the case) of the EAW form regarding these agreements, so that executing judicial authorities are immediately aware of them.

3.2. **Filling in the EAW form**

Detailed guidelines on filling in the EAW form are set out in Annex III.

3.2.1. *Information that is always necessary*

The executing judicial authority should always have the minimum necessary information to allow it to decide on surrender (see Article 8(1) of the Framework Decision on EAW). In particular, the executing judicial authority needs to be able to confirm the identity of the person and evaluate whether any of the grounds for non-execution apply. The issuing judicial authority should therefore pay particular attention to the description of the offence(s) on the EAW form.

The exact information to be provided depends on the circumstances in each case. However, it is good to bear in mind that the executing judicial authority might know little or nothing about the case underlying the EAW or the issuing Member State's legal system. Experience has shown that requests for further information between the issuing and executing judicial authorities are one of the primary causes of delays in the execution of EAWs. This often results in the time limits set out in the Framework Decision on EAW being exceeded (see Section 4.1).

It is therefore vital that issuing judicial authorities ensure that the information in the EAW is clear, correct and comprehensive.

In Case C-367/16, *Piotrowski* ([82]), the Court held that:

'In order to simplify and accelerate the surrender procedure in accordance within the time limits laid down by Article 17 of Framework Decision 2002/584, the annex to the decision provides a specific form which the issuing judicial authorities are required to complete, furnishing the specific information requested.

According to Article 8 of Framework Decision 2002/584, that information relates, inter alia, to the identity and nationality of the requested person, evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect, coming within the scope of Articles 1 and 2 of the framework decision, the nature and legal classification of the offence, a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person, the penalty imposed or the prescribed scale of penalties for the offence under the law of the issuing Member State and, if possible, any other consequences of the offence'.

If the EAW form is properly filled in, no additional documents are required.

3.2.2. *Useful additional information from the issuing judicial authority*

In addition to the minimum set of data that must be entered to create the alert for arrest in the SIS (see Annex II, Section 1(a) of Commission Implementing Decision on SIS data entry) ([83]), all other data related to the person in particular photographs, fingerprints, identification documents must also be entered if available (see Articles 20 and 22 of the SIS Police Regulation) ([84]).

Particular attention should be paid to adding the following information:

— all available personal identifiers (in particular, fingerprints, palm prints and recent photographs);

— warning markers if the wanted person poses a specific risk;

— a copy of the EAW (this must be attached to the alert for it to have the same value as an original EAW or arrest warrant directly transmitted between competent authorities; several arrest warrants can be attached to a single alert);

([82]) Judgment of the Court of Justice of 23 January 2018, *Dawid Piotrowski*, C-367/16, ECLI:EU:C:2018:27.

([83]) Commission Implementing Decision of 15 January 2021 laying down the technical rules necessary for entering, updating, deleting and searching data in the Schengen Information System (SIS) and other implementing measures in the field of police cooperation and judicial cooperation in criminal matters, C(2021) 92.

([84]) OJ L 312, 7.12.2018, p. 56.

— data on objects used by the person sought ('object extensions' - for example, the vehicle used by the wanted person) or identification documents used;

— links to other alerts on persons or objects.

The contact details and the mobile phone number of the duty office and person responsible should always be given to the SIRENE Bureau, so that they can be notified immediately and at any time of day that the requested person has been found.

Whenever it is likely that the executing Member State will require guarantees by the issuing Member State on the basis of Article 5 of the Framework Decision on EAW, it is advisable to add the relevant information to the EAW. For example, the issuing judicial authority might already indicate its consent to returning the requested person to the executing Member State under specified conditions (see Section 5.9).

3.3. **Transmitting the EAW**

The procedure for transmitting the EAW depends on whether the issuing judicial authority knows the whereabouts of the requested person (Article 9 of the Framework Decision on EAW). In most cases, the person's location is unknown or uncertain and the EAW should be transmitted to all Member States via the SIS. Even when the person's location is known, the issuing judicial authority may decide to issue an alert in the SIS (Article 9(2) of the Framework Decision on EAW).

3.3.1. *When the location of the requested person is unknown*

When the location of the requested person is unknown, the EAW should be transmitted to all Member States. To that end, an alert for arrest or surrender should be created in the SIS in accordance with Article 26 of the SIS Police Regulation ([85]). It is important to emphasise that the issuing judicial authority must issue the EAW before the alert can be entered into the SIS.

The issuing judicial authority should, where appropriate, send a copy of the original EAW and all relevant information concerning the person to the national SIRENE Bureau (via the competent police authority) or make a copy of the original EAW available to the SIRENE Bureau by other means.

The SIRENE Bureau of the issuing Member State checks whether the information is complete (for instance, whether photographs and fingerprints are available and can be attached), attaches the copy of the original EAW to the alert together with a translation (if available) and validates the entry of the alert into the SIS. In addition, the SIRENE Bureau communicates the contents of the EAW to all the other SIRENE Bureaux through the exchange of supplementary information (the SIRENE 'A form'). When several arrest warrants exist for the same person, separate A forms are to be sent for each arrest warrant. The A form is issued in English. It is important to indicate in the A form (field 311) if the search for the person is limited to the territories of certain Member States (geographical search) and to include any further information about the possible whereabouts of the person (field 061 of the A form).

Upon receipt of the A form, all the other SIRENE Bureaux verify whether the information provided in the A form and whether the EAW is complete.

In accordance with Article 25 of the SIS Police Regulation ([86]), at the behest of a competent national authority, a Member State may also require the issuing Member State to add a flag to an alert for arrest for surrender purposes if it obvious that the execution of an EAW will have to be refused. During this verification process, the alert should continue to be available to users. A Member State may also require that a flag be added to the alert if its competent judicial authority releases the subject of the alert during the surrender process. An alert for arrest for surrender purposes shall not be flagged if at least one of the arrest warrants, attached to the alert, can be executed.

([85]) OJ L 312, 7.12.2018, p. 56.
([86]) OJ L 312, 7.12.2018, p. 56. See also Article 31 of Commission Implementing Decision C(2021) 7901 (SIRENE Manual – Police).

If a Member State does not execute the EAW and therefore decides to ask to flag the alert, the alert will remain visible for users. The reason for the alert will in this case remain as 'person for arrest and surrender or extradition'. However, the action to be taken will not be to ask for the arrest of the requested person but rather to take details of the whereabouts of the person (see Article 12(2) and Annex I of Commission Implementing Decision on SIS data entry) ([87]).

The SIRENE Bureaux receiving the A form are also to search, in accordance with national law, all available national information to try to locate the person who is the subject of the alert. They will check national databases (e.g. police and prison systems) to see if the requested person is already known to them or even already in custody for another offence. If the person is located on the basis of such verification, the SIRENE Bureau forwards the information contained in the A form to the competent authority that will execute the EAW.

The competent authorities of all Member States (including law enforcement, border guard and judicial authorities) have access to alerts for arrest in the SIS. If the person is detected and arrested on the basis of the SIS alert in another Member State, the issuing judicial authority will be informed via the national SIRENE Bureau.

An alert for arrest in the SIS containing a copy of the original EAW constitutes and has the same effect as an EAW (see Article 31(1) of the SIS Police Regulation ([88])). The transmission of the original EAW paper copy in addition to the SIS alert is no longer required because the copy of the original EAW is directly attached to the alert. However, since the original EAW is issued in the language of the issuing State and the A form is issued in English, it may still be necessary for the issuing judicial authority to send a translated EAW to the executing Member State after the requested person has been arrested. It is also possible (but not mandatory) to immediately attach a copy of an EAW translation to the alert in one or more official languages of the Union. The *Fiches Belges* section on the EJN website ([89]) contains a list of the languages accepted by Member States and a list is also provided in Annex IV (see Section 3.4). The issuing judicial authority should ensure that the alert entered in the SIS is stored only for the time required to achieve the purposes for which it was entered (see Articles 53 and 55 of the SIS Police Regulation ([90])). This means that the alert needs to be deleted if the EAW is withdrawn (see Section 11.4 of this Handbook) or surrender has taken place (see Article 55(1) of the SIS Police Regulation).

It is furthermore possible to render alerts for arrest invisible (unavailable) (see Article 26 of the SIS Police Regulation ([91])). In the case of an ongoing operation, the issuing Member State may temporarily make an existing alert for arrest unavailable for searching by the end-users in the Member States involved in the operation. In such cases the alert shall only be accessible to the SIRENE Bureaux. This means that, when operationally necessary, instead of deleting the alert for arrest and inserting a new alert for arrest, one can make the alert 'invisible' to the end-users for a specific period of time.

Certain conditions apply to this functionality. Member States are only to make an alert unavailable if:

(a) the purpose of the operation cannot be achieved by other measures;

(b) a prior authorisation has been granted by the competent judicial authority of the issuing Member State; and

(c) all Member States involved in the operation have been informed through the exchange of supplementary information.

The functionality is only to be used for a period not exceeding 48 hours. However, if operationally necessary, it may be extended by further periods of 48 hours. Member States shall keep statistics on the number of alerts in relation to which this functionality has been used.

([87]) Commission Implementing Decision C(2021) 92
([88]) OJ L 312, 7.12.2018, p. 56.
([89]) http://www.ejn-crimjust.europa.eu. Please select there the European Arrest Warrant and the Member State in question for further information.
([90]) OJ L 312, 7.12.2018, p. 56.
([91]) OJ L 312, 7.12.2018, p. 56.

3.3.2. *When the location of the requested person is known*

When the requested person's location is known, the issuing judicial authority can send the EAW directly to the competent authority of the executing Member State for execution (Article 9(1) of the Framework Decision on EAW).

If the issuing judicial authority does not know the competent executing judicial authority, it must make enquiries, including through the contact points of the European Judicial Network, in order to obtain that information from the executing Member State (Article 10(1) of the Framework Decision on EAW). The Atlas tool on the EJN website also contains information and contact details of each Member State's competent authorities ([92]).

In order to reduce any risk of the requested person absconding, the issuing judicial authority can also send the EAW to its national SIRENE Bureau for transmission to the other Member States via the SIS (see Section 3.3.1). The SIS alert enables the police authorities in the Member States to be aware that the person is wanted for arrest. However, it should be clearly indicated to all SIRENE Bureaux that the person's location is known – in order to avoid unnecessary in checking whether the person is known or present on their territory.

3.3.3. *Transmitting the EAW to Member States who do not use the SIS*

Currently all EU Member States use the SIS. Cyprus was the last country to join the SIS in July 2023. In the future, if there is any Member State that do not use the SIS and a transmission of an EAW to that Member State is required, the EAW can be sent either directly or by the relevant INTERPOL National Office. Transmitting via INTERPOL is provided for in Article 10(3) of the Framework Decision on EAW.

However, it should be noted that an INTERPOL alert does not constitute grounds for arrest in some Member States. It is therefore important to clearly indicate the existence of the EAW in the alert because an EAW always entails an obligation to apprehend the requested person.

3.4. **Translation of the EAW**

The EAW form must be completed or translated into the official language or one of the official languages of the executing Member State. However, where the executing Member State has stated in a declaration that it will also accept a translation in one or more official languages of the institutions of the Union, the EAW may, alternatively, be translated into one of those languages (Article 8(2) of the Framework Decision on EAW).

The EJN website (http://www.ejn-crimjust.europa.eu – *Fiches Belges* tool) contains a list of the languages accepted by the Member States. A list is also provided in Annex IV.

Where the EAW is transmitted via the SIS, the issuing Member State may also attach to the alert a copy of a translation of the EAW in one or more other official languages of the institutions of the Union as provided for in Article 27(2) of the SIS Police Regulation ([93]). These translations as well as the SIRENE A forms should serve as a sufficient basis to carry out the verifications indicated in Section 3.3.1 of this Handbook. It should be noted that this does not affect the obligation to translate the EAW into a language accepted by the executing Member State after the person has been arrested.

When the location of the arrest of the requested person can be anticipated, it may be better to translate the EAW in advance into the language of that Member State. This makes it easier to respect the short deadlines for execution of an EAW.

In cases where an EAW is transmitted directly to an executing judicial authority, it must be accompanied by a translation. As EAWs must be dealt with and executed as a matter of urgency (Article 17(1) of the Framework Decision on EAW), the issuing Member State should send the translation as soon as possible and, in any case, before the deadline set by the Member State for receiving a translated EAW (see Section 4.3 of this Handbook).

([92]) http://www.ejn-crimjust.europa.eu. Please, select the European Arrest Warrant and the Member State in question.
([93]) OJ L 312, 7.12.2018, p. 56.

The translations must be done using the standard EAW form, which is available in all 24 official languages of the Union. All language versions of the form are available on the EJN website (Judicial Library and Compendium, in both pdf and Word formats).

3.5. After the requested person is apprehended: cooperation and communication with the competent authorities of the executing Member State

After the requested person is apprehended in another Member State, the competent authorities of the issuing Member State should swiftly respond to requests for information and other requests from the authorities of the executing Member State. The competent authorities of the issuing Member State are advised to refer to Part II, Section 4.4. of this Handbook for guidelines on good cooperation and communication with the competent authorities of the executing Member State. EJN or Eurojust can assist if problems in communication arise. The SIRENE Bureaux also regularly facilitate communications when the person has been apprehended following an alert for arrest issued in the SIS.

If the issuing judicial authority decides to withdraw its EAW, it should notify this without delay to the executing judicial authority, in particular where the requested person has been deprived of liberty. It must also ensure that the alert in the SIS is deleted.

The issuing judicial authority may at any time forward any additional useful information to the executing judicial authority (Article 15(3) of the Framework Decision on EAW).

PART II: EXECUTING AN EAW

4. PROCEDURE FOR EXECUTING AN EAW

4.1. Time limits for taking the decision on the execution of the EAW

Strict time limits are set out for the execution of an EAW. The time limits depend on whether the requested person consents to his or her surrender. It is emphasised that, notwithstanding the time limits, all EAWs must be dealt with and executed as a matter of **urgency** (Article 17(1) of the Framework Decision on EAW).

If the requested person consents to his or her surrender, the final decision on the execution of the EAW should be taken within a period of **10 days after consent** has been given (Article 17(2) of the Framework Decision on EAW).

If the requested person does not consent to his or her surrender, the final decision on the execution of the EAW should be taken within a period **of 60 days after the arrest** of the requested person (Article 17(3) of the Framework Decision on EAW).

According to the Framework Decision on EAW, in principle, consent may not, , be revoked. Each Member State may, however, provide that consent and, if appropriate, renunciation of entitlement to the rule of speciality (see Section 2.6) may be revoked, in accordance with the rules applicable under its domestic law ([94]). If the requested person revokes his or her consent, the initial 10-day time limit ceases to apply and becomes 60 days, starting from the day of arrest (Article 13(4) of the Framework Decision on EAW). When establishing that time limit, the period between the date of consent and that of its revocation is not taken into consideration.

Exceptionally, where in a specific case the EAW cannot be executed within the applicable time limits, those time limits may be extended by a **further 30 days**. In that case, the executing judicial authority must immediately inform the issuing judicial authority and give the reasons for the delay (Article 17(4) of the Framework Decision on EAW).

As held by the Court of Justice in its judgment in Case C-168/13 PPU *Jeremy F.* ([95]), any appeal with suspensive effect provided for by national legislation against a surrender decision must in any event comply with the time limits laid down in the Framework Decision on EAW for making a final decision.

([94]) To date, Estonia, Austria and Romania have introduced a notification to this effect under Article 27(1) of the Framework Decision on EAW.

([95]) Judgment of the Court of Justice of 30 May 2013, *Jeremy F.*, C-168/13 PPU, ECLI:EU:C:2013:358.

In its judgment in Case C-237/15 PPU *Lanigan* ([96]), the Court of Justice held that the expiry of the time limits for taking a decision on the execution of an EAW does not free the competent authority from its obligation to adopt a decision in that regard and does not preclude, in itself, the continued detention of the requested person. However, the release of the requested person, together with the measures necessary to prevent him or her from absconding, must be ordered if the duration of the custody is excessive (see Section 4.6).

Duty to inform Eurojust of delays

Where a Member State cannot observe a time limit, the competent authorities must inform Eurojust, giving the reasons for the delay (Article 17(7) of the Framework Decision on EAW). Given the fundamental importance of respecting the time limits in the operation of the EAW, Eurojust monitors cases where the time limits could not be observed and of which it has been informed. Eurojust can thus help identify any systematic problems causing delays. In many situations, Eurojust can help competent authorities to respect the time limits, for example by facilitating information exchange between competent authorities ([97]).

4.2. **Time limits for surrendering the requested person (after the decision on the execution of the EAW)**

The time limit for surrendering the requested person starts to run immediately after the final decision on the execution of the EAW is taken. The authorities concerned should arrange and agree on the person's surrender as soon as possible (Article 23(1) of the Framework Decision on EAW). In any event, the surrender must take place no later than **10 days** after the final decision on the execution of the EAW (Article 23(2) of the Framework Decision on EAW). It is therefore necessary to agree on the practical arrangements of the surrender without delay.

If the surrender of the requested person within the 10-day period is prevented by circumstances beyond the control of any of the Member States (concept of *force majeure*) the executing and issuing judicial authorities must immediately contact each other and agree on a new surrender date. In that event, the surrender must take place within 10 days of the new date thus agreed (Article 23(3) of the Framework Decision on EAW).

In its judgment in Case C-640/15 *Vilkas* ([98]), the Court of Justice concluded that the executing judicial authority may agree on a new surrender date with the issuing judicial authority, even if the previous two surrender attempts failed due to resistance put up by the requested person – in so far as that resistance could not have been foreseen by the authorities and the consequences of the resistance for the surrender could not have been avoided in spite of the exercise of all due care by those authorities (a matter for the referring court to ascertain). Those authorities remain obliged to agree on a new surrender date even if the time limits prescribed in Article 23 have expired.

In Case C-804/21 PPU *C and CD* ([99]), the Court of Justice held that the concept of *force majeure*, referred to in Article 23(3) of the Framework Decision on EAW, does not extend to legal obstacles to surrender which arise from legal actions brought by the person who is the subject of the EAW and are based on the law of the executing Member State. Additionally, the finding of a situation of *force majeure* by the police services of the executing Member State, followed by the setting of a new surrender date, without intervention on the part of the executing judicial authority, does not meet the formal requirements laid down in Article 23(3), irrespective of whether that situation of *force majeure* actually exists. With respect to Article 23(5) of Framework Decision, the Court held that the time limits referred to in Article 23(2) to (4) must be regarded as having expired, with the result that the person must be released if the requirement of intervention on the part of the executing judicial authority, referred to in Article 23(3), has not been met. However, having regard to the obligation on the part of the executing Member State to carry on with the procedure for executing the EAW, the competent authority of the executing Member State is required, if the person who is the subject of the EAW is released, to take any measures it thinks necessary to prevent that person from absconding, with the exception of measures involving deprivation of liberty.

([96]) Judgment of the Court of Justice of 16 July 2015, *Lanigan* C-237/15 PPU, ECLI:EU:C:2015:474.
([97]) See also the template developed by Eurojust for national authorities in relation to this notification obligation. The template is available in 22 languages at https://www.eurojust.europa.eu/electronic-forms-article-177-eaw-framework-decision.
([98]) Judgment of the Court of Justice of 25 January 2017, *Vilkas*, C-640/15, ECLI:EU:C:2017:39.
([99]) Judgment of the Court of Justice of 28 April 2022, *C and CD*, C-804/21 PPU, ECLI:EU:C:2022:307.

As regards postponement of surrender for serious humanitarian reasons (for example, serious illness of the requested person), see Section 5.11.1.

4.3. **Translation of the EAW**

The executing judicial authority may set a deadline for receiving a translation of the EAW. The EAW is to be translated into one of the official languages of the executing Member State or another language which that Member State has stated that it would accept. The executing judicial authorities are strongly encouraged to set this deadline **between 6 and 10 calendar days.**

Experience has shown that a deadline shorter than 6 days is often too short for providing a translation of adequate quality. Allowing over 10 days could be regarded as leading to an excessive prolongation of the procedure, in particular when the requested person is held in custody.

4.4. **Communication between the competent judicial authorities of Member States *prior* to the decision on surrender**

4.4.1. *When to communicate*

Supplementary information necessary to allow a decision on surrender

Requests for supplementary information should be exceptional. In cases where a SIS alert was issued, this request communication should be made via the SIRENE Bureaux through the SIRENE channel by using the dedicated form (the M form). The EAW operates on the general presumption that the executing judicial authority can decide on the surrender on the basis of the information contained in the EAW. This presumption rests on the principle of mutual recognition and on the need to decide on the surrender swiftly. Requests for supplementary information are nonetheless necessary in some situations in order to comply with the duty to execute an EAW.

If the information communicated by the issuing Member State is insufficient to allow the executing judicial authority to decide on surrender, the executing judicial authority must communicate with the issuing judicial authority in order to obtain the necessary supplementary information. It is important to note that the Framework Decision on EAW presents this as the executing judicial authority's **duty** (Article 15(2)).

Communication between the issuing and executing judicial authorities prior to the surrender decision should primarily concern supplementary information that is relevant for deciding on surrender (see Section 5.2). Thus, requests for supplementary information should concern, in particular, the content required in the EAW form which is needed to assess the applicability of any ground for refusal.

These requests must also respect the duty of sincere cooperation laid down in the first subparagraph of Article 4(3) TEU ([100]). This is not the case when an executing judicial authority asks multiple and/or unnecessary questions that (because of their number, scope and content) make it in practice impossible for the authorities of the issuing Member State to provide a useful answer given the short time limits laid down in Article 17 of the Framework Decision on EAW (see judgment of the Court of Justice in Case C-220/18 PPU *ML* ([101])).

In line with the principle of mutual recognition, the executing judicial authority may not question the merits of decisions by the issuing Member State's judicial authorities.

Communication should always be done as swiftly as possible and, in any event, within the time limits set out in Article 17 of the Framework Decision on EAW.

Typical situations in which supplementary information may be necessary are when:

(a) a relevant part of the EAW form is not filled in;

(b) the content of the EAW is unclear;

(c) there is an obvious error in the EAW;

(d) it is uncertain whether the correct person was arrested pursuant to the EAW.

([100]) Judgment of the Court of Justice of 31 January 2023, *Puig Gordi and Others*, C-158/21, ECLI:EU:C:2023:57.
([101]) Judgment of the Court of Justice of 25 July 2018, *ML*, C-220/18 PPU, ECLI:EU:C:2018:589.

Before invoking a ground for refusal

In many situations, the executing judicial authority should contact the issuing judicial authority before deciding to apply a ground for non-execution. For example, this can help establish whether there are other measures of judicial cooperation that could be used where the EAW cannot be executed.

Other reasons to communicate

Additional communication may also be required, for example:

(a) for obtaining guarantees from the issuing Member State concerning life-term custodial sentences or for returning nationals or residents for serving custodial sentences in the executing Member State (see Section 5.9);

(b) in the case of multiple EAWs concerning the same person (see Section 5.12);

(c) where the defendant has raised legitimate concerns regarding an alleged breach of fundamental rights that requires input from the issuing judicial authority.

4.4.2. *How to communicate*

The EAW builds on the principle of direct contact between competent authorities. Direct communication between the issuing and executing judicial authorities has the benefit of being swift and reliable.

However, where the Member State designated a central authority for official correspondence (pursuant to Article 7 of the Framework Decision on EAW), communication must take place through the central authority. Information on Member States that have appointed a central authority can be found in the EAW section of the Judicial Library on the EJN website ([102]).

Judicial Atlas (contact details)

The contact details of the Member States' competent authorities can be found in the Atlas tool on the EJN website (*https://www.ejn-crimjust.europa.eu*). The Atlas was developed for the purpose of identifying the authority locally competent for receiving a decision to be executed and contacting the relevant person to discuss practical issues regarding the EAW and other mutual recognition instruments.

Methods of communication

There are no specific rules in the Framework Decision on EAW on the forms of, or procedures for, communication following reception of an EAW. Communication may be carried out by any available, sufficiently secure means (for example, telephone or e-mail). The most efficient way is to communicate directly with minimum formalities and, whenever possible, by agreeing to use a common language.

New rules on means of communication are expected to be adopted on the basis of two Commission proposals from 1 December 2021 – a proposal for a regulation laying down rules on digital communication in judicial cooperation procedures in civil, commercial and criminal matters ([103]) and a proposal for a directive aligning the existing rules on communication with the rules of the proposed regulation ([104]).

It is advisable to keep the language in written communication as simple as possible. Terms and concepts that might have different connotations in different legal systems should be avoided or, explained. This will help to avoid misunderstandings and problems with translations.

Good communication helps to keep the procedure swift, to avoid misunderstandings and to respect the short time limits set in Article 17 of the Framework Decision on EAW (see Sections 4.1 and 4.2 on time limits).

([102]) https://www.ejn-crimjust.europa.eu; please visit Judicial Library → Legal Framework → EU Judicial Cooperation → European arrest warrant → 2002/584/JHA: Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States → EAW-Notifications. The Member States which have made a notification under Article 7 include: BE, BG, CZ, EE, IE, GR, ES, FR, IT, CY, LV, HU, MT, AT, PL, PT, RO, SI, SK, SE and FI.

([103]) COM(2021) 759 final.

([104]) COM(2021) 760 final.

Always urgent

The issuing judicial authority must deal with requests for further information as a matter of urgency. The executing judicial authority may set a (reasonable) time limit for the receipt of this information, taking into account the need to observe the time limits set in Article 17 of the Framework Decision on EAW (Article 15(2) of the Framework Decision on EAW).

Competent authorities should also take into account the delays that may be caused by requests for further information and attempts to minimise such delays.

European Judicial Network (EJN) or Eurojust contact points can facilitate communication

The contact points of the EJN or national members of Eurojust can facilitate communication between the Member States' authorities. Both the EJN and Eurojust can provide swift and informal communication between representatives of all Member States' legal systems.

Using the EJN or Eurojust in accordance with their specific roles is particularly advisable in urgent situations or when reaching the right authority is difficult.

As examples, tools on the EJN website (the Judicial Atlas, *Fiches Belges*) and the EJN contact points can assist in identifying the competent executing judicial authorities and provide information on the specific requirements in the executing Member State. The Eurojust national member of the executing Member State should be involved in cases of repeated delays or refusals of execution. The executing judicial authority may also seek the advice of Eurojust in the case of multiple EAWs within the meaning of Article 16(2) of the Framework Decision on EAW. In addition, the EJN's secure telecommunications connection may be used as a channel to transmit EAWs, as provided for in Article 10(2) of the Framework Decision on EAW. It is good practice to mention on the EAW form if EJN contact points or Eurojust national members or other persons in charge of a case have been involved in the preparation of the EAW ([105]).

Role of the SIRENE Bureaux

For arrest alerts issued in the SIS, the SIRENE Bureaux are responsible for the exchange of information from the moment the alert is issued and the person is found ('the hit') until at least the start of the formal surrender procedure. Judicial authorities should keep the SIRENE Bureau informed about any developments that occur between the hit and the final decision on the execution of the EAW ([106]).

4.5. Duty of the executing judicial authority to inform the issuing judicial authority *after* deciding on the surrender

After taking a decision on whether or not to surrender the requested person, the executing judicial authority has a duty to inform the issuing Member State about the decision as well as about the time the requested person has spent in detention.

4.5.1. *Information on the decision concerning surrender*

The executing judicial authority must notify the issuing judicial authority of the decision concerning surrender. Regardless of whether or not the requested person will be surrendered, this notification must be done **immediately after the decision is taken** in order to allow the issuing Member State's authorities to take appropriate action. This duty to immediately notify the issuing Member State stems from Article 22 of the Framework Decision on EAW.

For this purpose, it is advisable to use the standard form presented in Annex VII to this Handbook. It is also recommended that the executing judicial authority communicates the decision **directly** to the issuing judicial authority, as this facilitates fast and clear communication (see Section 4.4.2).

([105]) For a general introduction on the tasks of Eurojust and the EJN see document 'Assistance in International Cooperation in Criminal Matters for Practitioners – European Judicial Network and Eurojust – What can we do for you?'. On the assessment of the allocation of cases to the EJN and Eurojust and the EJN, see document 'Joint Eurojust/EJN Report on the Assessment of the Allocation of Cases to Eurojust and to the EJN'. Both are available on both the EJN website (https://www.ejn-crimjust.europa.eu) and the Eurojust website (http://www.eurojust.europa.eu).

([106]) See Articles 27, 28 and 55 of Regulation (EU) 2018/1862 as well as Chapter 7 of Commission Implementing Decision C(2021)7901 ('SIRENE Manual - Police').

Reasons must be given for any refusal to execute an EAW (Article 17(6) of the Framework Decision on EAW).

It is important that the executing judicial authorities **clearly indicate the offence(s) to which the decision concerning surrender relates**. This is relevant because of the rule of speciality, enshrined in Article 27 of the Framework Decision on EAW (see Section 2.6). The rule of speciality might preclude the issuing Member State from prosecuting offences committed prior to the surrender, other than the one or those for which the requested person was surrendered.

In cases where the EAW was entered in the SIS, the executing judicial authority should notify its decision to its Member State's SIRENE Bureau.

Judicial authorities should keep the SIRENE Bureau informed about any developments that occur between the hit and the final decision on the execution of the EAW.

As soon as the person is found, the issuing judicial authority will be informed via the SIRENE Bureau, which, in most cases, will organise the practical modalities for the surrender of the person and will fully support the issuing judicial authority requesting the arrest (in some countries SIRENE Bureaux directly execute handovers in others SIRENE Bureaux organises units to execute it). A specific SIRENE form ('T form') has been drawn up to facilitate the exchange of information between SIRENE Bureaux for the surrender, extradition, and transit of arrested persons (see Article 38 to 40 of SIRENE Manual – Police) ([107]).

4.5.2. *Information on the time spent in detention*

All information concerning the duration of the detention of the requested person on the basis of the EAW must be transmitted to the issuing judicial authority. The Framework Decision on EAW requires this information to be transmitted **at the time of the surrender** (Article 26(2) of the Framework Decision on EAW). This information may be transmitted by the executing judicial authority or the designated central authority.

It is important that the issuing Member State's authorities are aware of the exact time spent in detention. This period must be deducted from the final custodial sentence or detention order (Article 26(1) of the Framework Decision on EAW).

The standard form in Annex VII contains space for providing information on time spent in detention.

In its judgment in Case C-294/16 PPU *JZ* ([108]), the Court of Justice ruled as follows:

'47 (…) the concept of "detention" within the meaning of Article 26(1) of Framework Decision 2002/584 must be interpreted as covering not only imprisonment but also any measure or set of measures imposed on the person concerned which, on account of the type, duration, effects and manner of implementation of the measure(s) in question deprive the person concerned of his liberty in a way that is comparable to imprisonment.

(…)

53 When applying Article 26(1) of Framework Decision 2002/584, the judicial authority of the Member State which issued the European arrest warrant is required to consider whether the measures taken against the person concerned in the executing Member State are to be treated in the same way as a deprivation of liberty, as referred to in paragraph 47 of the present judgment, and therefore constitute detention within the meaning of Article 26(1). If, in carrying out that examination, the judicial authority comes to the conclusion that that is the case, Article 26(1) of Framework Decision 2002/584 requires that the whole of the period during which those measures were applied be deducted from the period of detention which that person would be required to serve in the Member State which issued the European arrest warrant.

(…)

([107]) Commission Implementing Decision C(2021) 7901.
([108]) Judgment of the Court of Justice of 28 July 2016, *JZ*, C-294/16 PPU, ECLI:EU:C:2016:610.

55 However, in so far as Article 26(1) of that framework decision merely imposes a minimum level of protection of the fundamental rights of the person subject to the European arrest warrant, it cannot be interpreted, as the Advocate General stated at point 72 of his Opinion, as preventing the judicial authority of the Member State that issued that arrest warrant from being able, on the basis of domestic law alone, to deduct from the total period of detention which the person concerned would have to serve in that Member State all or part of the period during which that person was subject, in the executing Member State, to measures involving not a deprivation of liberty but a restriction of it.

56 It must, lastly, be borne in mind that, in the course of the examination referred to in paragraph 53 of the present judgment, the judicial authority of the Member State which issued the European arrest warrant may, under Article 26(2) of Framework Decision 2002/584, ask the competent authority of the executing Member State to transmit any information it considers necessary.'

4.6. **Keeping the requested person in detention in the executing Member State**

Following the arrest of the requested person on the basis of the EAW, the executing judicial authority must decide whether the person needs to be kept in detention or set free until the decision on the execution of the EAW. Detention is not necessarily required, therefore, and the person may be provisionally released at any time in conformity with the domestic law of the executing Member State (Article 12 of the Framework Decision on EAW).

When the person is not kept in detention, the competent authority of the executing Member State has a duty to take all measures it deems necessary to prevent the person absconding (Article 12 of the Framework Decision on EAW). These measures could include travel-bans or a duty to regularly register and electronic surveillance.

In its judgment in Case C-492/18 *TC* ([109]), the Court of Justice ruled that the Framework Decision on EAW precludes a national provision that lays down a general and unconditional obligation to release a requested person arrested pursuant to an EAW as soon as the period of 90 days from that person's arrest has elapsed, where there is a very serious risk of that person absconding and where the risk cannot be reduced to an acceptable level by the imposition of appropriate measures.

In its judgment in Case C-237/15 PPU *Lanigan* ([110]), the Court of Justice held that:

'Article 12 of that Framework Decision, read in conjunction with Article 17 thereof and in the light of Article 6 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding, in such a situation, the holding of the requested person in custody, in accordance with the law of the executing Member State, even if the total duration for which that person has been held in custody exceeds those time-limits, provided that that duration is not excessive in the light of the characteristics of the procedure followed in the case in the main proceedings, which is a matter to be ascertained by the national court. If the executing judicial authority decides to bring the requested person's custody to an end, that authority is required to attach to the provisional release of that person any measures it deems necessary so as to prevent him from absconding and to ensure that the material conditions necessary for his effective surrender remain fulfilled for as long as no final decision on the execution of the European arrest warrant has been taken.'

The decision on detention must, however, be taken in accordance with national law and in conformity with Article 6 of the Charter, which provides that everyone has the right to liberty and security of person. This article requires the existence of a legal basis, which justifies that continued detention and which must meet the requirements of clarity, predictability and accessibility in order to avoid any risk of arbitrariness. The Court of Justice ruled in Case C-492/18 *TC* ([111]) that:

([109]) Judgment of the Court of Justice of 12 February 2019, *TC*, C-492/18 PPU, ECLI:EU:C:2019:108.
([110]) Judgment of the Court of Justice of 16 July 2015, *Lanigan*, C-237/15 PPU, ECLI:EU:C:2015:474.
([111]) Judgment of the Court of Justice of 12 February 2019, *TC*, C-492/18 PPU, ECLI:EU:C:2019:108.

'Article 6 of the Charter of Fundamental Rights of the European Union must be interpreted as precluding national case-law which allows the requested person to be kept in detention beyond that 90-day period, on the basis of an interpretation of that national provision according to which that period is suspended when the executing judicial authority decides to refer a question to the Court of Justice of the European Union for a preliminary ruling, or to await the reply to a request for a preliminary ruling made by another executing judicial authority, or to postpone the decision on surrender on the ground that there could be, in the issuing Member State, a real risk of inhuman or degrading detention conditions, in so far as that case-law does not ensure that that national provision is interpreted in conformity with Framework Decision 2002/584 and entails variations that could result in different periods of continued detention.'

5. SURRENDER DECISION

5.1. **General duty to execute EAWs**

The executing judicial authority has a general duty to execute any EAW on the basis of the principle of mutual recognition and in accordance with the provisions of the Framework Decision on EAW (Article 1).

In its judgment in Case C-268/17 *AY* ([112]), the Court of Justice held that Article 1(2) of the Framework Decision must be interpreted as requiring the judicial authority of the executing Member State to adopt a decision on any EAW forwarded to it – even when a ruling has already been made in that Member State on a previous EAW concerning the same person and the same acts, but the second EAW has been issued only on account of the indictment, in the issuing Member State, of the requested person. On a similar note, in Case C-158/21 Puig Gordi and Others ([113]), the Court of Justice held that Framework Decision 2002/584 does not preclude the issuing of several successive EAW against a requested person, where the execution of a first EAW has been refused, provided that the execution of a new EAW does not result in an infringement of Article 1(3) of that framework decision and provided that the issuing of the latter EAW is proportionate.

As the Court of Justice ruled in its judgment in Case C-510/19 *AZ* ([114]), the decision to execute an EAW must be taken by a 'judicial authority' that meets the requirements inherent in effective judicial protection (see Section 2.1.5).

The provisions of the Framework Decision on EAW relating to the decision to execute an EAW are addressed in Sections 5 to 9 of this Handbook. The decision on surrender must be carried out within the time limits mentioned in Section 4.

In addition, the competent authorities must ensure that the minimum procedural rights of the requested person are respected, as mentioned in Section 12.

5.2. **Provision of information by the issuing judicial authority**

The information provided by the issuing judicial authority under Article 8 of the Framework Decision on EAW serves to provide the executing judicial authority with the minimum official information required to enable it to take swiftly a decision on the execution of the EAW.

In Case C-551/18 PPU *IK* ([115]), the issuing judicial authority failed to indicate an additional sentence of conditional release that was imposed on the requested person for the same offence in the same judicial decision as that relating to the main offence. The Court of Justice considered that, as the main sentence of 3 years of imprisonment exceeded the threshold of 4 months set out in Article 2(1) of the Framework Decision on EAW, the indication provided by the issuing authority was sufficient for the purpose of ensuring that the EAW satisfied the requirement of validity referred to in Article 8(1)(f) of the Framework Decision on EAW.

([112]) Judgment of the Court of Justice of 25 July 2018, *AY*, C-268/17, ECLI:EU:C:2018:602.
([113]) Judgment of the Court of Justice of 31 January 2023, *Puig Gordi and Others*, C-158/21, ECLI:EU:C:2023:57.
([114]) Judgment of the Court of Justice of 24 November 2020, *AZ*, C-510/19, ECLI:EU:C:2020:953.
([115]) Judgment of the Court of Justice of 6 December 2018, *IK*, C-551/18 PPU, ECLI:EU:C:2018:991.

The Court of Justice further ruled:

'Article 8(1)(f) of Council Framework Decision 2002/584/JHA (…), must be interpreted as meaning that failure to indicate, in the European arrest warrant pursuant to which the person concerned has been surrendered, an additional sentence of conditional release which was imposed on that person for the same offence in the same judicial decision as that relating to the main custodial sentence does not, on the facts of the case in the main proceedings, preclude the enforcement of that additional sentence, on the expiry of the main sentence after an express decision to that effect is taken by the national court with jurisdiction for the enforcement of sentences, from resulting in deprivation of liberty.'

In Case C-241/15 *Bob-Dogi* ([116]), the Court of Justice ruled that, before refusing to give effect to an EAW on the ground that it is invalid, the executing judicial authority must, in accordance with Article 15(2) of the Framework Decision on EAW, request the issuing judicial authority to furnish all necessary supplementary information as a matter of urgency.

5.3. *The list of 32 offences which give rise to surrender without verification of double criminality*

The executing judicial authority should check whether any of the offences have been determined by the issuing judicial authority as belonging to one of the 32 categories of offences listed in Article 2(2) of the Framework Decision on EAW. The executing judicial authority can only verify double criminality for offences that are not in that list.

It should be emphasised that it is only the definition of the offence and maximum punishment in the issuing Member State's law that is relevant. The executing judicial authority may ascertain what the issuing judicial authority has indicated in the EAW. If the executing judicial authority considers that there is an obvious error in this regard, it should contact the issuing judicial authority for clarification (see Section 4.4 on communication).

As regards the relevant version of the law of the issuing Member State, the Court of Justice interpreted Article 2(2) of the Framework Decision on EAW in its judgment in Case C-717/18 *X* ([117]). It ruled:

'(…) in order to ascertain whether the offence for which a European arrest warrant has been issued is punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years, as it is defined in the law of the issuing Member State, the executing judicial authority must take into account the law of the issuing Member State in the version applicable to the facts giving rise to the case in which the European arrest warrant was issued.'

5.4. **Accessory offences**

'Accessory offences' refers to one or more offences punishable by a lower sanction than the threshold set out in Article 2(1) of the Framework Decision on EAW. Such offences may be included in an EAW as accessory offences. The issuing judicial authority might include such offences on the EAW form even though they do not fall within the scope of the EAW (see Section 2.3).

However, the EAW must be issued for at least one offence that meets the threshold set in Article 2(1) of the Framework Decision on EAW.

The Framework Decision on EAW does not explicitly provide for a way to deal with the issue of accessory surrender. Some Member States have decided to allow it but others do not. If the executing Member State does not surrender a requested person for accessory offences, the rule of speciality may preclude the issuing Member State from prosecuting those offences (see Section 2.6 on the rule of speciality).

If the EAW includes accessory offences, it is advisable for the executing judicial authority to clearly indicate in the surrender decision whether the surrender also concerns the accessory offences. Surrender for the accessory offences grants the issuing Member State the competence to prosecute or execute a custodial sentence for those offences.

([116]) Judgment of the Court of Justice of 1 June 2016, *Bob-Dogi*, C-241/15, ECLI:EU:C:2016:385.
([117]) Judgment of the Court of Justice of 3 March 2020, *X*, C-717/18, ECLI:EU:C:2020:142.

Annex VIII contains a list of Member States whose legal system provides for the possibility to surrender for accessory offences.

5.5. **Grounds for non-execution (refusal)**

The general duty to execute EAWs (enshrined in Article 1(2) of the Framework Decision on EAW) is limited by the grounds for mandatory and optional non-execution of the EAW, i.e. the grounds for *refusal* (Articles 3, 4 and 4a of the Framework Decision on EAW). It is important to note that in accordance with the Framework Decision on EAW, these grounds are, in principle, the only ones that the executing judicial authority may invoke as the basis for non-execution of a validly issued EAW. The Court of Justice has clarified that the list of grounds is **exhaustive** (notably in its judgments in Case C-123/08 *Wolzenburg* and Joined Cases C-404/15 and C-659/15 PPU *Aranyosi and Căldăraru* ([118])).

The executing judicial authority must, in some situations, contact the issuing judicial authority before deciding to refuse the surrender. This might be advisable where there are uncertainties regarding the application of any of the grounds for non-execution. The executing judicial authority can also communicate on the possibilities for other measures (such as the transfer of prisoners) before taking the refusal decision (see Section 4.4 on communication and Section 2.5 on the other Union measures on judicial cooperation).

After the decision to refuse the surrender has been taken, the requested person can no longer be kept in detention on the basis of the EAW.

5.5.1. *Mandatory grounds for non-execution*

Where one or more of the mandatory grounds for non-execution apply, the executing judicial authority must refuse to execute the EAW (Article 3 of the Framework Decision on EAW). These grounds are provided in Article 3 of the Framework Decision on EAW.

Amnesty (Article 3(1))

The offence to which the arrest warrant is based is covered by amnesty in the executing Member State. It is also required that the executing Member State has jurisdiction to prosecute the offence under its own criminal law.

Ne bis in idem (Article 3(2))

The executing judicial authority is informed that the requested person has been finally judged by a Member State in respect of the same acts. It is also required that, where a sentence has been passed, that sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State.

The Court of Justice has handed down several judgments in cases on the interpretation of the *ne bis in idem* principle in relation to Article 54 of the Convention Implementing the Schengen Agreement (CISA). These judgments are applicable to the Framework Decision on EAW by virtue of the judgment in Case C-261/09 *Mantello* ([119]). In its judgment in Case C-129/14 PPU *Spasic* ([120]), the Court of Justice ruled that Article 54 CISA is compatible with Article 50 of the Charter, where the principle is enshrined.

Article 54 CISA

'A person whose trial has been finally disposed of in one Contracting Party may not be prosecuted by another Contracting party for the same acts provided that, if a penalty has been imposed, it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing Contracting party.'

Article 50 of the Charter

'Right not to be tried or punished twice in criminal proceedings for the same criminal offence

([118]) Judgment of the Court of Justice of 6 October 2009, *Wolzenburg*, C-123/08, ECLI:EU:C:2009:616, Judgment of the Court of Justice of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, ECLI:EU:C:2016:198.

([119]) Judgment of the Court of Justice of 16 November 2010, *Mantello,* C-261/09, ECLI:EU:C:2010:683.

([120]) Judgment of the Court of Justice of 27 May 2014, *Spasic,* C-129/14 PPU, ECLI:EU:C:2014:586.

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.'

In its judgments in Case C-261/09 *Mantello* ([121]) and Case C-268/17 *AY* ([122]), the Court of Justice confirmed the interpretation of concepts such as 'final decision', 'same act' and 'sentence has been served' set out in its earlier case-law. In Case C-268/17 *AY,* the Court of Justice ruled that a decision by a public prosecutor's office to terminate an investigation during which the person who is subject to an EAW was interviewed only as a witness may not be relied on for the purpose of refusing to execute that EAW under Article 3(2) of the Framework Decision on the EAW.

In its judgment in Case C-505/19, *WS (INTERPOL red notice)* ([123]) the Court of Justice specified with regard to the lawfulness of the arrest and detention of a requested person that:

'(…) although under Article 3(2) of Framework Decision 2002/584 the execution of a European arrest warrant is to be refused if the judicial authority of the executing Member State is informed that the *ne bis in idem* principle applies, it is apparent from Article 12 of that framework decision that, when a person is arrested on the basis of a European arrest warrant, it is for that authority to decide whether that person should remain in detention, in accordance with the law of the executing Member State. It follows that the arrest of the person concerned or his or her continued detention is precluded only if that authority has established that the *ne bis in idem* principle applies'.

Additionally, in Case C-203/20 *AB and Others* ([124]), the Court of Justice held that Article 50 of the Charter must be interpreted as not precluding the issue of an EAW against a person who was subject to a criminal prosecution that was initially discontinued by a final judicial decision adopted on the basis of an amnesty, and resumed following the adoption of a law revoking that amnesty, if that judicial decision was adopted before any determination as to the criminal liability of the person concerned.

Annex VI contains a list of the judgments of the Court of Justice concerning the principle of *ne bis in idem* in criminal matters. Summaries of these cases can be found in Eurojust's compilation entitled *Case-law by the Court of Justice of the European Union on the principle of ne bis in idem in criminal matters* (available at www.eurojust.europa.eu).

Under the age of criminal responsibility (Article 3(3))

Due to his or her age, the requested person cannot be held criminally responsible for the acts on which the arrest warrant is based under the law of the executing Member State.

Member States' laws define the minimum age for criminal responsibility differently. Furthermore, the moment when this age applies in a particular case varies, meaning that the relevant moment might be, for example, when the suspected offence takes place or when the person is charged.

This ground for non-execution applies if, in the executing Member State, the requested person might only face civil or administrative proceedings but not criminal proceedings, due to his or her age.

In its judgment in Case C-367/16 *Piotrowski* ([125]), the Court of Justice ruled that the executing judicial authority must refuse to surrender only those minors who are the subject of an EAW and who, under the law of the executing Member State, have not yet reached the age at which they are regarded as criminally responsible for the acts on which the warrant issued against them is based. It is not possible for the executing judicial authority to consider additional conditions, relating to an assessment based on the circumstances of the individual, to which the law of its Member State specifically makes subject the prosecution and conviction of a minor. It is for the issuing judicial authority to apply the specific rules governing criminal law penalties for offences committed by minors in its Member State.

([121]) Judgment of the Court of Justice of 16 November 2010, *Mantello,* C-261/09, ECLI:EU:C:2010:683.
([122]) Judgment of the Court of Justice of 25 July 2018, *AY,* C-268/17, ECLI:EU:C:2018:602.
([123]) Judgment of the Court of Justice of 12 May 2021, *WS,* C-505/19, ECLI:EU:C:2021:376.
([124]) Judgment of the Court of Justice of 16 December 2021, *AB and Others,* C-203/20, ECLI:EU:C:2021:1016.
([125]) Judgment of the Court of Justice of 23 January 2018, *Piotrowski*, C-367/16, ECLI:EU:C:2018:27.

5.5.2. *Grounds for optional non-execution*

When any of the grounds for optional non-execution apply and have been transposed into national law, the executing judicial authority may refuse to execute the EAW depending on the circumstances of the case. Those grounds are set out in Article 4 of the Framework Decision on EAW.

The Court of Justice held in Case C-665/20 PPU, *Openbaar Ministerie v X* ([126]), that Member States, when opting for the transposition of an optional ground for non-execution under the Framework Decision, cannot provide for an obligation to refuse the execution of an EAW if the issued warrant falls within the scope of thosegrounds. Rather, the judicial authority of the executing Member State must have a margin of discretion and needs to be able to take into account the specific circumstances of each case and to assess the optional ground of refusal in the case at hand.

In particular, the specific circumstances of each case should be carefully assessed in cases of an EAW issued by, a European Delegated Prosecutor of the European Public Prosecutor's Office (the EPPO) ([127]) or issued following his/her request, when investigating/prosecuting criminal offences affecting the financial interests of the Union ([128]) , e.g. complex VAT fraud with a cross- border element, since the EPPO acts as a supranational single office.

Lack of double criminality (Article 4(1))

The act on which the EAW is based does not constitute an offence under the law of the executing Member State.

This ground concerns offences which are not mentioned in the list of offences in Article 2(2) of the Framework Decision on EAW, for which the verification of double criminality is abolished. Moreover, this ground for optional non-execution may apply even if the act corresponds to one of the offences listed in Article 2(2) of the Framework Decision on EAW, but (i) it is punishable by a custodial sentence or a detention order for a maximum period of less than 3 years under the law of the issuing Member State; and (ii) it does not constitute an offence under the law of the executing Member State.

In its judgments in Case C-289/15 *Grundza* ([129]) and in Case C-168/21 *Procureur général près la cour d'appel d'Angers* ([130]), the Court of Justice clarified how the double criminality condition needs to be assessed

In its judgment in Case C-289/15 *Grundza* ([131]), the Court of Justice interpreted Articles 7(3) and 9(1)(d) of Framework Decision 2008/909/JHA (namely how the double criminality condition needs to be assessed). The Court of Justice ruled as follows:

'38 (…) when assessing double criminality, the competent authority of the executing State is required to verify whether the factual elements underlying the offence, as reflected in the judgment handed down by the competent authority of the issuing State, would also, per se, be subject to a criminal penalty in the executing State if they were present in that State.

(…)

49 (…) in assessing double criminality, the competent authority of the executing State must ascertain, not whether an interest protected by the issuing State has been infringed, but whether, in the event that the offence at issue were committed in the territory of the executing State, it would be found that a similar interest, protected under the national law of that State, had been infringed.'

([126]) Judgment of the Court of Justice of 29 April 2021, *X*, C-665/20 PPU, ECLI:EU:C:2021:339.
([127]) OJ L 283, 31.10.2017, p. 1–71.
([128]) See Article 22 of the EPPO Regulation.
([129]) Judgment of the Court of Justice of 11 January 2017, *Grundza*, C-289/15, ECLI:EU:C:2017:4.
([130]) Judgment of the Court of Justice of 14 July 2022, *Procureur général près la cour d'appel d'Angers*, C-168/21, ECLI:EU:C:2022:558.
([131]) Judgment of the Court of Justice of 11 January 2017, *Grundza*, C-289/15, ECLI:EU:C:2017:4.

In Case C-168/21 *Procureur général près la cour d'appel d'Angers* ([132]), the Court of Justice further explained that, in order to determine whether the condition of double criminality of the act is met, it is necessary and sufficient that the acts giving rise to the issuing of the EAW also constitute an offence under the law of the executing Member State. Therefore, the EU legislature does not require there to be an exact match between the constituent elements of the offence, as defined in the law of the issuing Member State and the executing Member State, respectively, or between the name given to or the classification of the offence under the national law of the respective States.

Moreover, the Court of Justice held that the condition of double criminality under Articles 2(4) and 4(1) of Framework Decision on EAW will be met where the EAW is issued for the purpose of enforcing a custodial sentence for acts which relate, in the issuing Member State, to an offence requiring that those acts impair a legal interest protected in that Member State, even when the impairment of the legal interest protected by the law of the issuing Member State is not a constituent element of the offence under the law of the executing Member State. If the condition of double criminality were to be interpreted as requiring an exact match between the constituent elements of the offence, as well as between the legal interests protected under the laws of the issuing and executing Member State, then the effectiveness of the surrender procedure would be undermined. Moreover, the condition of double criminality of the act must therefore be considered to be met where the EAW is issued for the purpose of enforcing a custodial sentence – even if that sentence was imposed in the issuing Member State for the commission of a single offence consisting of multiple acts, only some of which constitute a criminal offence in the executing Member State. Such an interpretation is also consistent with the principle of proportionality of criminal offences and penalties that is provided for in Article 49(3) of the Charter. In that regard, the Court clarified that it is not for the executing judicial authority, when assessing the condition of double criminality, to assess the sentence handed down in the issuing Member State in light of Article 49(3) of the Charter.

In relation to taxes or duties, customs and exchange, the execution of an EAW may not be refused on the ground that the law of the executing Member State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes, duties, customs and exchange regulations as the law of the issuing Member State.

Prosecution pending in the executing Member State (Article 4(2))

The person who is the subject of the EAW is being prosecuted in the executing Member State for the same act as that on which the EAW is based.

Prosecution for the same offence precluded in the executing Member State (Article 4(3))

The judicial authorities of the executing Member State have decided either not to prosecute for the offence on which the EAW is based or to halt proceedings; or a final judgment has been passed upon the requested person in a Member State in respect of the same acts which prevents further proceedings.

In Case C-268/17 *AY* ([133]), the Court of Justice ruled that a decision by a pPublic Pprosecutor's Ooffice to terminate an investigation opened against an unknown person, and during which the person who is subject to an EAW was interviewed as a witness only, without criminal proceedings having been brought against that person and where the decision was not taken in respect of that person, cannot be relied on for the purpose of refusing to execute that EAW under Article 4(3) of the Framework Decision on the EAW.

See also Section 5.5.1 on the *ne bis in idem* principle.

Prosecution or punishment statute-barred (Article 4(4))

The criminal prosecution or punishment of the requested person is statute-barred according to the law of the executing Member State and the acts fall within the jurisdiction of that Member State under its own criminal law.

([132]) Judgment of the Court of Justice of 14 July 2022, Procureur général près la cour d'appel d'Angers, C-168/21, ECLI:EU:C:2022:558.
([133]) Judgment of the Court of Justice of 25 July 2018, *AY*, C-268/17, ECLI:EU:C:2018:602.

Final judgment in a third State (Article 4(5))

The executing judicial authority is informed that the requested person has been finally judged by a third State in respect of the same acts provided that, where there has been a sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing country.

In its judgment in case C-665/20 PPU *X* ([134]), the Court of Justice specified that the concept of 'same acts' under Articles 3(2) and 4(5) of the Framework Decision on EAW must be interpreted uniformly in the two provisions. Moreover, the Court of Justice clarified that the condition regarding execution provided for in Article 4(5) is also satisfied in cases where the requested person has been finally sentenced, for the same acts, to a term of imprisonment, of which part has been served in the third State, while the remainder of that sentence has been remitted by a non-judicial authority of that State. The Court of Justice underlined that it is for the executing judicial authority, when exercising its discretion, to find a balance between prevention of impunity and ensuring legal certainty for the person concerned.

See also Section 5.5.1 on the *ne bis in idem* principle.

The executing Member State undertakes the execution of the sentence (Article 4(6))

Where the EAW has been issued for the purposes of execution of a custodial sentence or detention order, and the requested person is staying in, or is a national or a resident of the executing Member State, the executing judicial authority might consider whether the sentence could be executed in its Member State instead of surrendering the person to the issuing Member State.

Article 25 of Framework Decision 2008/909/JHA also contains a specific provision concerning the enforcement of custodial sentences in the executing Member State in cases falling under Article 4(6) of the Framework Decision on EAW (see Section 2.5.2). Framework Decision 2008/909/JHA has replaced the 1983 Convention on the Transfer of Sentenced Persons and its Additional Protocol ([135]). Framework Decision 2008/909/JHA must therefore be applied when transferring the sentence to the Member State where it is executed.

In accordance with Framework Decision 2008/909/JHA, consent by the sentenced person to the transfer is no longer a prerequisite in all cases.

In its judgment in Case C-514/17 *Sut* ([136]), the Court of Justice highlighted the procedure and the conditions needed to apply Article 4(6) of the Framework Decision on EAW.

It ruled as follows:

'32. It is thus clear from the wording of that provision that the application of that ground for optional non-execution requires two conditions to be satisfied, namely, first, that the requested person is staying in, or is a national or a resident of the executing Member State, and, second, that that State undertakes to enforce the sentence or detention order in accordance with its domestic law.

(…)

36. Where the executing judicial authority finds that both of the above-mentioned conditions have been satisfied, it must ascertain whether there is a legitimate interest which would justify the sentence imposed in the issuing Member State being enforced on the territory of the executing Member State (see judgment of 17 July 2008, *Kozłowski*, C-66/08, EU:C:2008:437, paragraph 44). Such an assessment allows that judicial authority to take account of the objective underlying Article 4(6) of Framework Decision 2002/584, as stated in paragraph 33 above.'

([134]) Judgment of the Court of Justice of 29 April 2021, *X*, C-665/20 PPU, ECLI:EU:C:2021:339.

([135]) Convention on the Transfer of Sentenced Persons of 21 March 1983 (ETS No. 112) and its Additional Protocol to the Convention on the Transfer of Sentenced Persons of 18 December 1997 (ETS No. 167), as well as the protocol amending the Additional Protocol to the Convention on the Transfer of Sentenced Persons of 22 November 2017 (CETS No. 222).

([136]) Judgment of the Court of Justice of 13 December 2018, *Sut*, C-514/17, ECLI:EU:C:2018:1016.

With regard to the first condition, the Court of Justice specified, in its judgment in Case C-66/08 *Kozłowski* ([137]), that the terms 'resident' and 'staying' in Article 4(6) of the Framework Decision on EAW must be defined uniformly, since they concern autonomous concepts of Union law. They respectively cover the situations in which the requested person has either established his actual place of residence in the executing Member State or has acquired, following a stable period of presence in that State, certain connections with that State, which are of a similar degree to those resulting from residence. A determination of 'staying' requires an overall assessment of various objective factors, including the length, nature and conditions of the person's presence and the family and economic connections with the executing Member State. The Court of Justice further clarified that the fact that the requested person systematically commits crimes in the executing Member State and the fact that he or she is in detention serving a custodial sentence there are not relevant factors for the executing judicial authority to take into account when it has to ascertain whether the person concerned is 'staying' in the executing Member State. If the person concerned is 'staying' in the executing Member State, however, these factors may be of some relevance for the assessment which the executing judicial authority is then called upon to carry out in order to decide whether there are grounds for not implementing an EAW.

The Court of Justice held, in its judgment in Case C-123/08 *Wolzenburg* ([138]), that Member States may limit the situations in which it is possible, as an executing Member State, to refuse to surrender a person who falls within the scope of Article 4(6), by making the application of that provision, when the person requested is a national of another Member State, subject to the condition that the person has lawfully resided for a continuous period of 5 years in that Member State of execution. However, a Member State cannot make application of the ground for optional non-execution of an EAW in Article 4(6) of the Framework Decision on EAW subject to supplementary administrative requirements, such as possession of a residence permit of indefinite duration.

In its judgment in Case C-42/11 *Lopes da Silva Jorge* ([139]), the Court of Justice clarified that Article 4(6) of the Framework Decision on EAW and Article 18 TFEU must be interpreted as meaning that a Member State may, in transposing Article 4(6) of the Framework Decision on EAW, decide to limit the situations in which an executing judicial authority may refuse to surrender a person falling within the scope of that provision., However, it cannot automatically and absolutely exclude from its scope the nationals of other Member States who are staying or resident in its territory, irrespective of their connections with that Member State. National courts are required to interpret the law in the light of the wording and purpose of the Framework Decision on EAW to ensure its full effectiveness.

In its judgment in Case C-700/21 *O. G.* ([140]), the Court of Justice held that Article 4(6) of Framework Decision on EAW, read in conjunction with Article 20 of the Charter, precludes a national law which excludes, absolutely and automatically, third-country nationals staying or resident in the territory of that Member State from benefiting from the ground for optional non-execution of an EAW, without the executing judicial authority being able to assess the connections that that national has with that Member State. In order to assess whether it is appropriate to refuse to execute such an EAW, the executing judicial authority must carry out an overall assessment to establish whether the requested person has sufficient links with the executing Member State to support the presumption that, if the sentence is enforced in that State, the person concerned will have a greater chance of reintegration there than in the issuing Member State. Those elements include family, linguistic, cultural, social or economic links which the third-country national has with the executing Member State, and the nature, duration and conditions of his or her stay in that Member State.

([137]) Judgment of the Court of Justice of 17 July 2008, *Kozłowski*, C-66/08, ECLI:EU:C:2008:437.
([138]) Judgment of the Court of Justice of 6 October 2009, *Wolzenburg*, C-123/08, ECLI:EU:C:2009:616.
([139]) Judgment of the Court of Justice of 5 September 2012, *Lopes da Silva Jorge*, C-42/11, ECLI:EU:C:2012:517.
([140]) Judgment of the Court of Justice of 6 June 2023, *O.G.*, C-700/21, ECLI:EU:C:2023:444, paragraphs 58 and 68.

Regarding the second condition, the Court of Justice underlined, in Case C-579/15 *Popławski (Popławski I)* ([141]), that the requirement to take over the execution of the sentence presupposes an actual undertaking on the part of the executing Member State to execute the custodial sentence imposed on the requested person by the issuing Member State. In order to avoid impunity, the executing judicial authority must first examine whether it is actually possible to execute the sentence in accordance with its domestic law. If that is not the case, the executing judicial authority must order the execution of the EAW and surrender the requested person.

The Court of Justice further considered that the execution of an EAW cannot be refused on the ground of Article 4(6) of the Framework Decision on EAW merely because the judicial authority of the executing Member State informs the judicial authority of the issuing Member State that it is 'willing' to take over the enforcement of the judgment, or because it intends to prosecute that person in relation to the same acts as those for which that judgment was pronounced.

In Case C-514/17 *Sut* ([142]), the Court of Justice considered that a Member State may, for reasons related to the social rehabilitation of a requested person, refuse to execute an EAW despite the fact that the offence which provides the basis for that warrant is, under that national law of the executing Member State, punishable by fine only. However, this is only possible provided that, in accordance with its national law, that fact does not prevent the custodial sentence imposed on the person requested from actually being enforced in that Member State.

Regarding the legitimate interest justifying the application of Article 4(6), the Court of Justice stressed, in Case C-579/15 *Popławski I* ([143]), that Article 4(6) is an optional ground of refusal – meaning that, when the two above conditions are fulfilled, the executing judicial authorities cannot be obliged to refuse to execute an EAW. Hence as highlighted by the Court of Justice in Case C-66/08 *Kozłowski* ([144]), when using its margin of discretion, the executing judicial authority must assess whether there is a legitimate interest that would justify the sentence imposed in the issuing Member State being executed on the territory of the executing Member State. The executing judicial authority must notably give particular weight to the possibility of increasing the requested person's chances of reintegrating into society when the sentence imposed on him or her expires.

Finally, in Cases C-42/11 *Lopes da Silva Jorge* ([145]), C-579/15 *Popławski I* ([146]) and C-573/17 *Popławski (Popławski II)* ([147]), the Court of Justice held that national courts are required to interpret their national law in the light of the wording and purpose of the Framework Decision on EAW to ensure its full effectiveness and to ensure an outcome that is compatible with the objective pursued by the Framework Decision. In Case C-573/17 *Popławski (Popławski II)* ([148]) the Court of Justice also specified that the principle of the primacy of EU law must be interpreted as meaning that it does not require a national court to disapply a provision of national law which is incompatible with the provisions of a framework decision (such as the Framework Decision on EAW) because those provisions do not have direct effect.

Extraterritoriality (offences committed outside the territory of the issuing Member State) (Article 4(7))

The EAW relates to offences which:

(a) are regarded by the law of the executing Member State as having been committed in whole or in part in the territory of the executing Member State or in a place treated as such; or

(b) have been committed outside the territory of the issuing Member State and the law of the executing Member State does not allow prosecution for the same offences when committed outside its territory.

([141]) Judgment of the Court of Justice of 29 June 2017, *Popławski I*, C-579/15, ECLI:EU:C:2017:503.
([142]) Judgment of the Court of Justice of 13 December 2018, *Sut*, C-514/17, ECLI:EU:C:2018:1016.
([143]) Judgment of the Court of Justice of 29 June 2017, *Popławski I*, C-579/15, ECLI:EU:C:2017:503.
([144]) Judgment of the Court of Justice of 17 July 2008, *Kozłowski*, C-66/08, ECLI:EU:C:2008:437; Judgment of the Court of Justice of 13 December 2018, *Sut*, C-514/17, ECLI:EU:C:2018:1016.
([145]) Judgment of the Court of Justice of 5 September 2012, *Lopes da Silva Jorge*, C-42/11, ECLI:EU:C:2012:517.
([146]) Judgment of the Court of Justice of 29 June 2017, *Popławski I*, C-579/15, ECLI:EU:C:2017:503.
([147]) Judgment of the Court of Justice of 24 June 2019, *Popławski II*, C-573/17, ECLI:EU:C:2019:530.
([148]) Judgment of the Court of Justice of 24 June 2019, *Popławski II*, C-573/17, ECLI:EU:C:2019:530.

The Court of Justice specified in its judgment in Case C-488/19 *JR* ([149]) that Article 4(7)(b) does not include situations where an EAW is issued on the basis of a judicial decision of the issuing Member State allowing execution in that Member State of a sentence imposed by a court of a third State in which the offence was committed. In these cases, the question whether that offence was committed 'outside the territory of the issuing Member State' must be resolved by taking into consideration the criminal jurisdiction of that third State which allowed prosecution of that offence, and not that of the issuing Member State.

5.6. **Trials *in absentia***

Framework Decision 2009/299/JHA amended the Framework Decision on EAW by deleting Article 5(1) and inserting a new Article 4a on decisions rendered *in absentia*. These provisions concern situations where an executing judicial authority has received an EAW concerning execution of a custodial sentence arising from proceedings in the issuing Member State where the person was not present.

Article 4a(1) of the Framework Decision on EAW contains a ground for optional non-execution whereby an EAW that was issued for the purpose of executing a custodial sentence or a detention order may be refused if the person did not appear at the trial resulting in the decision (a decision rendered *in absentia*). That option is nevertheless accompanied by four exceptions set out in points (a) to (d) of Article 4a(1) of the Framework Decision on EAW.

Pursuant to Article 4a(1) of the Framework Decision on EAW, an executing judicial authority **cannot** refuse to execute an EAW based on a decision rendered *in absentia* where the EAW states that the person, in accordance with further procedural requirements defined in the national law of the issuing Member State:

(a) in due time:

  (i) either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial; and

  (ii) was informed that a decision may be handed down if he or she does not appear for the trial; or

(b) being aware of the scheduled trial, had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial; or

(c) after being served with the decision and being expressly informed about the right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed:

  (i) expressly stated that he or she does not contest the decision; or

  (ii) did not request a retrial or appeal within the applicable time frame; or

(d) was not personally served with the decision but:

  (i) will be personally served with it without delay after the surrender and will be expressly informed of his or her right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed; and

  (ii) will be informed of the time frame within which he or she has to request such a retrial or appeal, as mentioned in the relevant EAW.

([149]) Judgment of the Court of Justice of 17 March 2021, *JR*, C-488/19, ECLI:EU:C:2021:206.

In this context, the Court of Justice has clarified that, where at least one of the conditions under Article 4(a)(1)(a) to (d) of the Framework Decision on EAW is met, the executing authority cannot refuse the execution of the EAW ([150]).

In its judgment in Case C-271/17 PPU *Zdziaszek* ([151]), the Court of Justice however highlighted that, where neither the information contained in the EAW form nor the information obtained pursuant to Article 15(2) of the Framework Decision on EAW provide sufficient evidence to establish the existence of one of the situations referred to in Article 4a(1)(a) to (d), the executing judicial authority may refuse to execute the EAW.

Moreover, the Court of Justice underlined in its case-law the optional nature of the ground for refusal by stating that the executing judicial authority may, after it has found that the situations referred to in Article 4a(1)(a) to (d) are not applicable, take account of other circumstances that enable it to ensure that the surrender of the person concerned does not entail a breach of their rights of defence and order the surrender. Indeed, the Framework Decision on EAW does not prevent the executing judicial authority from ensuring that the rights of defence of the person concerned are respected by taking into due consideration all the circumstances of the case before it, including any information which it may itself obtain. In that context, the executing authority may take into account the behaviour of the requested person and the fact that he prevented his summons in person or any contact from the court-appointed lawyers, or the fact that he appealed against the first instance decisions ([152]). This implies that the executing judicial authority may decide to surrender the requested person even where the four situations as mentioned under Article 4a(1)(a) to (d) are not fulfilled.

The exhaustive nature of the four situations mentioned under Article 4(a)(1)(a) to (d) of the Framework Decision on EAW was confirmed by the Court of Justice in Case C-399/11 *Melloni* and in Case C-416/20 PPU *TR*.

In Case C-399/11 *Melloni* ([153]) the Court of Justice was asked whether Article 4a(1) of the Framework Decision on EAW must be interpreted as precluding the executing judicial authorities from making the execution of an EAW conditional upon the conviction rendered *in absentia* being open to review in the issuing Member State in accordance with a national constitutional rule of the executing State.

The Court of Justice considered that Article 4a(1) of the Framework Decision on EAW provides for an optional ground for non-execution of an EAW issued for the purpose of executing a sentence, where the person concerned has been sentenced *in absentia*. That option is nevertheless accompanied by four exceptions set out in points (a) to (d) of Article 4a(1). The Court of Justice held that in these four situations, the executing judicial authority may not make the surrender of a person convicted *in absentia* conditional upon the conviction being open to review in his presence. This means that executing judicial authorities cannot impose any additional requirements based on national constitutional requirements.

In Case C-416/20 PPU *TR* ([154]), the Court of Justice held that Article 4a of the Framework Decision on EAW must be interpreted as meaning that the executing judicial authority may not refuse to execute an EAW where the requested person has obstructed his or her summons in person and did not appear in person at the trial because he or she absconded to the executing Member State, solely because the executing judicial authority does not have the assurance that, in the event of surrender to the issuing Member State, the right to a retrial (as defined in Articles 8 and 9 of Directive (EU) 2016/343 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings ([155])) will be respected.

([150]) Judgment of the Court of Justice of 17 December 2020, *TR*, C-416/20 PPU, ECLI:EU:C:2020:1042.
([151]) Judgment of the Court of Justice of 10 August 2017, *Zdziaszek*, C-271/17 PPU, ECLI:EU:C:2017:629.
([152]) Judgment of the Court of Justice of 17 December 2020, *TR*, C-416/20 PPU, ECLI:EU:C:2020:1042. See also Judgment of the Court of Justice of 24 May 2016 *Dworzecki*, C-108/16 PPU, ECLI:EU:C:2016:346.
([153]) Judgment of the Court of Justice of 26 February 2013, *Melloni*, C-399/11, ECLI:EU:C:2013:107.
([154]) Judgment of the Court of Justice of 17 December 2020, *TR*, C-416/20 PPU, ECLI:EU:C:2020:1042.
([155]) Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ L 65, 11.3.2016, p. 1).

As regards the relation of Article 4a of the Framework Decision on EAW to Directive 2016/343/EU, the Court of Justice considered in Case C-416/20 PPU *TR* that Article 4a already specifically covers the situation where an EAW that has been issued for the purpose of executing a custodial sentence or a detention order concerning a person who did not appear in person at the trial results in the decision imposing that sentence or order. For this reason, 'any possible non-conformity of the national law of the issuing Member State with the provisions of Directive 2016/343 cannot constitute a ground which may lead to a refusal to execute the EAW' as the EU legislature adopted the approach of providing an exhaustive list of the circumstances in which the execution of an EAW issued in order to enforce a decision rendered *in absentia* must be regarded as not infringing the rights of the defence ([156]).

Nonetheless, the Court of Justice emphasised that the fact that Directive 2016/343/EU cannot be relied on in order to prevent the execution of an EAW does not in any way affect the absolute obligation of the issuing Member State to comply, within its legal system, with all provisions of EU law, including Directive 2016/343. The person concerned may, where appropriate, after being surrendered to the issuing Member State, rely before the courts of that Member State on the relevant provisions of Directive 2016/343/EU.

5.6.1. *Autonomous concepts of EU law*

The Court of Justice has ruled that the terms in Article 4a(1)(a)(i) of the Framework Decision on EAW 'summoned in person', 'trial which resulted in the decision' and 'by other means actually received' constitute autonomous concepts of EU law that need to be interpreted uniformly throughout the EU irrespective of classifications in the Member States ([157]). The meaning of such concepts cannot therefore be determined by national law.

Member States' authorities are therefore obliged to always complete Box (d) section (d) of the EAW form concerning cases when decisions are rendered *in absentia*. It is important that the authorities not only tick the boxes provided in that section, but also fill in point 4 of that section and provide information about how the relevant conditions have been met. In that respect, it is important that the information is provided in a clear, comprehensive and factual manner, and that legal qualifications that derive from national law concepts are avoided. The non-appearance of the person, how the summons and the judgment were served and whether legal counsel appointed by the person (not court-appointed) represented the accused, should therefore be described in a factual manner without resorting to national legal terminology.

Providing complete information in a factual manner avoids requests for supplementary information under Article 15(2) of the Framework Decision on EAW, which can cause unnecessary delays.

The autonomous concept of 'trial resulting in the decision' within the meaning of Article 4a

Where the proceedings have taken place over several instances which have given rise to successive decisions, the Court of Justice clarified, in its judgment in Case C-270/17 PPU *Tupikas* ([158]), that the concept of *'trial resulting in the decision'* relates only to the instance at the end of which the decision handed down finally rules on the guilt of the person concerned and imposes a penalty on him or her, such as a custodial sentence, following an assessment in fact and in law of the merits of the case.

In its judgment in Case C-271/17 PPU *Zdziaszek* ([159]), the Court of Justice specified that the concept of a 'trial resulting in the decision' not only covers the appeal proceedings that led to a decision which finally determined the guilt of the person concerned and the sentence imposed, but also refers to subsequent proceedings, such as those that led to the judgment handing down a cumulative sentence, at the end of which the decision that finally amended the level of the initial sentence was handed down, inasmuch as the authority which adopted the latter decision enjoyed a certain discretion in that regard.

([156]) Judgment of the Court of Justice of 17 December 2020, *TR*, C-416/20 PPU, ECLI:EU:C:2020:1042.

([157]) Judgment of the Court of Justice of 10 August 2017, *Tupikas*, C-270/17 PPU, ECLI:EU:C:2017:628, Judgment of the Court of Justice of 10 August 2017, *Zdziaszek*, C-271/17 PPU, ECLI:EU:C:2017:629 and Judgment of the Court of Justice of 24 May 2016, *Dworzecki*, C-108/16 PPU, ECLI:EU:C:2016:346 and Judgment of the Court of Justice of 22 December 2017, *Ardic*, C-571/17 PPU, ECLI:EU:C:2017:1026.

([158]) Judgment of the Court of Justice of 10 August 2017, *Tupikas*, C-270/17 PPU, ECLI:EU:C:2017:628.

([159]) Judgment of the Court of Justice of 10 August 2017, *Zdziaszek*, C-271/17 PPU, ECLI:EU:C:2017:629.

However, where a party appears in person in criminal proceedings that result in a judicial decision which definitively finds him guilty of an offence and, as a consequence, imposes a custodial sentence the execution of which is subsequently suspended subject to certain conditions (such as probation measures related to conduct), the Court of Justice considered in Case C-571/17 PPU *Ardic* ([160]), that the concept of 'trial resulting in the decision' does not include subsequent proceedings in which that suspension is revoked on grounds of infringement of those conditions during the probationary period – provided that the revocation decision adopted at the end of those proceedings does not change the nature or the level of the sentence initially imposed.

In Joined Cases C-514/21 and C-515/21 *Minister for Justice and Equality* ([161]), the Court of Justice held that Article 4a(1) of the Framework Decision on EAW, read in the light of Articles 47 and 48 of the Charter, must be interpreted as meaning that where the suspension of a custodial sentence is revoked, on account of a new criminal conviction, and an EAW is issued for the purpose of serving that sentence, that criminal conviction, handed down *in absentia*, constitutes a 'decision' within the meaning of that provision. That is not the case for the decision revoking the suspension of that sentence.

Article 4a(1) must therefore be interpreted as authorising the executing judicial authority to refuse to surrender the requested person to the issuing Member State where it is apparent that the proceedings resulting in a second criminal conviction of that person, which was decisive for the issue of the EAW, took place *in absentia* – unless the EAW contains, in respect of those proceedings, one of the statements referred to in subparagraphs (a) to (d) of that provision.

The executing judicial authority will, however, be precluded from refusing to surrender the requested person to the issuing Member State on the ground that the proceedings resulting in the revocation of the suspension of the custodial sentence for the execution of which the EAW was issued took place *in absentia*, or from making the surrender of that person subject to a guarantee that he or she will be entitled, in that Member State, to a retrial or to an appeal allowing for the re-examination of such a revocation decision or of the second criminal conviction which was handed down against that person *in absentia* and which proves decisive for the issue of that warrant.

The autonomous concept of 'summoned in person' and 'actually received by other means' within the meaning of Article 4a

In its judgment in Case C-108/16 PPU *Dworzecki* ([162]) the Court of Justice held as follows:

'Article 4a(1)(a)(i) of Council Framework Decision 2002/584 (…) must be interpreted as meaning that a summons, such as that at issue in the main proceedings, which was not served directly on the person concerned but was handed over, at the latter's address, to an adult belonging to that household who undertook to pass it on to him, when it cannot be ascertained from the European arrest warrant whether and, if so, when that adult actually passed that summons on to the person concerned, does not in itself satisfy the conditions set out in that provision.'

5.7. Fundamental rights considerations by the executing judicial authority

The Framework Decision on EAW does not contain any provision for non-execution on the basis of a breach of the requested person's fundamental rights in the issuing Member State. However, Article 1(3), read together with recitals 12 and 13 of the Framework Decision on EAW, clarifies that the Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles, as enshrined in Article 6 TEU and reflected in the Charter an obligation which concerns all Member States and in particular both the issuing and the executing Member State

([160]) Judgment of the Court of Justice of 22 December 2017, *Ardic*, C-571/17 PPU, ECLI:EU:C:2017:1026.
([161]) Judgment of the Court of Justice of 23 March 2023, *Minister for Justice and Equality*, Joined Cases C-514/21 and C-515/21, ECLI:EU:C:2023:235.
([162]) Judgment of the Court of Justice of 24 May 2016, *Dworzecki*, C-108/16 PPU, ECLI:EU:C:2016:346.

As reaffirmed by the Court of Justice in its judgments in Joined Cases C-404/15 and C-659/15 PPU *Aranyosi and Căldăraru* ([163]) and in Case C-216/18 PPU *LM* ([164]), the principle of mutual trust requires that, save in exceptional circumstances, each Member State considers all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law.

Moreover, the Court of Justice held in Case C-158/21 *Puig Gordi and Others* ([165]) that an executing judicial authority may not in principle refuse to execute an EAW on the basis that the court called upon to try the requested person in the issuing Member State does not have jurisdiction for that purpose under the national law of the issuing Member State. That authority must nevertheless refuse to execute that EAW if it finds that there are systemic or generalised deficiencies affecting the judicial system of that Member State and that the court called upon to try the requested person in that Member State clearly lacks jurisdiction, thus following the two-step examination established by the Court of Justice's case-law, as set out below in Section 5.7.2.

In the same judgment, the Court of Justice also ruled that the executing judicial authority does not have the power to refuse to execute an EAW on the basis of a ground for non-execution which arises not from Framework Decision on EAW but solely from the law of the executing Member State.

The Court of Justice ruled in Case C-327/18 PPU *RO* ([166]) that the notification by a Member State of its intention to withdraw from the European Union pursuant to Article 50 TEU cannot be regarded as constituting an exceptional circumstance capable of justifying a postponement or a refusal to execute an EAW issued by that Member State.

However, it remains the task of the executing judicial authority to examine, after carrying out a specific and precise assessment of the particular case, whether there are substantial grounds for believing that, after the withdrawal from the European Union of the issuing Member State, the person who is the subject of that arrest warrant is at risk of being deprived of his fundamental rights. Circumstances such as continued participation in the ECHR and the European Convention on Extradition of 13 December 1957 can be taken into account in the context of that assessment.

5.7.1. *Considerations relating to detention conditions in the issuing Member State*

With regard to detention conditions in the issuing Member State, in its judgments in Joined Cases C-404/15 and C-659/15 PPU *Aranyosi and Căldăraru* ([167]), Case C-220/18 PPU *ML* ([168]) and Case C-128/18 *Dumitru-Tudor Dorobantu* ([169]), the Court of Justice considered that the need to guarantee that the person concerned will not be subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter justifies, exceptionally, a limitation of the principles of mutual trust and recognition. In that context the Court of Justice recalled that the prohibition of inhuman or degrading treatment or punishment, laid down in Article 4 of the Charter, is absolute in that it is closely linked to respect for human dignity, the subject of Article 1 of the Charter.

In its judgment in Joined Cases C-404/15 and C-659/15 PPU *Aranyosi and Căldăraru*, the Court of Justice ruled as follows:

'(…) where there is objective, reliable, specific and properly updated evidence with respect to detention conditions in the issuing State that demonstrates that there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people, or which may affect certain places of detention, the executing judicial authority must determine, specifically and precisely, whether there are substantial grounds to believe that the individual concerned by a European arrest warrant, issued for the purposes of conducting a criminal prosecution or executing a custodial sentence, will be exposed, because of the conditions for his detention in the issuing Member State, to a real risk of inhuman or degrading treatment, within the meaning of Article 4 of the Charter, in the event of his surrender to that Member State.

([163]) Judgment of the Court of Justice of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, ECLI:EU:C:2016:198.
([164]) Judgment of the Court of Justice of 25 July 2018, *LM*, C-216/18 PPU, ECLI:EU:C:2018:586.
([165]) Judgment of the Court of Justice of 31 January 2023, *Puig Gordi and Others*, C-158/21, ECLI:EU:C:2023:57.
([166]) Judgment of the Court of Justice of 19 September 2018, *RO*, C-327/18 PPU, ECLI:EU:C:2018:733.
([167]) Judgment of the Court of Justice of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, ECLI:EU:C:2016:198.
([168]) Judgment of the Court of Justice of 25 July 2018, *ML*, C-220/18 PPU, ECLI:EU:C:2018:589.
([169]) Judgment of the Court of Justice of 15 October 2019, *Dumitru-Tudor Dorobantu*, C-128/18, ECLI:EU:C:2018:589.

To that end, the executing judicial authority must request that supplementary information be provided by the issuing judicial authority, which, after seeking, if necessary, the assistance of the central authority or one of the central authorities of the issuing Member State, under Article 7 of the Framework Decision, must send that information within the time limit specified in the request. The executing judicial authority must postpone its decision on the surrender of the individual concerned until it obtains the supplementary information that allows it to discount the existence of such a risk.

If the existence of that risk cannot be discounted within a reasonable time, the executing judicial authority must decide whether the surrender procedure should be brought to an end.'

If the judicial authority of the executing Member State is in possession of evidence of a real risk of inhuman or degrading treatment of individuals detained in the issuing Member State because of general detention conditions, it must follow the procedure set out in the judgment of the Court of Justice in Joined Cases C-404/15 and C-659/15 PPU *Aranyosi and Căldăraru* (paragraphs 89 to 104) and complemented by the Court in Case C-220/18 PPU *ML* and Case C-128/18 *Dumitru-Tudor Dorobantu*.

*Procedural steps to be followed by the national executing judicial authorities **if they are in possession of evidence** of a real risk of inhuman or degrading treatment of individuals detained in the issuing Member State.*

The steps below should be followed in the following order:

1. **Verification whether there is a real risk of inhuman and degrading treatment of the requested person because of general detention conditions:**

   — *based on objective reliable, specific and properly updated information that may be obtained from, inter alia, judgments of international courts, such as judgments of the European Court of Human Rights, judgments of courts of the issuing Member State, and also decisions, reports and other documents produced by bodies of the Council of Europe or under the aegis of the UN* ([170]).

2. **If the existence of such a risk is identified based on the general detention conditions, verification whether there are substantial grounds to believe that such a real risk of inhuman and degrading treatment exists in the particular circumstances of the case for the requested person by requesting supplementary information:**

   — ***obligation to request*** *— on the basis of Article 15(2) of the Framework Decision* on EAW *— **of the issuing judicial authority** that there be provided, as a matter of urgency, all necessary supplementary information on the conditions in which it is envisaged that the requested person will be detained;*

   — ***possibility to fix a time limit for the reply**, taking into account the time required to collect the information as well as the time limits set in Article 17 of the Framework Decision on EAW;*

   — ***possibility to take into account information** provided by authorities of the issuing Member State other than the issuing judicial authority* ([171]);

   — ***obligation to rely on the assurance given or endorsed by the issuing judicial authority** that the person concerned will not suffer inhuman or degrading treatment on account of the actual and precise conditions of detention, at least in the absence of any precise and specific indication that the detention conditions in a particular detention centre are in breach of Article 4 of the Charter.*

([170]) Judgment of the Court of Justice 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, ECLI:EU:C:2016:198.
([171]) Judgment of the Court of Justice of 25 July 2018, *ML*, C-220/18 PPU, ECLI:EU:C:2018:589.

3. **If the issuing judicial authority does not give an assurance that the person requested would not suffer inhuman and degrading treatment or if the executing judicial authority, based on the information received from the issuing judicial authority and any other information that may be available to the executing judicial authority, has precise and specific indications that the detention conditions in a particular detention centre are in breach of Article 4 of the Charter, assessment whether there are substantial grounds to believe that such a real risk of inhuman and degrading treatment exists in the particular circumstances of the case for the requested person:**

— ***obligation to only assess the conditions of detention in certain prisons*** *– the prisons in which, according to the information available to it, it is likely that the requested person will be detained, including on a temporary or transitional basis* ([172]);

— ***obligation to take into account all the relevant physical aspects of the conditions of detention*** *where the requested person will be detained, such as the personal space available to each detainee in a cell in that prison, sanitary conditions and the extent of the detainee's freedom of movement within the prison. That assessment is not limited to the review of obvious inadequacies* ([173]);

— ***obligation to take into account*** *– as regards the personal space available to each detainee –* ***the minimum requirements under Article 3*** *of the ECHR and not the requirements resulting from the executing Member State's national law. According to the case-law of the ECtHR, a strong presumption of a violation of Article 3 of the ECHR arises when the personal space available to a detainee in any type of cell is below 3 m². This presumption can only be rebutted if (i) the reductions in the required minimum personal space of 3 m² are short, occasional and minor, (ii) such reductions are accompanied by sufficient freedom of movement outside the cell and adequate out-of-cell activities, and (iii) the general conditions of detention at the facility are appropriate and there are no other aggravating aspects of the conditions of the concerned individual's detention. The calculation of the available space should include the area occupied by furniture but not that occupied by sanitary facilities and detainees should be able to move around normally within the cell. For a range of 3 to 4 m² in multi-occupancy accommodation it may be concluded that there is a violation of Article 3 of the ECHR if the space factor is coupled with other aspects of inappropriate physical conditions of detention, including, inter alia, lack of access to outdoor exercise natural light or air, poor ventilation, inadequacy of room temperature, the impossibility of using the toilet in private, and non-compliance with basic sanitary and hygienic requirements. In cases where a detainee disposes of more than 4 m² of personal space in multi-occupancy prison accommodation and where therefore no issue with regard to the question of personal space arises, other aspects of physical conditions of detention, as referred to in the preceding paragraph, remain relevant for the assessment of adequacy of an individual's conditions of detention under Article 3 of the ECHR* ([174]).

— ***prohibition to rule out the risk merely because*** *the requested person has, in the issuing Member State****, a legal remedy permitting the individual to challenge the conditions of his detention*** *or because there are legislative or structural measures that are intended to reinforce the monitoring of detention conditions. Such remedies and measures may, however, be taken into account when making the overall assessment of the detention conditions for the purpose of deciding on the surrender of the person* ([175]);

— ***prohibition to weigh*** *a finding that there are substantial grounds for believing that that requested person runs a risk of being subject to inhuman or degrading treatments* ***against considerations relating to the efficacy of judicial cooperation in criminal matters and to the principles of mutual trust and recognition*** ([176]).

4. **If the existence of a real risk of inhuman or degrading treatment for the requested person is identified (and pending a final decision on the EAW):**

— ***obligation to postpone the execution of the EAW in question****. Eurojust must be informed (in accordance with Article 17(7) of the Framework Decision on EAW);*

([172]) Judgment of the Court of Justice of 25 July 2018, *ML*, C-220/18 PPU, ECLI:EU:C:2018:589.
([173]) Judgment of the Court of Justice of 15 October 2019, *Dumitru-Tudor Dorobantu*, C-128/18, ECLI:EU:C:2018:589.
([174]) Judgment of the Court of Justice of 15 October 2019, *Dumitru-Tudor Dorobantu*, C-128/18, ECLI:EU:C:2018:589.
([175]) Judgment of the Court of Justice of 25 July 2018, *ML*, C-220/18 PPU, ECLI:EU:C:2018:589.
([176]) Judgment of the Court of Justice of 15 October 2019, *Dumitru-Tudor Dorobantu*, C-128/18, ECLI:EU:C:2018:589.

— ***possibility to hold the person concerned in custody****, but only if the procedure for execution of the EAW has been carried out in a sufficiently diligent manner and the duration of the detention is not excessive (in accordance with the judgment in Case C-237/15 Lanigan, paragraphs 58, 59 and 60), giving due regard to the principle of the presumption of innocence guaranteed by Article 48 of the Charter and respecting the principle of proportionality laid down in Article 52(1) of the Charter;*

— ***possibility or even obligation to provisionally release the person concerned*** *accompanied by measures to prevent the person absconding.*

5. **Final decision:**

— *if the executing judicial authority, on the basis of the information received from the issuing judicial authority,* and any other information that may be available to the executing judicial authority, *can discount the existence of a real risk that the requested person will be subject to inhuman and degrading treatment, it must decide on the execution of the EAW;*

— *if the executing judicial authority finds out that the risk of inhuman and degrading treatment cannot be discounted within a reasonable time, it must decide whether the surrender procedure should be brought to an end.*

In situations where the risk of inhuman and degrading treatment cannot be discounted within a reasonable time, the issuing and executing judicial authorities might consult and consider whether there are alternatives to the EAW, such as a transfer of proceedings or of the custodial sentence to the executing Member State (see Section 5.11.4).

A **template for requesting supplementary information on detention conditions** pursuant to Article 15(2) of the Framework Decision on EAW is provided in **Annex X to this Handbook.** The executing judicial authority should only tick boxes it considers relevant in a specific case. In that context, the Court of Justice has held in the *ML* case that requests for supplementary information including aspects of detention that are of no obvious relevance for the purposes of the assessment to be carried out in a specific case may be incompatible with the duty of sincere cooperation laid down in the first subparagraph of Article 4(3) TEU because such requests make it impossible in practice Rfor the authorities of the issuing Member State to provide a useful answer, given the short time limits laid down in Article 17 of the Framework Decision on EAW ([177]).

Moreover, for the assessment of detention conditions in the issuing Member State, reference is made to the Commission Recommendation on the procedural rights of suspects and accused in pre-trial detention and on material detention conditions of 8 December 2022 (see Annex XI).

5.7.2. *Considerations relating to the requested person's right to a fair trial*

In its judgment in Case C-216/18 PPU *LM* ([178]), the Court of Justice ruled that the existence of a real risk that the person requested will, if surrendered, suffer a breach of his fundamental right to an independent tribunal (and therefore of the essence of his fundamental right to a fair trial guaranteed by the second paragraph of Article 47 of the Charter) is capable of permitting the executing judicial authority to refrain, by way of exception, from giving effect to the EAW. The Court of Justice ruled as follows:

'(…) where the executing judicial authority, called upon to decide whether a person in respect of whom a European arrest warrant has been issued for the purposes of conducting a criminal prosecution is to be surrendered, has material, such as that set out in a reasoned proposal of the European Commission adopted pursuant to Article 7(1) TEU, indicating that there is a real risk of breach of the fundamental right to a fair trial guaranteed by the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, on account of systemic or generalised deficiencies so far as concerns the independence of the issuing Member State's judiciary, **that authority must determine, specifically and precisely**, whether, having regard to his personal situation, as well as to the nature of the offence for which the requested person is being prosecuted and the factual context that form the basis of the European arrest warrant, and in the light of the information provided by the issuing Member State pursuant to Article 15(2) of Framework Decision 2002/584, as amended, there are substantial grounds for believing that that person will run such a risk if he or she is surrendered to that State.'

([177]) Judgment of the Court of Justice of 25 July 2018, *ML*, C-220/18 PPU, ECLI:EU:C:2018:589.
([178]) Judgment of the Court of Justice of 25 July 2018, *LM*, C-216/18 PPU, ECLI:EU:C:2018:586.

In order to assess whether there is a real risk that the individual concerned will suffer a breach of his fundamental right to a fair trial, the executing judicial authority is required to follow the procedure set out in the judgment of the Court of Justice in Case C-216/18 PPU *LM* (paragraphs 30 to 79) and complemented by the Court in Joined Cases C-354/20 PPU and C-412/20 PPU *L and P* ([179]) and Joined Cases C-562/21 PPU and C-563/21 PPU *Openbaar Ministerie* ([180]) and Case C-480/21, *W O and J L v Minister for Justice and Equality* ([181]) and Case C-158/21 *Puig Gordi and Others* ([182]).

Procedural steps to be followed by the national executing judicial authorities.

The steps below should be followed in the following order:

1. **Verification whether there is a real risk of the right to a fair trial being breached on account of systemic or generalised deficiencies concerning the judiciary, such as to compromise the independence of the courts of the issuing Member State:**

   — *on the basis of objective, reliable, specific and properly updated information showing that there are systemic or generalised deficiencies in the operation of the judicial system of the issuing Member State or deficiencies affecting the judicial protection of an objectively identifiable group of persons to which the person concerned belongs, in the light of the requirement for a tribunal established by law, which mean that the individuals concerned are generally deprived, in that Member State, of an effective legal remedy enabling a review of the jurisdiction of the criminal court called upon to try them.*

   — *Information in a reasoned proposal recently addressed by the Commission to the Council on the basis of Article 7(1) TEU is particularly relevant for the purposes of that assessment.*

   — *The existence of a report which does not directly relate to that person's situation may not, in itself, justify a refusal to execute that EAW. However, such a report may be taken into account by that judicial authority, among other elements, in order to assess whether there are systemic or generalised deficiencies in the operation of the judicial system of the issuing Member State* ([183]).

   — Other factors that are particularly relevant for the purpose of assessing whether there is a real risk of breach of the fundamental right to a fair trial include constitutional case-law of the issuing Member State, which challenges the primacy of EU law and the binding nature of the ECHR as well as the binding force of judgments of the Court of Justice and of the ECtHR relating to the organisation of the judicial system, and in particular the appointment of judges ([184]).

2. **If the existence of such a risk is identified based on systemic or generalised deficiencies concerning the judiciary, verification that there are substantial grounds to believe that such a risk of the right to a fair trial being breached exists in the particular circumstances of the case for the requested person:**

   — *This analysis cannot overlap with the preceding step. The existence or an increase in systemic or generalised deficiencies concerning the independence of the judiciary in the issuing Member State is not sufficient to presume that there are substantial grounds for believing that the person will, if he or she is surrendered to that Member State, run a real risk of a breach of his or her fundamental right to a fair trial* ([185]). *Nor can the analysis focus directly on the risk of a possible individual breach in the concrete case before having verified firstly and separately the existence of systemic or generalised deficiencies concerning the judiciary.*

([179]) Judgment of the Court of Justice of 17 December 2020, *L and P*, C-354/20 PPU and C-412/20 PPU, ECLI:EU:C:2020:1033.
([180]) Judgment of the Court of Justice of 22 February 2022, *Openbaar Ministerie*, Joined Cases C-562/21 PPU and C-563/21 PPU, ECLI:EU:C:2022:100.
([181]) Order of the Court of Justice of 12 July 2022, *W O and J L v Minister for Justice and Equality*, C-480/21, ECLI:EU:C:2022:592.
([182]) Judgment of the Court of Justice of 31 January 2023, *Puig Gordi and Others*, C-158/21, ECLI:EU:C:2023:57.
([183]) Judgment of the Court of Justice of 31 January 2023, *Puig Gordi and Others*, C-158/21, ECLI:EU:C:2023:57.
([184]) Judgment of the Court of Justice of 22 February 2022, *X and Y v Openbaar Ministerie*, C-562/21 PPU and C-563/21 PPU ECLI:EU:C:2022:100.
([185]) Judgment of the Court of Justice of 17 December 2020, *L and P*, C-354/20 PPU and C-412/20 PPU, ECLI:EU:C:2020:1033.

— ***obligation to request*** *— on the basis of Article 15(2) of the Framework Decision on EAW —* ***of the issuing judicial authority*** *that there be provided any supplementary information that the executing judicial authority considers necessary for assessing whether there is such a risk. The executing judicial authority cannot refuse to execute an EAW, on the ground that the person for whom that warrant has been issued is at risk, following his or her surrender to the issuing Member State, of being tried by a court lacking jurisdiction, without having first requested that the issuing judicial authority provide supplementary information on the basis of Article 15(2)* ([186])

— *obligation to assess the reality of the risk, having regard to inter alia, the information that is provided by the person for whom that EAW has been issued and that relates to his/her personal situation, the nature of the offence for which he/or she is being prosecuted and the factual context that forms the basis of the EAW as well as the factual context in which the EAW was issued, or any other relevant circumstance, such as statements by public authorities that are liable to interfere with the way in which an individual case is handled;*

— *where* ***the EAW is issued for the purpose of conducting a criminal prosecution****, the executing judicial authority must examine in particular to what extent the systemic or generalised deficiencies, in so far as they concern the independence of the issuing Member State's judiciary, are liable to have an impact at the level of the Member State's courts with jurisdiction over the proceedings to which the requested person will be subject. That examination involves taking into consideration the impact of such deficiencies which may have arisen after the issue of the EAW* ([187])*. The executing judicial authority may refuse to surrender the requested person if that authority finds that there are substantial grounds for believing that, having regard to the information provided by the person concerned relating to his or her personal situation, the nature of the offence for which that person is prosecuted, the factual context surrounding that EAW or any other circumstance relevant to the assessment of the independence and impartiality of the panel of judges likely to be called upon to hear the proceedings in respect of that person, the latter, if surrendered, runs a real risk of breach of the fundamental right to a fair trial before an independent and impartial tribunal previously established by law. Such information may also relate to statements made by public authorities which could have an influence on the specific case. By contrast, the fact that the identity of the judges who will be called upon eventually to hear the case of the person concerned is not known at the time of the decision on surrender or, when their identity is known, that those judges were appointed on application of a body such as a National Council of the Judiciary is not sufficient to refuse that surrender* ([188])*.*

— *where* ***the EAW is issued for the purpose of executing a custodial sentence****, and when following his or her possible surrender, the requested person will be subject to new court proceedings relating to the execution of that custodial sentence or to an appeal against the judicial decision which is the subject of the EAW, the executing judicial authority must also examine the impact that the systemic or generalised deficiencies are liable to have on the court having jurisdiction over those proceedings. The executing judicial authority must also examine to what extent the systemic or generalised deficiencies that existed in the issuing Member State at the time of issue of the EAW have, in the particular circumstances of the case, affected the independence of the court that imposed the custodial sentence or detention order* ([189])*. The executing judicial authority may refuse to surrender the requested person if that authority finds that there are substantial grounds for believing that, having regard to the information provided by that person relating to the composition of the panel of judges who heard his or her criminal case or to any other circumstance relevant to the assessment of the independence and impartiality of that panel, there has been a breach of that person's fundamental right to a fair trial before an independent and impartial tribunal, enshrined in the second paragraph of Article 47 of the Charter It is not sufficient, in order to refuse surrender, that one or more judges who participated in those proceedings were appointed on application of a body such as a National Council of the Judiciary. The person concerned must, in addition, provide information relating to, inter alia, the procedure for the appointment of the*

([186]) Judgment of the Court of Justice of 31 January 2023, *Puig Gordi and Others,* C-158/21, ECLI:EU:C:2023:57.

([187]) Judgment of the Court of Justice of 17 December 2020, *L and P,* C-354/20 PPU and C-412/20 PPU, ECLI:EU:C:2020:1033.

([188]) Judgment of the Court of Justice of 22 February 2022, *Openbaar Ministerie,* Joined Cases C-562/21 PPU and C-563/21 PPU, ECLI:EU:C:2022:100 and Order of the Court of Justice of 12 July 2022, *W O and J L v Minister for Justice and Equality,* C-480/21, ECLI:EU:C:2022:592.

([189]) Judgment of the Court of Justice of 17 December 2020, *L and P,* C-354/20 PPU and C-412/20 PPU, ECLI:EU:C:2020:1033.

judges concerned and their possible secondment, which would lead to a finding that the composition of that panel of judges was such as to affect that person's fundamental right to a fair trial. Furthermore, account must be taken of the fact that it may be possible, for the person concerned, to request the recusal of the members of the panel of judges for breach of his or her fundamental right to a fair trial, the fact that that person may exercise that option as well as the outcome of the request for recusal ([190]).

3. **If the information provided by the issuing judicial authority does not lead to discounting of discount the existence of a real risk that the requested person will suffer, in the issuing Member State, a breach of his right to a fair trial:**

— *obligation to* ***refrain from giving effect to the*** **EAW**.

In situations where there is a real risk that the requested person will suffer, in the issuing Member State, a breach of his right to a fair trial, the issuing and executing judicial authorities might consult and consider whether there are alternatives to the EAW, such as a transfer of proceedings or of the custodial sentence to the executing Member State.

5.8. Proportionality – the role of the executing Member State

The Framework Decision on EAW does not provide for the possibility of evaluation of the proportionality of an EAW by the executing Member State. This is in line with the principle of mutual recognition. Should serious concerns on the proportionality of the received EAW arise in the executing Member State, the issuing and executing judicial authorities are encouraged to enter into direct communication. It is anticipated that such cases would arise only in exceptional circumstances. With consultation, the competent judicial authorities may be able to find a more suitable solution (see Section 4.4). For example, depending on the circumstances of the case, it might be possible to withdraw the EAW and use other measures provided under national law or Union law.

In such situations, judicial authorities may also consult Eurojust or the EJN contact points. These bodies can facilitate communication and help find solutions.

5.9. Guarantees to be given by the issuing Member State

Article 5 of the Framework Decision on EAW states that the execution of the EAW by the executing judicial authority may, by its national law, be subject to certain conditions. Those conditions may relate to the review of life-term imprisonment and the return of nationals to the executing Member State to serve their custodial sentences.

These guarantees may be provided directly in the national law of the issuing Member State or by way of an agreement between the competent authorities of the issuing and executing Member States. Nonetheless, they may concern only the subjects specified in Article 5 of the Framework Decision on EAW, as confirmed by the Court of Justice (notably in its judgments in Joined Cases C-404/15 and C-659/15 PPU *Aranyosi and Căldăraru*, paragraph 80, and in Case C-237/15 PPU *Lanigan*, paragraph 36).

NB: The guarantee concerning retrial for decisions rendered *in absentia* in Article 5(1) was deleted by Framework Decision 2009/299/JHA and replaced by the new Article 4a, which contains more comprehensive provisions on decisions *in absentia* (see Section 5.6).

In its judgment in Case C-306/09 *I.B.* ([191]), the Court of Justice concluded:

([190]) Judgment of the Court of Justice of 22 February 2022, *Openbaar Ministerie*, Joined Cases C-562/21 PPU and C-563/21 PPU, ECLI:EU:C:2022:100 and Order of the Court of Justice of 12 July 2022, *W O and J L v Minister for Justice and Equality*, C-480/21, ECLI:EU:C:2022:592.

([191]) Judgment of the Court of Justice of 21 October 2010, *I.B.*, C-306/09, ECLI:EU:C:2010:626.

'Articles 4(6) and 5(3) of Council Framework Decision 2002/584/JHA (…) must be interpreted as meaning that, where the executing Member State has implemented Articles 5(1) and Article 5(3) of that framework decision in its domestic legal system, the execution of a European arrest warrant issued for the purposes of execution of a sentence imposed *in absentia* within the meaning of Article 5(1) of the framework decision, may be subject to the condition that the person concerned, a national or resident of the executing Member State, should be returned to the executing State in order, as the case may be, to serve there the sentence passed against him, following a new trial organised in his presence in the issuing Member State.'

5.9.1. *Review of custodial life sentence or lifetime detention order*

In cases where the EAW has been issued for an offence that is punishable by a custodial life sentence or a lifetime detention order, the executing Member State can require a guarantee of review from the issuing Member State (Article 5(2) of the Framework Decision on EAW).

Custodial life sentence refers to sentences served in prison. **Lifetime detention order** refers to other types of detention, for example, in psychiatric treatment facilities.

The guarantee can be provided by the issuing Member State by demonstrating that, according to its legal system, the penalty or measure imposed can be reviewed either on request or at the latest after 20 years. Alternatively, a sufficient guarantee would be that the person is entitled to apply for measures of clemency under the law or practice of the issuing Member State, aiming a non-execution of such penalty or measure.

5.9.2. *Returning nationals and residents*

The EAW allows for the possibility of returning the requested person to serve the custodial sentence in his or her home country. According to Article 5(3) of the Framework Decision on EAW, where a person who is the subject of an EAW for the purposes of prosecution is a national or resident of the executing Member State, the executing Member State can impose the condition that this person is returned to its territory by the issuing Member State to serve the custodial sentence or detention order passed in the issuing Member State.

This condition should be clearly stated by the executing Member State. Where possible, the issuing and executing Member State should agree on the details of this condition before the executing Member State decides on the surrender.

Where it is already known, prior to the EAW being issued, that the requested person is a national or resident of the executing Member State, the issuing judicial authority could already indicate on the EAW form its consent to a potential return condition.

The issuing Member State is responsible for ensuring that the condition is fulfilled. When a custodial sentence or detention order passed against the surrendered person becomes final, the issuing Member State must contact the executing Member State to arrange the return. The issuing Member State should ensure that the sentence is translated into the language of the executing Member State.

In Case C-314/18 *SF* ([192]), the Court of Justice was asked whether the issuing Member State may postpone the return of the person concerned to the executing Member State until after the completion of other procedural steps within the scope of criminal proceedings (e.g. confiscation proceedings) relating to the offence underlying the EAW. The Court of Justice considered that such postponement should not be systematic. It ruled:

'Article 5(3) of Council Framework Decision 2002/584/JHA (…), read in combination with Article 1(3) thereof, as well as with Article 1(a), Article 3(3) and (4) and Article 25 of Council Framework Decision 2008/909/JHA (…) must be interpreted as meaning that, when the executing Member State makes the return of a person who, being a national or resident of that Member State, is the subject of a European arrest warrant for the purposes of criminal prosecution, subject to the condition that that person, after being heard, is returned to that Member State in order

([192]) Judgment of the Court of Justice of 11 March 2020, *SF*, C-314/18, ECLI:EU:C:2020:191.

to serve there the custodial sentence or detention order imposed on him in the issuing Member State, that Member State must return that person as soon as the sentencing decision has become final, unless concrete grounds relating to the rights of defence of the person concerned or to the proper administration of justice make his presence essential in the issuing Member State pending a definitive decision on any procedural step coming within the scope of the criminal proceedings relating to the offence underlying the European arrest warrant.'

Article 25 of Framework Decision 2008/909/JHA also contains a specific provision concerning the enforcement of custodial sentences in the executing Member State in cases falling under Article 5(3) of the Framework Decision on EAW. For transferring the sentence to the executing Member State where it is executed, the procedure and conditions required by Framework Decision 2008/909/JHA are to be applied (see Section 2.5.2).

In its judgment in Case C-314/18 *SF* ([193]), the Court of Justice ruled that Article 25 of Framework Decision 2008/909/JHA must be interpreted as meaning that, when the execution of an EAW issued for the purposes of criminal proceedings is subject to the condition set out in Article 5(3) of Framework Decision on EAW, the executing Member State can, in order to enforce the execution of a custodial sentence or a detention order imposed in the issuing Member State on the person concerned, adapt the duration of that sentence or detention only within the strict conditions set out in Article 8(2) of Framework Decision 2008/909/JHA.

5.10. **Relationship with Framework Decision 2008/909/JHA on Transfer of Prisoners**

The connection between the Framework Decision on EAW and the Framework Decision 2008/909/JHA is laid down in Article 25 and recital 12 of the latter.

Article 4(6) of the Framework Decision on EAW provides that if an EAW has been issued for the purpose of execution of a custodial sentence or a detention order, where the requested person is staying in, is a national or a resident of the executing State, that State may execute the sentence or detention order in accordance with its domestic law.

Article 5(3) of the Framework Decision on EAW provides that where a person who is the subject of an EAW for the purposes of prosecution is a national or resident of the executing Member State, surrender may be subject to the condition that the person, after being heard, is returned to the executing Member State in order to serve there the custodial sentence or detention order passed against him or her in the issuing Member State.

Under Article 25 and recital 12 of Framework Decision 2008/909/JHA, in cases where Articles 4(6) and 5(3) of the Framework Decision on EAW are applied, **the domestic law implementing the Framework Decision 2008/909/JHA shall apply**, *mutatis mutandis* and to the extent compatible with the Framework Decision on EAW, to the enforcement of the sentence. This also implies that the limitations contained in the **rules on adaptation of the sentence** (i.e. the principle of continued enforcement laid down in Article 8 of Framework Decision 2008/909/JHA) will need to be respected ([194]).

The Court of Justice has also clarified that any refusal to execute an EAW under Article 4(6) of the Framework Decision on EAW presupposes an **actual undertaking** on the part of the executing Member State **to execute the custodial sentence** imposed on the requested person and that, in any event, the mere fact that that Member State declares itself 'willing' to execute the sentence cannot be regarded as justifying such a refusal ([195]).

([193]) Judgment of the Court of Justice of 11 March 2020, *SF*, C-314/18, ECLI:EU:C:2020:191.
([194]) Judgment of the Court of Justice of 11 March 2020, *Openbaar Ministerie v SF*, C-314/18, ECLI:EU:C:2020: 191.
([195]) Judgment of the Court of Justice of 29 June 2017, *Popławski*, C 579/15, ECLI:EU:C:2017:503.

This implies that any refusal to execute an EAW under Article 4(6) of the Framework Decision on EAW **must be preceded by** the executing judicial authority's examination of whether it is **actually possible to enforce the sentence in accordance with its domestic law implementing the Framework Decision 2008/909/JHA.** In the event that the executing Member State finds that it cannot ensure the enforcement of the sentence under Framework Decision 2008/909/JHA, it is under an obligation, in order to avoid impunity, to execute the EAW and therefore to surrender the requested person to the issuing Member State ([196]).

The Court of Justice has further clarified that Article 4(6) of the Framework Decision on EAW must be interpreted as meaning that, where a person who is the subject of an EAW issued for the purposes of enforcing a custodial sentence resides in the executing Member State, the executing judicial authority may, for reasons related to the social rehabilitation of that person, refuse to execute that warrant, despite the fact that the offence which provides the basis for that warrant is, under that national law of the executing Member State, punishable by fine only – provided that, in accordance with its national law, that fact does not prevent the custodial sentence imposed on the requested person from actually being enforced in that Member State (a matter for the referring court to ascertain) ([197]).

It should be underlined that, as follows from the above-mentioned case-law of the Court of Justice, the decision of the executing Member State to execute the sentence in accordance with the domestic law implementing the Framework Decision 2008/909/JHA should have become final before the decision to refuse the EAW under Article 4(6) of the Framework Decision on EAW can be made.

In the event that the executing Member State undertakes to execute the sentence or detention order and will on that basis refuse the execution of the EAW under Article 4(6) of the Framework Decision on EAW, the execution of that sentence cannot rely solely on the EAW. For such execution, a separate certificate under Framework Decision 2008/909/JHA will always be needed.

Choice of legal instrument by the issuing State in case of an arrest warrant issued for the purposes of executing a custodial sentence or a detention order

In the event that the Member State that considers issuing an EAW for the purposes of executing a custodial sentence or a detention order knows that the requested person can be located in his/her Member State of nationality or residence, it may be advisable to forward the judgment and the certificate under Framework Decision 2008/909/JHA to that Member State before issuing an EAW.

Indeed, under Article 14 of Framework Decision 2008/909/JHA, the issuing Member State may request the Member State of nationality or residence, before the arrival of the judgment and the certificate under Framework Decision 2008/909/JHA, **to arrest the sentenced person provisionally** or take any other measure to ensure that the sentenced person remains in its territory. Such an arrest will therefore avoid that the requested person will abscond, pending a decision to recognise the judgment and enforce the sentence under Framework Decision 2008/909/JHA. Issuing an EAW solely for the purpose of arresting the person is therefore not required in such situations.

However, neither of the Framework Decisions prevents the issuing of an EAW and a certificate under Framework Decision 2008/909/JHA in parallel, if the Member State issuing the EAW knows that the requested person is a national of another Member State.

If the two are issued at the same time, consultation between the issuing and the executing Member States is, however, of major importance (see Article 21 of Framework Decision 2008/909/JHA).

This consultation is important to clarify, in particular, why both requests were issued and to find practical solutions. For example, after the consultations, the issuing authority may decide to withdraw either the EAW or the Framework Decision 2008/909/JHA certificate.

([196]) Judgment of the Court of Justice of 29 June 2017, *Popławski*, C-579/15, ECLI:EU:C:2017:503.
([197]) Judgment of the Court of Justice of 13 December 2018, *Sut*, C-514/17, ECLI:EU:C:2018:1016

5.11. **Postponement or temporary surrender**

5.11.1. *Serious humanitarian reasons*

After the executing judicial authority has decided to execute the EAW, the 10-day time limit for surrendering the person starts to run (as explained in Section 4.2). However, the executing judicial authority may exceptionally decide to postpone the surrender temporarily for serious humanitarian reasons – for example, where there are substantial grounds for believing that the surrender would manifestly endanger the requested person's life or health (Article 23(4) of the Framework Decision on EAW).

The execution of the EAW must take place as soon as these grounds have ceased to exist. The executing judicial authority must immediately inform the issuing judicial authority and agree on a new surrender date. In that event, the surrender must take place within 10 days of the new date thus agreed. After the expiry of that deadline, the person can no longer be held in custody by the executing Member State on the basis of the EAW and the person must be released (Article 23(5) of the Framework Decision on EAW).

In situations where such humanitarian reasons are **indefinite or permanent**, the issuing and executing judicial authorities might consult each other and consider whether there are alternatives to the EAW. For example, possibilities to transfer proceedings or the custodial sentence to the executing Member State or to withdraw the EAW (for instance, in the case of serious permanent illness) might be examined.

In Case C-699/21, *E. D. L* ([198])., the Court of Justice ruled that Articles 1(3) and 23(4) of the Framework Decision on EAW, read in the light of Article 4 of the Charter, must be interpreted as meaning that, where there are substantial grounds to believe that the surrender of a requested person in the execution of an EAW manifestly risks endangering his or her health, the executing judicial authority may exceptionally postpone that surrender temporarily.

Where the executing judicial authority concludes that there are substantial grounds for believing that that surrender would expose that person to a real risk of a significant reduction in his or her life expectancy or of a rapid, significant and irreversible deterioration in his or her state of health, it must postpone that surrender and ask the issuing judicial authority to provide all information relating to (i) the conditions under which it intends to prosecute or detain that person and (ii) the possibility of adapting those conditions to his or her state of health in order to prevent such a risk from materialising. If the risk referred to above can be ruled out by guarantees provided by the issuing judicial authority, the EAW must then be executed.

Nevertheless if, in exceptional circumstances in the light of the information provided by the issuing judicial authority, it appears that that risk cannot be ruled out within a reasonable period of time, the executing judicial authority must refuse to execute the EAW. On the other hand, if that risk can be ruled out within a reasonable period of time, a new date of surrender must be arranged with the issuing judicial authority.

5.11.2. *Ongoing criminal procedure or execution of a custodial sentence*

The executing judicial authority may, after deciding to execute the EAW, postpone the surrender of the requested person so that the person may be prosecuted in the executing Member State for **another** offence (Article 24(1) of the Framework Decision on EAW).

In such situations, the surrender should take place immediately after the prosecution has been carried out, on a date agreed by the issuing and executing judicial authorities.

When the requested person has already been sentenced for another offence, the surrender may be postponed so that the person may serve the sentence for that offence in the executing Member State (Article 24(1) of the Framework Decision on EAW).

In such cases, the surrender should take place after the person has served the sentence, on a date agreed by the issuing and executing judicial authorities.

([198]) Judgment of the Court of Justice of 18 April 2023, *E.D.L.*, C-699/21, ECLI:EU:C:2023:295.

NB: If the criminal procedure in the executing Member State concerns the **same** offence as the one that is the basis of the EAW, the executing Member State may refuse the execution of the EAW for that offence (see Article 4(2) of the Framework Decision on EAW and Section 5.5.2). Where the conditions of Article 3(2) of the Framework Decision on EAW are fulfilled, the execution of the EAW must be refused (see Section 5.5.1).

In Case C-492/22 PPU *CJ* ([199]), the Court of Justice clarified that Article 24(1) of the Framework Decision on EAW must be interpreted as meaning that the decision to postpone surrender constitutes a decision on the execution of an EAW which, under Article 6(2) of that framework decision, must be taken by the executing judicial authority. Where such a decision has not been taken by that authority and the time limits referred to in Article 23(2) to (4) have expired, the person who is the subject of the EAW must be released in accordance with Article 23(5). Additionally, where the executing judicial authority decides to postpone the surrender pursuant to Article 24(1), Article 6 of the Charter allows that authority to decide to keep the requested person in detention while the criminal prosecution is being conducted in the executing Member State. However, this will be the case only in so far as the surrender procedure has been conducted in a sufficiently diligent manner and the duration of detention is not excessive. Lastly, the Court of Justice held that Article 24(1) of the Framework Decision on EAW, read in conjunction with Article 47(2) and (3) and Article 48(2) of the Charter, must be interpreted as not precluding the postponement of the surrender of the requested person solely on the ground that that person has not waived their right to appear in person before the courts seized in the executing Member State.

5.11.3. *Temporary surrender instead of postponement*

In the situations described in Section 5.10, the executing judicial authority may, instead of postponing the surrender temporarily, surrender the requested person to the issuing Member State (Article 24(2) of the Framework Decision on EAW). This can be done for the purposes of prosecuting the person or executing a sentence already passed.

The executing and the issuing judicial authorities need to agree on the conditions of the temporary surrender in writing and in clear terms. The agreement is binding on all the authorities in the issuing Member State (Article 24(2) of the Framework Decision on EAW). The temporary surrender makes it possible to avoid lengthy delays in proceedings in the issuing Member State resulting from the fact that the person is being prosecuted or has already been sentenced in the executing Member State.

5.11.4. *Postponement of surrender decision due to identification of a real risk of inhuman or degrading treatment for the requested person*

In accordance with the judgment of the Court of Justice in Joined Cases C-404/15 and C-659/15 PPU *Aranyosi and Căldăraru*, if the existence of a real risk of inhuman or degrading treatment for the requested person is identified, based on information received from the issuing judicial authority and any other information that may be available to the executing judicial authority (and pending a final decision on the EAW), the execution of the EAW must be postponed but not abandoned. Where the executing judicial authority decides on such a postponement, the executing Member State is to inform Eurojust, in accordance with Article 17(7) of the Framework Decision on EAW, giving the reasons for the delay (see Sections 5.7 and 4.1).

In a similar vein, the Court of Justice ruled in Case C-699/21 ([200]), *E. D. L.* that where the executing judicial authority concludes that there are substantial grounds for believing that that surrender would expose that person to a real risk of a significant reduction in his or her life expectancy or of a rapid, significant and irreversible deterioration in his or her state of health, it must postpone that surrender and ask the issuing judicial authority to provide all information relating to the conditions under which it intends to prosecute or detain that person and to the possibility of adapting those conditions to his or her state of health in order to prevent such a risk from materialising. If the risk referred to above can be ruled out by guarantees provided by the issuing judicial authority, the EAW must then be executed. It is nevertheless possible that, in exceptional circumstances and in the light of the information provided by the issuing judicial authority, the executing judicial authority arrives at the

([199]) Judgment of the Court of Justice of 8 December 2022, *CJ*, C-492/22 PPU, ECLI:EU:C:2022:964.
([200]) Judgment of the Court of Justice of 18 April 2023, *E.D.L.*, C-699/21, ECLI:EU:C:2023:295.

conclusion that (i) in the event that the person concerned is surrendered to the issuing Member State, that person will genuinely be at risk of inhuman and degrading treatment; and (ii) that risk cannot be ruled out within a reasonable period of time. In those circumstances, the executing judicial authority must refuse to execute the EAW. However, if that risk can be ruled out within a reasonable period of time, a new date of surrender must be arranged with the issuing judicial authority.

5.12. **Multiple EAWs concerning the same person**

5.12.1. *Deciding which EAW to execute*

Multiple EAWs concerning the same person may exist at the same time, either for the same acts or for different acts, and may be issued by the authorities of one or more Member States. The following guidelines apply regardless of whether the EAWs were issued for same acts or for different acts.

Where there are multiple EAWs for the same person, the executing judicial authority decides which one to execute, taking due consideration of all the circumstances (Article 16 of the Framework Decision on EAW).

It is advised that, before deciding the executing judicial authority tries to coordinate among the issuing judicial authorities who have issued the EAWs. If the issuing judicial authorities have already coordinated beforehand, this should be taken into account by the executing judicial authority, although the executing judicial authority is not bound by any agreements they may have reached under the Framework Decision on EAW.

The executing judicial authority may also seek advice from Eurojust (Article 16(2) of the Framework Decision on EAW). It can facilitate and speed up the coordination and can be requested to give an opinion on the competing EAWs. The decision on which EAW to execute should ideally be based on the consent of all of the issuing judicial authorities.

In considering which of the EAWs to execute, and whether or not the issuing judicial authorities have reached consensus, the following factors in particular should be taken into account by the executing judicial authority (Article 16(1) of the Framework Decision on EAW):

(a) the relative seriousness of the offences;

(b) the place where the offences were committed;

(c) the respective dates of the EAWs;

(d) whether the warrant has been issued for the purposes of prosecution, or for execution of a custodial sentence or detention order.

This list is non-exhaustive. Furthermore, there are no strict rules as to which of these factors should be prioritised – this is to be considered on a case-by-case basis. In any case, Article 16 of the Framework Decision on EAW requires the executing judicial authority to take the situation into due consideration. A simple 'first come, first served' decision should therefore be avoided.

The executing judicial authorities may also refer to the *Eurojust Guidelines for deciding on competing requests for surrender and extradition* (revised, 2019), which are available at: https://www.eurojust.europa.eu/nl/guidelines-deciding-competing-requests-surrender-and-extradition.

When taking the surrender decision, it is important that the executing judicial authority clearly indicates which EAW is the basis for the surrender. Furthermore, the SIRENE Bureau of the executing Member State then needs to send SIRENE G form to each Member State concerned (see Article 32(3) of the SIRENE Manual – Police) ([201]).

The assessment of which of the EAWs to execute should only concern those EAWs that are **enforceable**. Therefore, the executing judicial authority could initially assess each of the EAWs to determine whether it would be possible to execute them on their own. If a ground of non-execution applies to any of the EAWs, the executing judicial authority could, for the sake of clarity, take a separate decision not to execute that EAW.

In *Case C-158/21 Puig Gordi and Others* ([202]), the Court of Justice clarified that the Framework Decision on EAW does not preclude the issuing of several successive EAW against a requested person even after the execution of a first EAW concerning that person has been refused by the executing Member State – provided that the execution of a new EAW does not result in an infringement of Article 1(3) of that framework decision and that the issuing of the successive EAW is proportionate.

5.12.2. *'Parallel proceedings'*

When EAWs for offences concerning **the same facts and the same person** are issued by two or more Member States, the competent authorities have a duty to communicate and cooperate. This duty follows from Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings ([203]). In these situations, the competent authorities are advised to refer to their national legislation implementing that Framework Decision.

When consensus cannot be reached, the competent authorities involved must refer the matter to Eurojust in cases where Eurojust is competent to act ([204]). Eurojust can also be consulted in other situations ([205]). On 13 December 2016, Eurojust issued Guidelines for deciding 'Which jurisdiction should prosecute?' to prevent and support the settling of conflicts of jurisdiction that could result in an infringement of the principle of *ne bis in idem* ([206]).

Member States which receive such parallel EAWs should inform the issuing Member States' competent authorities of the parallel proceedings.

The competent authorities of the Member States which issued the EAWs should inform the executing judicial authority of their cooperation to resolve the conflict of jurisdiction and of any consent achieved in this procedure.

6. DEDUCTION OF THE PERIOD OF DETENTION SERVED IN THE EXECUTING MEMBER STATE

Following the surrender of the requested person, the issuing Member State must take into account the periods of detention that have resulted from the execution of the EAW. All of these periods must be deduced from the total period of the custodial sentence or detention to be served in the issuing Member State (Article 26 of the Framework Decision on EAW). If the person is acquitted, provisions of the issuing Member State on compensation for damages may apply.

([201]) Commission Implementing Decision C(2021) 7901.
([202]) Judgment of the Court of Justice of 31 January 2023, *Puig Gordi and Others*, C-158/21, ECLI:EU:C:2023:57.
([203]) OJ L 328, 15.12.2009, p. 42.
([204]) See Regulation 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), OJ L 295, 21.11.2018, p. 138.
([205]) See Articles 4(4) and (6) of Regulation 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), OJ L 295, 21.11.2018, p. 138.
([206]) Guidelines for deciding 'Which jurisdiction should prosecute?', European Union Agency for Criminal Justice Cooperation (Eurojust), https://www.eurojust.europa.eu/sites/default/files/assets/eurojust_jurisdiction_guidelines_2016_en.pdf.

For this reason and as described in Section 4.5.2, the executing judicial authority or the central authority of the executing Member State must provide all information concerning the duration of the detention of the requested person on the basis of the EAW. This information should be provided on the form included in Annex VII (Standard form on EAW decision) at the time of the surrender (see also the judgment of the Court of Justice in Case C-294/16 PPU *JZ* ([207])).

7. RULE OF SPECIALITY – PROCEDURE FOR RENOUNCING THE RULE OF SPECIALITY BY CONSENT OF THE EXECUTING JUDICIAL AUTHORITY

As discussed in Section 2.6, a person who has been surrendered may not in general be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to the surrender other than the offence for which the person was surrendered. This is the rule of speciality, as set out in Article 27 of the Framework Decision on EAW.

The rule of speciality is subject to a number of exceptions discussed in Section 2.6. In addition, Article 27(3) of the Framework Decision on EAW lists other situations where the rule of speciality does not apply (see Section 2.6 for further details and for the definition of an 'offence other than' that for which the person was surrendered within the meaning of Article 27(2) of the Framework Decision on EAW).

In other cases, it is necessary to request the original executing Member State's consent (Article 27(3)(g) of the Framework Decision on EAW).

The procedure for renouncing the rule of speciality by consent of the executing judicial authority requires that the request for consent must be submitted by the same procedure and must contain the same information as a normal EAW. Thus, the competent judicial authority transmits the request for consent directly to the executing judicial authority, which surrendered the person.

The information contained in the request, as provided for in Article 8(1) of the Framework Decision on EAW, must be translated under the same rules as an EAW. The executing judicial authority must take the decision no later than 30 days after receipt of the request (Article 27(4) of the Framework Decision on EAW).

The executing authority must give its consent when the offence for which the consent is requested is itself subject to surrender in accordance with the Framework Decision on EAW – unless a mandatory or optional ground for non-execution applies.

Where applicable, the executing judicial authority may subject its consent to one of the conditions concerning custodial life sentences and the return of nationals and residents laid down in Article 5 of the Framework Decision on EAW (see Section 5.9). In such cases, the issuing Member State must give the appropriate guarantees (Article 27(4) of the Framework Decision on EAW).

The Court held in its judgment in Case C-168/13 PPU *Jeremy F* ([208]). that a Member State could provide in its national law for an appeal with suspensive effect against the decision referred to in Article 27(4) of the Framework Decision on EAW – provided that the final decision is taken within the time limits laid down in Article 17 of the Framework Decision on EAW (see Section 4.1).

In its judgment in Case C-195/20 PPU *XC* ([209]), the Court of Justice clarified that in a situation where the person was surrendered by a first Member State on the basis of an EAW, and that person then left the territory of the issuing Member State of the first warrant voluntarily and has been surrendered back there by a second Member State in execution of another EAW issued after that departure, then (i) the only surrender that is relevant for assessing compliance with the rule of speciality is that of the executing judicial authority of that second EAW; and (ii) the consent required in Article 27(3)(g) must therefore be given only by the executing judicial authority of the Member State that surrendered the prosecuted person on the basis of that EAW.

In Case C-510/19 *AZ* ([210]), the Court of Justice clarified that the consent to renounce to the application of the rule of speciality under Articles 27(3)(g) and 27(4) of the Framework Decision on EAW must be given by a judicial authority that fulfils the requirements set out in Article 6(2) thereof (see Section 2.1.2).

([207]) Judgment of the Court of Justice of 28 July 2016, *JZ*, C-294/16 PPU, ECLI:EU:C:2016:610.
([208]) Judgment of the Court of Justice of 30 May 2013, *Jeremy F*, C-168/13 PPU, ECLI:EU:C:2013:358.
([209]) Judgment of the Court of Justice of 24 September 2020, *XC*, C-195/20 PPU, ECLI:EU:C:2020:749.
([210]) Judgment of the Court of Justice of 24 November 2020, *AZ*, C-510/19, ECLI:EU:C:2020:953.

In its judgment in Joined Cases C-428/21 and C-429/21 PPU ([211]), *HM and TZ*, the Court of Justice furthermore interpreted Article 27(3)(g) and (4) as well as Article 28(3) of the Framework Decision on EAW in light of the right to effective judicial protection guaranteed by Article 47 of the Charter. Consequently, a person who has been surrendered to the issuing judicial authority in execution of an EAW has the right to be heard by the executing judicial authority when a request for consent to renounce the rule of speciality is made. The Court clarified that the effective exercise of this right does not require the direct involvement of the executing judicial authority, provided that it ensures that it has sufficient information (particularly on the position of the person affected) to take a decision. It may thus suffice if the person affected can make their views known to the issuing judicial authority and this information is recorded in writing and passed on to the executing judicial authority. In principle, such information must be considered by the executing judicial authority as having been collected in compliance with the requirements of Article 47 of the Charter. If necessary, the executing judicial authority must ask for the provision of additional information without delay.

8. SUBSEQUENT SURRENDER

8.1. **To the executing Member State on the basis of the Dublin III Regulation**

At the time of his or her surrender, the requested person may have lodged an application for international protection in the executing Member State on the basis of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person ([212]).

In such situation and where the person has not lodged a new application for international protection in the issuing Member State following his or her surrender, the issuing Member State may request that the executing Member State takes back the surrendered person (see judgment of the Court of Justice in Case C-213/17 *X* ([213])).

8.2. **To another Member State on the basis of an EAW**

Following the surrender of the requested person to the issuing Member State on the basis of an EAW, that Member State might need to decide on the execution of another EAW issued by another Member State regarding the same person. In accordance with Article 28(2) of the Framework Decision on EAW, the issuing Member State may subsequently surrender the person to another Member State **without the consent** of the original executing Member State in the following cases:

(a) where the requested person, having had an opportunity to leave the territory of the Member State to which he or she has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it;

(b) where the requested person consents to be surrendered to a Member State other than the executing Member State pursuant to an EAW.

Consent by the requested person must be given before the competent judicial authorities of the issuing Member State. It must be recorded in accordance with that Member State's national law. It must be drawn up in such a way as to make clear that the person concerned has given it voluntarily and in full awareness of the consequences;

(c) where the requested person is not subject to the speciality rule in the issuing Member State according to Article 27(3)(a), (e), (f) and (g). The speciality rule, when applicable, prevents the deprivation of liberty of the requested person for any offence committed prior to his or her surrender for which the person was not surrendered, thus also preventing subsequent surrender to a Member State other than the executing Member State (see Section 2.6). Vice-versa, if the speciality rule is not applicable in the context of the first surrender pursuant to Article 27(3)(a), (e), (f) and (g) it also does not prevent subsequent surrender to another Member State.

([211]) Judgment of the Court of Justice of 26 October 2021, *HM and TZ*, Joined Cases C-428/21 PPU and C-429/21 PPU, ECLI:EU:C:2021:876.

([212]) OJ L 180, 29.6.2013, p. 31.

([213]) Judgment of the Court of Justice of 5 July 2018, *X*, C-213/17, ECLI:EU:C:2018:538.

In other cases, it is necessary to request the original executing Member State's **consent** for any subsequent surrender ([214]).

Procedure to obtain the consent of the executing judicial authority

The request for consent must be submitted by the same procedure and must contain the same information as a normal EAW. The competent judicial authority transmits the request for consent directly to the executing judicial authority which surrendered the person.

Where a person has been subject to more than one surrender between Member States pursuant to successive EAWs, the subsequent surrender of that person to a Member State other than the Member State that last surrendered him or her is subject to the consent **only** of the Member State which carried out that **last surrender** (see judgment of the Court of Justice in Case C-192/12 PPU West ([215])).

The information that must be contained in the request, as set out in Article 8(1) of the Framework Decision on EAW, must be translated under the same rules as an EAW. The executing judicial authority must take the decision on the consent no later than 30 days after receipt of the request (Article 28(3) of the Framework Decision on EAW).

Consent must be given when the offence for which the consent is requested is itself subject to surrender, in accordance with the provisions of the Framework Decision on EAW, unless a mandatory or optional ground for non-execution applies.

Where applicable, the executing judicial authority may subject its consent to one of the conditions concerning custodial life sentences and the return of nationals and residents laid down in Article 5 of the Framework Decision on EAW (see Section 5.9). In such cases, the issuing Member State must give the appropriate guarantees (Article 28(3) of the Framework Decision on EAW).

8.3. To a third State

A person who has been surrendered pursuant to an EAW shall not be extradited to a State which is not a Member State (third State) without the consent of the competent authority of the Member State which surrendered the person. Such consent is given in accordance with the extradition agreements by which that Member State is bound, as well as with its domestic law (Article 28(4) of the Framework Decision on EAW).

9. OBLIGATIONS AS REGARDS THIRD COUNTRIES

9.1. Extradition request of a citizen of another Member State

In 2016, the Court of Justice introduced in Case C-182/15 *Petruhhin* ([216]) specific obligations for Member States that do not extradite their own nationals when they receive an extradition request from a third State for the prosecution of an EU citizen who is a national of another Member State and who has exercised his/her right to free movement under Article 21(1) TFEU.

The *Petruhhin* judgment was the first case where the Court of Justice held that an EU Member State faced with an extradition request from a third State concerning a national of another EU Member State is obliged to initiate a consultation procedure with the Member State of nationality of the EU citizen (the *Petruhhin* mechanism), thus giving the latter the opportunity to prosecute its citizens by means of an EAW relating, at least, to the same offences as those of which that person is accused in the extradition request.

The specific obligations imposed on Member States that do not extradite their own nationals find their rationale derive from in Article 18 TFEU (non-discrimination) and Article 21 TFEU (right to free movement). A difference in treatment between own nationals and other EU citizens constitutes a restriction of the right to free movement

([214]) Article 28(1) of the Framework Decision on EAW allows Member States to submit a notification that their consent is presumed for such a surrender on subsequent extradition in their relations with other Member States that have made the same notification. According to the information available to the Commission, only Romania has made such a notification.

([215]) Judgment of the Court of Justice of 28 June 2012, *West*, C-192/12, ECLI:EU:C:2012:404.

([216]) Judgment of the Court of Justice of 6 September 2016, *Petruhhin*, C-182/15, ECLI:EU:C:2016:630.

which can only be justified if it is based on objective considerations and it is proportionate to the legitimate objective of preventing the risk of impunity. The Court held that in cooperating with the Member State of which the person concerned is a national and giving priority to a potential EAW over the extradition request, the host Member State acts in a manner which is less prejudicial to the exercise of freedom of movement while avoiding, as far as possible, the risk of impunity.

Member States' obligations were further specified in subsequent case-law. Moreover, the Court of Justice extended the *Petruhhin* mechanism to Iceland and Norway.

Detailed guidance on extradition to third states and a summary of the relevant case-law of the Court of Justice in this respect is provided in the Commission Notice containing Guidelines on Extradition to Third States of 8 June 2022, attached to this Handbook as Annex X ([217]).

The Guidelines take into account experience that has been gained in recent years in applying the *Petruhhin* mechanism across the EU, Iceland and Norway. The guidelines also establish a network of contact points to swiftly exchange information on any unlawful extradition request, in particular politically motivated extradition requests concerning EU citizens, third States' nationals and stateless persons. In addition, a table of all extradition agreements and mutual legal assistance agreements that Member States have concluded with third countries can be consulted on the EJN website.

9.2. **Concurrent EAWs and extradition requests for the same person**

9.2.1. *Requests from third States*

A Member State might receive an EAW and a concurrent extradition request from a third State for the same person who is in its territory. They might concern the same acts or different acts. The Member State might have different authorities responsible for deciding on the execution of the EAW and of the extradition request. In such cases, these authorities should cooperate when deciding how to proceed on the basis of the criteria mentioned below. Advice and help in coordination among the States involved might also be sought from Eurojust or the EJN.

There are no rules in the Framework Decision on EAW on which request should take precedence. However, as explained above, following the judgment in Case C-182/15, *Petruhhin*, in some situations priority should be given to an EAW over an extradition request.

In all other cases, according to Article 16(3) of the Framework Decision on EAW, the Member State must give due consideration to all the circumstances and in particular the criteria mentioned in Article 16(1) of the Framework Decision on EAW for deciding which request to execute when more than one of them relate to the same person.

Therefore, the following factors should be taken into account by the competent authorities:

(a) the relative seriousness of the offences;

(b) the place where the offences were committed;

(c) the respective dates of the EAW and the extradition request;

(d) whether the warrant has been issued for the purposes of prosecution or for execution of a custodial sentence or detention order.

The executing judicial authorities may also refer to Eurojust's *Guidelines for deciding on competing requests for surrender and extradition* (2019 edition), which are available at: https://www.eurojust.europa.eu/nl/guidelines-deciding-competing-requests-surrender-and-extradition.

In addition, any criteria mentioned in the relevant extradition agreement will need to be taken into account. These could concern, in particular, the rules on multiple extradition requests.

([217]) OJ C 223, 8.6.2022, p. 1–35.

9.2.2. *Requests from the International Criminal Court (ICC)*

If a Member State receives an EAW and a simultaneous extradition request from the ICC for the same person, the competent authority or authorities should consider all circumstances referred to in Section 9.2.1. However, Member States' obligations under the Statute of the International Criminal Court take precedence over the execution of the EAW (Article 16(4) of the Framework Decision on EAW).

9.3. Prior extradition from a third State and the rule of speciality

If the requested person had been extradited to the executing Member State by a third State, the extradition might involve the speciality rule, depending on the rules of the applicable extradition agreement. According to the speciality rule, the extradited person can only be prosecuted or deprived of liberty for the offence or offences for which he or she was extradited. The Framework Decision on EAW does not prejudice the obligation to respect the speciality rule in such situations (Article 21 of the Framework Decision on EAW). This means that the executing Member State might be prevented from further surrender of the person without the consent of the State from which the requested person was extradited.

To resolve such situations, the Framework Decision on EAW requires the executing Member State to immediately take all necessary measures for requesting the consent of the third State (from which the requested person was extradited) so that the person can be surrendered to the Member State which issued the EAW (Article 21 of the Framework Decision on EAW).

The time limits referred to in Article 17 of the Framework Decision on EAW (see Section 4.1) will not start running until the day on which these speciality rules cease to apply. Pending the decision of the third State from which the requested person was extradited, the executing Member State must ensure that the material conditions necessary for effective surrender remain fulfilled (Article 21 of the Framework Decision on EAW). In particular, it may need to take the measures necessary to prevent the person from absconding.

10. TRANSIT

10.1. Transit via another Member State

Transit (Article 25 of the Framework Decision on EAW) concerns the situation where the requested person is transferred to the issuing Member State from the executing Member State via the territory, land or water of a third Member State. In these cases, the third Member State has to permit the transit. The issuing Member State's competent authority must, however, provide the following information to the third Member State:

(a) the identity and nationality of the person subject to the EAW;

(b) the existence of an EAW;

(c) the nature and legal classification of the offence;

(d) the description of the circumstances of the offence, including the date and place.

To facilitate the transit, this information should be provided as soon as possible prior to the organisation of the transit. The issuing judicial authority is therefore advised to consider the possible need for transit even before it has agreed on the date of surrender with the executing judicial authority. This is also important in order to respect the strict time limits for surrender of the person set out in Article 23 of the Framework Decision on EAW (usually 10 days).

The information should be provided to the authority responsible for receiving transit requests in the Member State in question. Information on these authorities in each Member State can be found on the EJN website (the Judicial Atlas, *Fiches Belges*). The information can be provided to the relevant authority by any means capable of producing a written record, including email. The Member State of transit must notify its decision by the same procedure (Article 25(3) of the Framework Decision on EAW). In cases where the SIRENE Bureau is responsible for executing the handover, a specific SIRENE form (the 'T form') has been drawn up to facilitate the exchange of information between SIRENE Bureaux when transit is required (see Article 39 of SIRENE Manual – Police) ([218]).

([218]) Commission Implementing Decision C(2021) 7901.

The Framework Decision on EAW does not set a time limit for transit requests, but the State of transit should handle them without delay.

When the transport is carried out by air and without a scheduled stopover, the rules above do not apply. However, if an unscheduled landing occurs, the issuing Member State must provide the designated authority in the transit State with the information mentioned above, as in the case of transit via land or water (Article 25(4) of the Framework Decision on EAW).

10.2. **Nationals and residents of the Member State of transit**

The exceptions to the duty to permit transit concern situations where a person who is the subject of an EAW is a national or resident of the Member State of transit. If the EAW is issued for the purpose of prosecution, the Member State of transit may impose the condition that the person, after being heard, will be returned to the transit State to serve the custodial sentence or detention order passed against that person in the issuing Member State (Article 25(1) of the Framework Decision on EAW). In this regard, Article 5(3) of the Framework Decision on EAW should be observed *mutatis mutandis* (see Section 5.9.2). If the EAW is issued for the purpose of the execution of a custodial sentence or detention order, the Member State of transit may refuse the transit.

10.3. **Extradition from a third State to a Member State**

Although the Framework Decision on EAW does not directly concern extradition from third States, the rules on transit in Article 25 of the Framework Decision on EAW apply *mutatis mutandis* to extradition from a third State to a Member State (Sections 9.1 and 9.2). In this context, the expression 'European arrest warrant' in Article 25 of the Framework Decision on EAW must be read as 'extradition request' (Article 25(5)).

11. NON-EXECUTED EAWS

11.1. **Ensuring that the person is not arrested again in the same Member State**

If the executing judicial authority decides to refuse the execution of the EAW, the competent authority of that Member State needs to ensure that the refused EAW can no longer result in the arrest of the requested person within its territory. To ensure this, it must take the following steps so that:

(a) the corresponding SIS alert is 'flagged'; and

(b) the corresponding alerts in domestic systems of the executing Member State will still be visible and will appear as '**Person for arrest and surrender or extradition'**. However, the action to be taken will not require the person to be arrested but will instead be to '**determine the place of residence or domicile of the person'** ([219]).

The reason for the alert refers to the background of the case but the action to be taken must be read before acting because the wrong action might otherwise be executed in these important cases,.

For more information on the procedure for flagging, see Article 24 of the SIS Police Regulation ([220]), Article 31 of the SIRENE Manual – Police ([221]) and Article 12 of the Commission Implementing Decision on SIS data entry ([222]).

11.2. **Communication to the issuing Member State**

The executing judicial authority must communicate its decision on the action to be taken on the EAW to the issuing judicial authority (Article 22 of the Framework Decision on EAW). For this purpose, it is advisable to use the standard form in Annex VII to this Handbook. If the executing judicial authority decides to refuse the execution of the EAW, this communication gives the issuing judicial authority the possibility to consider whether it should maintain or withdraw the EAW.

([219]) See Article 12(2) of, and Annex I to, Commission Implementing Decision C (2021) 92 final.
([220]) OJ L 312, 7.12.2018, p. 56.
([221]) Commission Implementing Decision C(2021) 7901.
([222]) Commission Implementing Decision C(2021) 92.

11.3. **Consideration by the issuing judicial authorities whether or not to maintain the EAW**

The Framework Decision on EAW does not require an EAW to be withdrawn if one Member State refuses to execute it. This is because other Member States may still be able to execute the EAW. The EAW and corresponding SIS alert therefore remain valid unless the issuing judicial authority decides to withdraw it.

However, there should always be legitimate grounds for any existing EAW. When considering whether or not to maintain an EAW after a Member State has refused to execute it, the issuing judicial authority should consider the circumstances of the case and the applicable national and Union law, including fundamental rights. In particular, the following questions could be considered:

(a) is it likely that the ground for mandatory non-execution which the executing judicial authority applied would be applied by the other Member States? This is particularly relevant concerning the *ne bis in idem* principle (Article 3(2) of the Framework Decision on EAW);

(b) is it still proportionate to maintain the EAW (see Section 2.4):;

(c) is the EAW the only measure likely to be effective (see Section 2.5):.

11.4. **Review of long-standing EAWs in the SIS**

Each issuing judicial authority should remain attentive to its alerts in the SIS. It may need to observe the statute of limitations in respect of the offences concerned and any relevant changes in the criminal process and domestic legislation affecting the position of the requested person.

According to the SIS Police Regulation ([223]), alerts on persons entered in the SIS may be kept only for the time required to achieve the purposes for which they were entered (see Article 53(1) of the SIS Police Regulation). As soon as there are no longer grounds for an EAW, the competent authority of the issuing Member State must delete it from the SIS (see Article 55(1) of the SIS Police Regulation).

EAWs which are entered in the SIS remain there for up to 5 years (unless they were issued for a shorter time period) and the issuing Member State must review the need to retain the SIS alert within that 5-year period. The issuing Member State receives a notification that the alert will expire shortly. If the issuing authority does not review the alert and extend its validity, the alerts are automatically deleted (Article 53(7) of the SIS Police Regulation). Therefore, in any case within 5 years of entering the EAW in the SIS, the issuing judicial authority should decide whether to extend its duration where this is necessary and proportionate. Member States may determine a shorter review period (Article 53 (3) of the SIS Police Regulation).

Alerts for EAWs should be deleted from the SIS once the person has been surrendered.

12. PROCEDURAL RIGHTS OF THE REQUESTED PERSON

The Framework Decision on EAW grants the requested person several procedural rights. In accordance with Article 11 of the Framework Decision on EAW, the requested person has the right to be informed of the EAW and of its contents, and of the possibility of consenting to surrender; as well as the right to a legal counsel and an interpreter. These rights must be provided in accordance with the national law of the executing Member State. In addition, various provisions of the Framework Decision on EAW grant the requested person rights, in particular Article 4a(2) (right to information on judgments rendered *in absentia*), Article 13(2) (legal counsel when taking the decision to consent), Articles 14 and 19 (right to be heard) and Article 23(5) (release upon expiry of the time limits for surrender of the person).

These rights are strengthened by the specific instruments on procedural guarantees, as explained in Sections 12.1 to 12.9.

([223]) OJ L 312, 7.12.2018, p. 56.

12.1. **Right to interpretation and translation**

The right to interpretation and translation applies to the execution of an EAW, as provided by Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings ([224]).

Article 2(7) of Directive 2010/64/EU requires the executing Member State's competent authorities to provide the following rights to any person subject to EAW proceedings who does not speak or understand the language of the proceedings:

(a) the right to interpretation, without delay, during criminal proceedings before investigative and judicial authorities (including during police questioning, all court hearings and any necessary interim hearings);

(b) the right to interpretation for communication between suspected or accused persons and their legal counsel in direct connection with any questioning or hearing during the proceedings or with the lodging of an appeal or other procedural applications;

(c) the right to challenge a decision finding that there is no need for interpretation and the possibility to complain that the quality of the interpretation provided is not sufficient to safeguard the fairness of the proceedings.

Article 3(6) of Directive 2010/64/EU requires the executing Member State's competent authorities to provide a written translation of the EAW to any person subject to proceedings for the execution of an EAW who does not understand the language of the EAW. As an exception, an oral translation or oral summary may be provided on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings.

Interpretation and translation must be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence. It is also important to note that Member States must meet the costs of interpretation and translation, irrespective of the outcome of the proceedings.

12.2. **Right to information**

Article 5 of Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings ([225]) requires that persons who are arrested for the purpose of the execution of an EAW are provided promptly with an appropriate Letter of Rights containing information on their rights according to the law implementing the Framework Decision on EAW in the executing Member State. An indicative model Letter of Rights, drafted in simple and accessible language, is set out in Annex II to Directive 2012/13/EU (and reproduced in Annex IX to this Handbook).

When information is provided, this is noted using the recording procedure of the Member State concerned. Suspects or accused persons have the right to challenge any failure or refusal to provide information in accordance with procedures under national law.

In Case C-649/19 *IR* ([226]), the Court of Justice found that other rights under Directive 2012/13/EU that pertain to information on arrest (particularly Articles 4, 6 and 7) do not apply to a person arrested for the purpose of the execution of an EAW for criminal prosecution prior to their surrender.

The Court argued that where the person is surrendered to the authorities of the Member State that issued the EAW, he or she acquires the status of 'accused person' within the meaning of Directive 2012/13 and enjoys all the rights associated with that status. That person can thus prepare his or her defence in line with the aims of Directive 2012/13/EU.

([224]) OJ L 280, 26.10.2010, p. 1. Denmark is not bound by this Directive.
([225])
([226]) Judgment of the Court of Justice 28 January 2021, *IR*, C-649/19, ECLI:EU:C:2021:75.

Concerning the period prior to surrender, the Court found that, according to Article 8(1)(d) and (e) of the Framework Decision on EAW, the EAW must already contain information which essentially corresponds to that referred to in Article 6 of Directive 2012/13. Furthermore, the right to effective judicial protection does not require the person, against whom an EAW for the purposes of criminal prosecution has been issued, to be informed about the remedies against this decision available in the issuing Member State prior to his or her surrender.

Indeed, in Case C-105/21 *Criminal proceedings against IR* ([227]), the Court of Justice clarified that – in light of Articles 6 and 47 of the Charter, the right to freedom of movement and residence, and the principles of equality and mutual trust – the issuing judicial authority is under no obligation to forward to the requested person the national decision on the arrest of that person and information on the possibilities of challenging that decision, while that person is still in the executing Member State. The objective of speeding up and simplifying the surrender procedure would in fact be compromised if the issuing judicial authority were required to forward to the person concerned, before his or her surrender, the national decision on his or her arrest and information on the possibilities of challenging that decision.

12.3. **Right of access to a lawyer**

The right of access to a lawyer applies to persons subject to an EAW, pursuant to Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty ([228]).

Persons subject to an EAW have the right of access to a lawyer in the executing Member State upon arrest pursuant to the EAW (Article 10(1), (2) and (3) of Directive 2013/48/EU). Suspects or accused persons shall have access to a lawyer from whichever of the following points in time is the earliest ([229]):

(a) before they are questioned by the police or by another law enforcement or judicial authority;

(b) upon the carrying out by investigating or other competent authorities of an investigative or other evidence-gathering act in accordance with point (c) of paragraph 3;

(c) without undue delay after deprivation of liberty;

(d) where they have been summoned to appear before a court having jurisdiction in criminal matters, in due time before they appear before that court.

In Case C-659/18 *VW* ([230]), the Court of Justice ruled that the exercise of the right of access to a lawyer at the pre-trial stage may not be delayed until the national arrest warrant issued against the person concerned has been executed, based only on the fact that the suspect or accused person has failed to follow a summons to appear before an investigating judge.

With regard to the content of the right of access to a lawyer in the executing Member State, requested persons have the following rights:

(a) the right of access to a lawyer in such time and in such a manner as to allow the requested persons to exercise their rights effectively and in any event without undue delay from deprivation of liberty;

(b) the right to meet and communicate with the lawyer representing them;

(c) the right for their lawyer to be present and, in accordance with procedures in national law, participate during a hearing by the executing judicial authority.

([227]) Judgment of the Court of Justice 30 June 2022, *Criminal proceedings against IR*, C-105/21, ECLI:EU:C:2022:511.
([228]) OJ L 294, 6.11.2013, p. 1. Denmark and Ireland are not bound by this Directive.
([229]) Directive 2013/48/EU, Article 3(2).
([230]) Judgment of the Court of Justice of 12 March 2020, *VW*, C-659/18, ECLI:EU:C:2020:201.

In addition, requested persons have the right to appoint a lawyer in the issuing Member State (Article 10(4), (5) and (6) of Directive 2013/48/EU). The role of that lawyer is to assist the lawyer in the executing Member State by providing that lawyer with information and advice with a view to the effective exercise of the rights of requested persons under the Framework Decision on EAW.

12.4. **Right to have a third person informed of the deprivation of liberty**

From the time of their arrest in the executing Member State, persons subject to an EAW have the right to have at least one person, such as a relative or an employer, nominated by them, informed of their deprivation of liberty without undue delay ([231]).

12.5. **Right to communicate with third persons**

From the time of their arrest in the executing Member State, persons subject to an EAW have the right to communicate without undue delay with at least one third person, such as a relative, nominated by them ([232]).

12.6. **Right to communicate with consular authorities**

From the time of their arrest in the executing Member State, persons subject to an EAW who are non-nationals of the executing Member State have the right to have the consular authorities of their State of nationality informed of the deprivation of liberty without undue delay and to communicate with those consular authorities ([233]).

They also have the right to be visited by their consular authorities, the right to converse and correspond with them and the right to have legal representation arranged for by their consular authorities.

12.7. **Specific rights for children**

Specific safeguards for children subject to an EAW apply from the time of their arrest under an EAW in the executing Member State ([234]). They are related in particular to:

(a) the right to information;

(b) the right to have the holder of parental responsibility informed;

(c) the right to be assisted by a lawyer;

(d) the right to a medical examination;

(e) the right to specific treatment in case of deprivation of liberty;

(f) the right to protection of privacy;

(g) the right to be accompanied by the holder of parental responsibility during the proceedings.

12.8. **Right to legal aid**

The right to legal aid applies to persons subject to an EAW, as provided for by Directive 2016/1919/EU of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in EAW proceedings ([235]).

Persons subject to an EAW have a right to legal aid in the executing Member State upon an arrest that is pursuant to an EAW until they are surrendered or until the decision not to surrender them becomes final (Article 5(1) of Directive 2016/1919/EU).

([231]) Directive 2013/48/EU, Article 5.
([232]) Directive 2013/48/EU, Article 6.
([233]) Directive 2013/48/EU, Article 7.
([234]) Directive 2016/800/EU of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ L 132, 21.5.2016, p. 1). Denmark and Ireland are not bound by this Directive.
([235]) OJ L 297, 4.11.2016, p. 1. Denmark and Ireland are not bound by this Directive.

In addition, requested persons who exercise their right to appoint a lawyer in the issuing Member State to assist the lawyer in the executing Member State in accordance with Article 10(4) and (5) of Directive 2013/48/EU have the right to legal aid also in the issuing Member State, in so far as legal aid is necessary to ensure effective access to justice (Article 5(2) of Directive 2016/1919/EU).

Member States may in both cases apply criteria for means testing provided for in Article 4(3) of Directive 2016/1919/EU, which apply *mutatis mutandis* to legal aid in EAW proceedings (Article 5(3) of that Directive). Such means testing should therefore take into account all relevant and objective factors (such as the income, capital and family situation of the person concerned) as well as the costs of the assistance of a lawyer and the standard of living in that Member State, in order to determine whether, in accordance with the criteria applicable in that Member State, a requested person lacks sufficient resources to pay for the assistance of a lawyer.

12.9. **Right to the presumption of innocence and right to be present at trial**

Directive 2016/343/EU on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings ([236]) notes the rights laid down in Articles 47 and 48 of the Charter, and provides that those rights are engaged at all stages of criminal proceedings, from the moment of becoming a suspect until the final determination. Article 4 prohibits public references to guilt of suspects or accused persons. Article 6 ensures that the burden of proof lies with the prosecution. Defence rights include the right to remain silent and not to self-incriminate (Article 7).

The right to be present at trial is not an absolute right. Subject to certain conditions such as being informed in due time, legal representation by a mandated lawyer and the possibility to challenge a decision), prosecution can proceed without the suspect's attendance (Article 8). However, the right to a new trial or alternative remedy must be available in the case of a breach of the rights contained in the Directive (Articles 9 and 10).

In C-416/20 PPU *TR* ([237]), the Court further clarified the relationship of Directive 2016/343/EU with the Framework Directive on EAW in the context of *in absentia* proceedings (see Section 5.6).

([236]) OJ L 65, 11.3.2016, p. 1.

([237]) Judgment of the Court of Justice of 17 December 2020, *TR*, C-416/20 PPU, ECLI:EU:C:2020:1042.

ANNEX I

Framework decision on eaw, unofficial consolidation ([1])

Text in the English language of Framework Decision on EAW

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 31(a) and (b) and Article 34(2)(b) thereof,

Having regard to the proposal from the Commission ([1]),

Having regard to the opinion of the European Parliament ([2]),

Whereas:

(1) According to the Conclusions of the Tampere European Council of 15 and 16 October 1999, and in particular point 35 thereof, the formal extradition procedure should be abolished among the Member States in respect of persons who are fleeing from justice after having been finally sentenced and extradition procedures should be speeded up in respect of persons suspected of having committed an offence.

(2) The programme of measures to implement the principle of mutual recognition of criminal decisions envisaged in point 37 of the Tampere European Council Conclusions and adopted by the Council on 30 November 2000 ([3]), addresses the matter of mutual enforcement of arrest warrants.

(3) All or some Member States are parties to a number of conventions in the field of extradition, including the European Convention on extradition of 13 December 1957 and the European Convention on the suppression of terrorism of 27 January 1977. The Nordic States have extradition laws with identical wording.

(4) In addition, the following three Conventions dealing in whole or in part with extradition have been agreed upon among Member States and form part of the Union *acquis*: the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at their common borders ([4]) (regarding relations between the Member States which are parties to that Convention), the Convention of 10 March 1995 on simplified extradition procedure between the Member States of the European Union ([5]) and the Convention of 27 September 1996 relating to extradition between the Member States of the European Union ([6]).

(5) The objective set for the Union to become an area of freedom, security and justice leads to abolishing extradition between Member States and replacing it by a system of surrender between judicial authorities. Further, the introduction of a new simplified system of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal sentences makes it possible to remove the complexity and potential for delay inherent in the present extradition procedures. Traditional cooperation relations which have prevailed up till now between Member States should be replaced by a system of free movement of judicial decisions in criminal matters, covering both pre-sentence and final decisions, within an area of freedom, security and justice.

(6) The European arrest warrant provided for in this Framework Decision is the first concrete measure in the field of criminal law implementing the principle of mutual recognition which the European Council referred to as the 'cornerstone' of judicial cooperation.

([1]) This unofficial consolidation contains only the recitals of Framework Decision 2002/584/JHA. It does not incorporate the recitals of Framework Decision 2009/299/JHA, which amended Framework Decision 2002/584/JHA.
([1]) OJ C 332 E, 27.11.2001, p. 305.
([2]) Opinion delivered on 9 January 2002 (not yet published in the Official Journal).
([3]) OJ C 12 E, 15.1.2001, p. 10.
([4]) OJ L 239, 22.9.2000, p. 19.
([5]) OJ C 78, 30.3.1995, p. 2.
([6]) OJ C 313, 13.10.1996, p. 12.

(7) Since the aim of replacing the system of multilateral extradition built upon the European Convention on Extradition of 13 December 1957 cannot be sufficiently achieved by the Member States acting unilaterally and can therefore, by reason of its scale and effects, be better achieved at Union level, the Council may adopt measures in accordance with the principle of subsidiarity as referred to in Article 2 of the Treaty on European Union and Article 5 of the Treaty establishing the European Community. In accordance with the principle of proportionality, as set out in the latter Article, this Framework Decision does not go beyond what is necessary in order to achieve that objective.

(8) Decisions on the execution of the European arrest warrant must be subject to sufficient controls, which mean that a judicial authority of the Member State where the requested person has been arrested will have to take the decision on his or her surrender.

(9) The role of central authorities in the execution of a European arrest warrant must be limited to practical and administrative assistance.

(10) The mechanism of the European arrest warrant is based on a high level of confidence between Member States. Its implementation may be suspended only in the event of a serious and persistent breach by one of the Member States of the principles set out in Article 6(1) of the Treaty on European Union, determined by the Council pursuant to Article 7(1) of the said Treaty with the consequences set out in Article 7(2) thereof.

(11) In relations between Member States, the European arrest warrant should replace all the previous instruments concerning extradition, including the provisions of Title III of the Convention implementing the Schengen Agreement which concern extradition.

(12) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union ([7]), in particular Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to surrender a person for whom a European arrest warrant has been issued when there are reasons to believe, on the basis of objective elements, that the said arrest warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons.

This Framework Decision does not prevent a Member State from applying its constitutional rules relating to due process, freedom of association, freedom of the press and freedom of expression in other media.

(13) No person should be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

(14) Since all Member States have ratified the Council of Europe Convention of 28 January 1981 for the protection of individuals with regard to automatic processing of personal data, the personal data processed in the context of the implementation of this Framework Decision should be protected in accordance with the principles of the said Convention

([7]) OJ C 364, 18.12.2000, p. 1.

HAS ADOPTED THIS FRAMEWORK DECISION:

CHAPTER 1

GENERAL PRINCIPLES

Article 1

Definition of the European arrest warrant and obligation to execute it

1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.

3. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.

Article 2

Scope of the European arrest warrant

1. A European arrest warrant may be issued for acts punishable by the law of the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months.

2. The following offences, if they are punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years and as they are defined by the law of the issuing Member State, shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to surrender pursuant to a European arrest warrant:

— participation in a criminal organisation,

— terrorism,

— trafficking in human beings,

— sexual exploitation of children and child pornography,

— illicit trafficking in narcotic drugs and psychotropic substances,

— illicit trafficking in weapons, munitions and explosives,

— corruption,

— fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests,

— laundering of the proceeds of crime,

— counterfeiting currency, including of the euro,

— computer-related crime,

— environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,

— facilitation of unauthorised entry and residence,

— murder, grievous bodily injury,

— illicit trade in human organs and tissue,

— kidnapping, illegal restraint and hostage-taking,

— racism and xenophobia,

— organised or armed robbery,

— illicit trafficking in cultural goods, including antiques and works of art,

— swindling,

— racketeering and extortion,

— counterfeiting and piracy of products,

— forgery of administrative documents and trafficking therein,

— forgery of means of payment,

— illicit trafficking in hormonal substances and other growth promoters,

— illicit trafficking in nuclear or radioactive materials,

— trafficking in stolen vehicles,

— rape,

— arson,

— crimes within the jurisdiction of the International Criminal Court,

— unlawful seizure of aircraft/ships,

— sabotage.

3. The Council may decide at any time, acting unanimously after consultation of the European Parliament under the conditions laid down in Article 39(1) of the Treaty on European Union (TEU), to add other categories of offence to the list contained in paragraph 2. The Council shall examine, in the light of the report submitted by the Commission pursuant to Article 34(3), whether the list should be extended or amended.

4. For offences other than those covered by paragraph 2, surrender may be subject to the condition that the acts for which the European arrest warrant has been issued constitute an offence under the law of the executing Member State, whatever the constituent elements or however it is described.

Article 3

Grounds for mandatory non-execution of the European arrest warrant

The judicial authority of the Member State of execution (hereinafter 'executing judicial authority') shall refuse to execute the European arrest warrant in the following cases:

1. if the offence on which the arrest warrant is based is covered by amnesty in the executing Member State, where that State had jurisdiction to prosecute the offence under its own criminal law;

2. if the executing judicial authority is informed that the requested person has been finally judged by a Member State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State;

3. if the person who is the subject of the European arrest warrant may not, owing to his age, be held criminally responsible for the acts on which the arrest warrant is based under the law of the executing State.

Article 4

Grounds for optional non-execution of the European arrest warrant

The executing judicial authority may refuse to execute the European arrest warrant:

1. if, in one of the cases referred to in Article 2(4), the act on which the European arrest warrant is based does not constitute an offence under the law of the executing Member State; however, in relation to taxes or duties, customs and exchange, execution of the European arrest warrant shall not be refused on the ground that the law of the executing Member State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing Member State;

2. where the person who is the subject of the European arrest warrant is being prosecuted in the executing Member State for the same act as that on which the European arrest warrant is based;

3. where the judicial authorities of the executing Member State have decided either not to prosecute for the offence on which the European arrest warrant is based or to halt proceedings, or where a final judgment has been passed upon the requested person in a Member State, in respect of the same acts, which prevents further proceedings;

4. where the criminal prosecution or punishment of the requested person is statute-barred according to the law of the executing Member State and the acts fall within the jurisdiction of that Member State under its own criminal law;

5. if the executing judicial authority is informed that the requested person has been finally judged by a third State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing country;

6. if the European arrest warrant has been issued for the purposes of execution of a custodial sentence or detention order, where the requested person is staying in, or is a national or a resident of the executing Member State and that State undertakes to execute the sentence or detention order in accordance with its domestic law;

7. where the European arrest warrant relates to offences which:

   (a) are regarded by the law of the executing Member State as having been committed in whole or in part in the territory of the executing Member State or in a place treated as such; or

   (b) have been committed outside the territory of the issuing Member State and the law of the executing Member State does not allow prosecution for the same offences when committed outside its territory.

Article 4a

Decisions rendered following a trial at which the person did not appear in person

1. The executing judicial authority may also refuse to execute the European arrest warrant issued for the purpose of executing a custodial sentence or a detention order if the person did not appear in person at the trial resulting in the decision, unless the European arrest warrant states that the person, in accordance with further procedural requirements defined in the national law of the issuing Member State:

(a) in due time:

   (i) either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial;

   and

   (ii) was informed that a decision may be handed down if he or she does not appear for the trial;

   or

(b) being aware of the scheduled trial, had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;

or

(c) after being served with the decision and being expressly informed about the right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed:

   (i) expressly stated that he or she does not contest the decision;

   or

   (ii) did not request a retrial or appeal within the applicable time frame;

   or

(d) was not personally served with the decision but:

(i) will be personally served with it without delay after the surrender and will be expressly informed of his or her right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed;

and

(ii) will be informed of the time frame within which he or she has to request such a retrial or appeal, as mentioned in the relevant European arrest warrant.

2. In case the European arrest warrant is issued for the purpose of executing a custodial sentence or detention order under the conditions of paragraph 1(d) and the person concerned has not previously received any official information about the existence of the criminal proceedings against him or her, he or she may, when being informed about the content of the European arrest warrant, request to receive a copy of the judgment before being surrendered. Immediately after having been informed about the request, the issuing authority shall provide the copy of the judgment via the executing authority to the person sought. The request of the person sought shall neither delay the surrender procedure nor delay the decision to execute the European arrest warrant. The provision of the judgment to the person concerned is for information purposes only; it shall neither be regarded as a formal service of the judgment nor actuate any time limits applicable for requesting a retrial or appeal.

3. In case a person is surrendered under the conditions of paragraph (1)(d) and he or she has requested a retrial or appeal, the detention of that person awaiting such retrial or appeal shall, until these proceedings are finalised, be reviewed in accordance with the law of the issuing Member State, either on a regular basis or upon request of the person concerned. Such a review shall in particular include the possibility of suspension or interruption of the detention. The retrial or appeal shall begin within due time after the surrender.

Article 5

Guarantees to be given by the issuing Member State in particular cases

The execution of the European arrest warrant by the executing judicial authority may, by the law of the executing Member State, be subject to the following conditions:

1. [deleted]

2. if the offence on the basis of which the European arrest warrant has been issued is punishable by custodial life sentence or lifetime detention order, the execution of the said arrest warrant may be subject to the condition that the issuing Member State has provisions in its legal system for a review of the penalty or measure imposed, on request or at the latest after 20 years, or for the application of measures of clemency to which the person is entitled to apply for under the law or practice of the issuing Member State, aiming at a non-execution of such penalty or measure;

3. where a person who is the subject of a European arrest warrant for the purposes of prosecution is a national or resident of the executing Member State, surrender may be subject to the condition that the person, after being heard, is returned to the executing Member State in order to serve there the custodial sentence or detention order passed against him in the issuing Member State.

Article 6

Determination of the competent judicial authorities

1. The issuing judicial authority shall be the judicial authority of the issuing Member State which is competent to issue a European arrest warrant by virtue of the law of that State.

2. The executing judicial authority shall be the judicial authority of the executing Member State which is competent to execute the European arrest warrant by virtue of the law of that State.

3. Each Member State shall inform the General Secretariat of the Council of the competent judicial authority under its law.

Article 7

Recourse to the central authority

1. Each Member State may designate a central authority or, when its legal system so provides, more than one central authority to assist the competent judicial authorities.

2. A Member State may, if it is necessary as a result of the organisation of its internal judicial system, make its central authority(ies) responsible for the administrative transmission and reception of European arrest warrants as well as for all other official correspondence relating thereto.

Member State wishing to make use of the possibilities referred to in this Article shall communicate to the General Secretariat of the Council information relating to the designated central authority or central authorities. These indications shall be binding upon all the authorities of the issuing Member State.

Article 8

Content and form of the European arrest warrant

1. The European arrest warrant shall contain the following information set out in accordance with the form contained in the Annex:

(a) the identity and nationality of the requested person;

(b) the name, address, telephone and fax numbers and e-mail address of the issuing judicial authority;

(c) evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect, coming within the scope of Articles 1 and 2;

(d) the nature and legal classification of the offence, particularly in respect of Article 2;

(e) a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person;

(f) the penalty imposed, if there is a final judgment, or the prescribed scale of penalties for the offence under the law of the issuing Member State;

(g) if possible, other consequences of the offence.

2. The European arrest warrant must be translated into the official language or one of the official languages of the executing Member State. Any Member State may, when this Framework Decision is adopted or at a later date, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the Institutions of the European Communities.

CHAPTER 2

SURRENDER PROCEDURE

Article 9

Transmission of a European arrest warrant

1. When the location of the requested person is known, the issuing judicial authority may transmit the European arrest warrant directly to the executing judicial authority.

2. The issuing judicial authority may, in any event, decide to issue an alert for the requested person in the Schengen Information System (SIS).

3. Such an alert shall be effected in accordance with the provisions of Article 95 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of controls at common borders. An alert in the Schengen Information System shall be equivalent to a European arrest warrant accompanied by the information set out in Article 8(1).

For a transitional period, until the SIS is capable of transmitting all the information described in Article 8, the alert shall be equivalent to a European arrest warrant pending the receipt of the original in due and proper form by the executing judicial authority.

Article 10

Detailed procedures for transmitting a European arrest warrant

1. If the issuing judicial authority does not know the competent executing judicial authority, it shall make the requisite enquiries, including through the contact points of the European Judicial Network ([8]), in order to obtain that information from the executing Member State.

2. If the issuing judicial authority so wishes, transmission may be effected via the secure telecommunications system of the European Judicial Network.

3. If it is not possible to call on the services of the SIS, the issuing judicial authority may call on Interpol to transmit a European arrest warrant.

4. The issuing judicial authority may forward the European arrest warrant by any secure means capable of producing written records under conditions allowing the executing Member State to establish its authenticity.

5. All difficulties concerning the transmission or the authenticity of any document needed for the execution of the European arrest warrant shall be dealt with by direct contacts between the judicial authorities involved, or, where appropriate, with the involvement of the central authorities of the Member States.

6. If the authority which receives a European arrest warrant is not competent to act upon it, it shall automatically forward the European arrest warrant to the competent authority in its Member State and shall inform the issuing judicial authority accordingly.

Article 11

Rights of a requested person

1. When a requested person is arrested, the executing competent judicial authority shall, in accordance with its national law, inform that person of the European arrest warrant and of its contents, and also of the possibility of consenting to surrender to the issuing judicial authority.

2. A requested person who is arrested for the purpose of the execution of a European arrest warrant shall have a right to be assisted by a legal counsel and by an interpreter in accordance with the national law of the executing Member State.

Article 12

Keeping the person in detention

When a person is arrested on the basis of a European arrest warrant, the executing judicial authority shall take a decision on whether the requested person should remain in detention, in accordance with the law of the executing Member State. The person may be released provisionally at any time in conformity with the domestic law of the executing Member State, provided that the competent authority of the said Member State takes all the measures it deems necessary to prevent the person absconding.

([8]) Council Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network (OJ L 191, 7.7.1998, p. 4).

Article 13

Consent to surrender

1. If the arrested person indicates that he or she consents to surrender, that consent and, if appropriate, express renunciation of entitlement to the 'speciality rule', referred to in Article 27(2), shall be given before the executing judicial authority, in accordance with the domestic law of the executing Member State.

2. Each Member State shall adopt the measures necessary to ensure that consent and, where appropriate, renunciation, as referred to in paragraph 1, are established in such a way as to show that the person concerned has expressed them voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel.

3. The consent and, where appropriate, renunciation, as referred to in paragraph 1, shall be formally recorded in accordance with the procedure laid down by the domestic law of the executing Member State.

4. In principle, consent may not be revoked. Each Member State may provide that consent and, if appropriate, renunciation may be revoked, in accordance with the rules applicable under its domestic law. In this case, the period between the date of consent and that of its revocation shall not be taken into consideration in establishing the time limits laid down in Article 17. A Member State which wishes to have recourse to this possibility shall inform the General Secretariat of the Council accordingly when this Framework Decision is adopted and shall specify the procedures whereby revocation of consent shall be possible and any amendment to them.

Article 14

Hearing of the requested person

Where the arrested person does not consent to his or her surrender as referred to in Article 13, he or she shall be entitled to be heard by the executing judicial authority, in accordance with the law of the executing Member State.

Article 15

Surrender decision

1. The executing judicial authority shall decide, within the time limits and under the conditions defined in this Framework Decision, whether the person is to be surrendered.

2. If the executing judicial authority finds the information communicated by the issuing Member State to be insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information, in particular with respect to Articles 3 to 5 and Article 8, be furnished as a matter of urgency and may fix a time limit for the receipt thereof, taking into account the need to observe the time limits set in Article 17.

3. The issuing judicial authority may at any time forward any additional useful information to the executing judicial authority.

Article 16

Decision in the event of multiple requests

1. If two or more Member States have issued European arrest warrants for the same person, the decision on which of the European arrest warrants shall be executed shall be taken by the executing judicial authority with due consideration of all the circumstances and especially the relative seriousness and place of the offences, the respective dates of the European arrest warrants and whether the warrant has been issued for the purposes of prosecution or for execution of a custodial sentence or detention order.

2. The executing judicial authority may seek the advice of Eurojust ([9]) when making the choice referred to in paragraph 1.

3. In the event of a conflict between a European arrest warrant and a request for extradition presented by a third country, the decision on whether the European arrest warrant or the extradition request takes precedence shall be taken by the competent authority of the executing Member State with due consideration of all the circumstances, in particular those referred to in paragraph 1 and those mentioned in the applicable convention.

4. This Article shall be without prejudice to Member States' obligations under the Statute of the International Criminal Court.

Article 17

Time limits and procedures for the decision to execute the European arrest warrant

1. A European arrest warrant shall be dealt with and executed as a matter of urgency.

2. In cases where the requested person consents to his surrender, the final decision on the execution of the European arrest warrant should be taken within a period of 10 days after consent has been given.

3. In other cases, the final decision on the execution of the European arrest warrant should be taken within a period of 60 days after the arrest of the requested person.

4. Where in specific cases the European arrest warrant cannot be executed within the time limits laid down in paragraphs 2 or 3, the executing judicial authority shall immediately inform the issuing judicial authority thereof, giving the reasons for the delay. In such case, the time limits may be extended by a further 30 days.

5. As long as the executing judicial authority has not taken a final decision on the European arrest warrant, it shall ensure that the material conditions necessary for effective surrender of the person remain fulfilled.

6. Reasons must be given for any refusal to execute a European arrest warrant.

7. Where in exceptional circumstances a Member State cannot observe the time limits provided for in this Article, it shall inform Eurojust, giving the reasons for the delay. In addition, a Member State which has experienced repeated delays on the part of another Member State in the execution of European arrest warrants shall inform the Council with a view to evaluating the implementation of this Framework Decision at Member State level.

Article 18

Situation pending the decision

1. Where the European arrest warrant has been issued for the purpose of conducting a criminal prosecution, the executing judicial authority must:

(a) either agree that the requested person should be heard according to Article 19;

(b) or agree to the temporary transfer of the requested person.

2. The conditions and the duration of the temporary transfer shall be determined by mutual agreement between the issuing and executing judicial authorities.

3. In the case of temporary transfer, the person must be able to return to the executing Member State to attend hearings concerning him or her as part of the surrender procedure.

([9]) Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (OJ L 63, 6.3.2002, p. 1).

Article 19

Hearing the person pending the decision

1. The requested person shall be heard by a judicial authority, assisted by another person designated in accordance with the law of the Member State of the requesting court.

2. The requested person shall be heard in accordance with the law of the executing Member State and with the conditions determined by mutual agreement between the issuing and executing judicial authorities.

3. The competent executing judicial authority may assign another judicial authority of its Member State to take part in the hearing of the requested person in order to ensure the proper application of this Article and of the conditions laid down.

Article 20

Privileges and immunities

1. Where the requested person enjoys a privilege or immunity regarding jurisdiction or execution in the executing Member State, the time limits referred to in Article 17 shall not start running unless, and counting from the day when, the executing judicial authority is informed of the fact that the privilege or immunity has been waived.

The executing Member State shall ensure that the material conditions necessary for effective surrender are fulfilled when the person no longer enjoys such privilege or immunity.

2. Where power to waive the privilege or immunity lies with an authority of the executing Member State, the executing judicial authority shall request it to exercise that power forthwith. Where power to waive the privilege or immunity lies with an authority of another State or international organisation, it shall be for the issuing judicial authority to request it to exercise that power.

Article 21

Competing international obligations

This Framework Decision shall not prejudice the obligations of the executing Member State where the requested person has been extradited to that Member State from a third State and where that person is protected by provisions of the arrangement under which he or she was extradited concerning speciality. The executing Member State shall take all necessary measures for requesting forthwith the consent of the State from which the requested person was extradited so that he or she can be surrendered to the Member State which issued the European arrest warrant. The time limits referred to in Article 17 shall not start running until the day on which these speciality rules cease to apply. Pending the decision of the State from which the requested person was extradited, the executing Member State will ensure that the material conditions necessary for effective surrender remain fulfilled.

Article 22

Notification of the decision

The executing judicial authority shall notify the issuing judicial authority immediately of the decision on the action to be taken on the European arrest warrant.

Article 23

Time limits for surrender of the person

1. The person requested shall be surrendered as soon as possible on a date agreed between the authorities concerned.

2. He or she shall be surrendered no later than 10 days after the final decision on the execution of the European arrest warrant.

3. If the surrender of the requested person within the period laid down in paragraph 2 is prevented by circumstances beyond the control of any of the Member States, the executing and issuing judicial authorities shall immediately contact each other and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.

4. The surrender may exceptionally be temporarily postponed for serious humanitarian reasons, for example if there are substantial grounds for believing that it would manifestly endanger the requested person's life or health. The execution of the European arrest warrant shall take place as soon as these grounds have ceased to exist. The executing judicial authority shall immediately inform the issuing judicial authority and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.

5. Upon expiry of the time limits referred to in paragraphs 2 to 4, if the person is still being held in custody he shall be released.

Article 24

Postponed or conditional surrender

1. The executing judicial authority may, after deciding to execute the European arrest warrant, postpone the surrender of the requested person so that he or she may be prosecuted in the executing Member State or, if he or she has already been sentenced, so that he or she may serve, in its territory, a sentence passed for an act other than that referred to in the European arrest warrant.

2. Instead of postponing the surrender, the executing judicial authority may temporarily surrender the requested person to the issuing Member State under conditions to be determined by mutual agreement between the executing and the issuing judicial authorities. The agreement shall be made in writing and the conditions shall be binding on all the authorities in the issuing Member State.

Article 25

Transit

1. Each Member State shall, except when it avails itself of the possibility of refusal when the transit of a national or a resident is requested for the purpose of the execution of a custodial sentence or detention order, permit the transit through its territory of a requested person who is being surrendered provided that it has been given information on:

(a) the identity and nationality of the person subject to the European arrest warrant;

(b) the existence of a European arrest warrant;

(c) the nature and legal classification of the offence;

(d) the description of the circumstances of the offence, including the date and place.

Where a person who is the subject of a European arrest warrant for the purposes of prosecution is a national or resident of the Member State of transit, transit may be subject to the condition that the person, after being heard, is returned to the transit Member State to serve the custodial sentence or detention order passed against him in the issuing Member State.

2. Each Member State shall designate an authority responsible for receiving transit requests and the necessary documents, as well as any other official correspondence relating to transit requests. Member States shall communicate this designation to the General Secretariat of the Council.

3. The transit request and the information set out in paragraph 1 may be addressed to the authority designated pursuant to paragraph 2 by any means capable of producing a written record. The Member State of transit shall notify its decision by the same procedure.

4. This Framework Decision does not apply in the case of transport by air without a scheduled stopover. However, if an unscheduled landing occurs, the issuing Member State shall provide the authority designated pursuant to paragraph 2 with the information provided for in paragraph 1.

5. Where a transit concerns a person who is to be extradited from a third State to a Member State this Article will apply mutatis mutandis. In particular the expression 'European arrest warrant' shall be deemed to be replaced by 'extradition request'.

CHAPTER 3

EFFECTS OF THE SURRENDER

Article 26

Deduction of the period of detention served in the executing Member State

1. The issuing Member State shall deduct all periods of detention arising from the execution of a European arrest warrant from the total period of detention to be served in the issuing Member State as a result of a custodial sentence or detention order being passed.

2. To that end, all information concerning the duration of the detention of the requested person on the basis of the European arrest warrant shall be transmitted by the executing judicial authority or the central authority designated under Article 7 to the issuing judicial authority at the time of the surrender.

Article 27

Possible prosecution for other offences

1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States that have given the same notification, consent is presumed to have been given for the prosecution, sentencing or detention with a view to the carrying out of a custodial sentence or detention order for an offence committed prior to his or her surrender, other than that for which he or she was surrendered, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

2. Except in the cases referred to in paragraphs 1 and 3, a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered.

3. Paragraph 2 does not apply in the following cases:

(a) when the person having had an opportunity to leave the territory of the Member State to which he or she has been surrendered has not done so within 45 days of his or her final discharge, or has returned to that territory after leaving it;

(b) the offence is not punishable by a custodial sentence or detention order;

(c) the criminal proceedings do not give rise to the application of a measure restricting personal liberty;

(d) when the person could be liable to a penalty or a measure not involving the deprivation of liberty, in particular a financial penalty or a measure in lieu thereof, even if the penalty or measure may give rise to a restriction of his or her personal liberty;

(e) when the person consented to be surrendered, where appropriate at the same time as he or she renounced the speciality rule, in accordance with Article 13;

(f) when the person, after his/her surrender, has expressly renounced entitlement to the speciality rule with regard to specific offences preceding his/her surrender. Renunciation shall be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's domestic law. The renunciation shall be drawn up in such a way as to make clear that the person has given it voluntarily and in full awareness of the consequences. To that end, the person shall have the right to legal counsel;

(g) where the executing judicial authority which surrendered the person gives its consent in accordance with paragraph 4.

4. A request for consent shall be submitted to the executing judicial authority, accompanied by the information mentioned in Article 8(1) and a translation as referred to in Article 8(2). Consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Framework Decision. Consent shall be refused on the grounds referred to in Article 3 and otherwise may be refused only on the grounds referred to in Article 4. The decision shall be taken no later than 30 days after receipt of the request.

For the situations mentioned in Article 5 the issuing Member State must give the guarantees provided for therein.

Article 28

Surrender or subsequent extradition

1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States which have given the same notification, the consent for the surrender of a person to a Member State other than the executing Member State pursuant to a European arrest warrant issued for an offence committed prior to his or her surrender is presumed to have been given, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

2. In any case, a person who has been surrendered to the issuing Member State pursuant to a European arrest warrant may, without the consent of the executing Member State, be surrendered to a Member State other than the executing Member State pursuant to a European arrest warrant issued for any offence committed prior to his or her surrender in the following cases:

(a) where the requested person, having had an opportunity to leave the territory of the Member State to which he or she has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it;

(b) where the requested person consents to be surrendered to a Member State other than the executing Member State pursuant to a European arrest warrant. Consent shall be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's national law. It shall be drawn up in such a way as to make clear that the person concerned has given it voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel;

(c) where the requested person is not subject to the speciality rule, in accordance with Article 27(3)(a), (e), (f) and (g).

3. The executing judicial authority consents to the surrender to another Member State according to the following rules:

(a) the request for consent shall be submitted in accordance with Article 9, accompanied by the information mentioned in Article 8(1) and a translation as stated in Article 8(2);

(b) consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Framework Decision;

(c) the decision shall be taken no later than 30 days after receipt of the request;

(d) consent shall be refused on the grounds referred to in Article 3 and otherwise may be refused only on the grounds referred to in Article 4.

For the situations referred to in Article 5, the issuing Member State must give the guarantees provided for therein.

4. Notwithstanding paragraph 1, a person who has been surrendered pursuant to a European arrest warrant shall not be extradited to a third State without the consent of the competent authority of the Member State which surrendered the person. Such consent shall be given in accordance with the Conventions by which that Member State is bound, as well as with its domestic law.

Article 29

Handing over of property

1. At the request of the issuing judicial authority or on its own initiative, the executing judicial authority shall, in accordance with its national law, seize and hand over property which:

(a) may be required as evidence; or

(b) has been acquired by the requested person as a result of the offence.

2. The property referred to in paragraph 1 shall be handed over even if the European arrest warrant cannot be carried out owing to the death or escape of the requested person.

3. If the property referred to in paragraph 1 is liable to seizure or confiscation in the territory of the executing Member State, the latter may, if the property is needed in connection with pending criminal proceedings, temporarily retain it or hand it over to the issuing Member State, on condition that it is returned.

4. Any rights which the executing Member State or third parties may have acquired in the property referred to in paragraph 1 shall be preserved. Where such rights exist, the issuing Member State shall return the property without charge to the executing Member State as soon as the criminal proceedings have been terminated.

Article 30

Expenses

1. Expenses incurred in the territory of the executing Member State for the execution of a European arrest warrant shall be borne by that Member State.

2. All other expenses shall be borne by the issuing Member State.

CHAPTER 4

GENERAL AND FINAL PROVISIONS

Article 31

Relation to other legal instruments

1. Without prejudice to their application in relations between Member States and third States, this Framework Decision shall, from 1 January 2004, replace the corresponding provisions of the following conventions applicable in the field of extradition in relations between the Member States:

(a) the European Convention on Extradition of 13 December 1957, its additional protocol of 15 October 1975, its second additional protocol of 17 March 1978, and the European Convention on the suppression of terrorism of 27 January 1977 as far as extradition is concerned;

(b) the Agreement between the 12 Member States of the European Communities on the simplification and modernisation of methods of transmitting extradition requests of 26 May 1989;

(c) the Convention of 10 March 1995 on simplified extradition procedure between the Member States of the European Union;

(d) the Convention of 27 September 1996 relating to extradition between the Member States of the European Union;

(e) Title III, Chapter 4 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders.

2. Member States may continue to apply bilateral or multilateral agreements or arrangements in force when this Framework Decision is adopted in so far as such agreements or arrangements allow the objectives of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for surrender of persons who are the subject of European arrest warrants.

Member States may conclude bilateral or multilateral agreements or arrangements after this Framework Decision has come into force in so far as such agreements or arrangements allow the prescriptions of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for surrender of persons who are the subject of European arrest warrants, in particular by fixing time limits shorter than those fixed in Article 17, by extending the list of offences laid down in Article 2(2), by further limiting the grounds for refusal set out in Articles 3 and 4, or by lowering the threshold provided for in Article 2(1) or (2).

The agreements and arrangements referred to in the second subparagraph may in no case affect relations with Member States which are not parties to them.

Member States shall, within three months from the entry into force of this Framework Decision, notify the Council and the Commission of the existing agreements and arrangements referred to in the first subparagraph which they wish to continue applying.

Member States shall also notify the Council and the Commission of any new agreement or arrangement as referred to in the second subparagraph, within three months of signing it.

3. Where the conventions or agreements referred to in paragraph 1 apply to the territories of Member States or to territories for whose external relations a Member State is responsible to which this Framework Decision does not apply, these instruments shall continue to govern the relations existing between those territories and the other Members States.

Article 32

Transitional provision

1. Extradition requests received before 1 January 2004 will continue to be governed by existing instruments relating to extradition. Requests received after that date will be governed by the rules adopted by Member States pursuant to this Framework Decision. However, any Member State may, at the time of the adoption of this Framework Decision by the Council, make a statement indicating that as executing Member State it will continue to deal with requests relating to acts committed before a date which it specifies in accordance with the extradition system applicable before 1 January 2004. The date in question may not be later than 7 August 2002. The said statement will be published in the Official Journal of the European Communities. It may be withdrawn at any time.

Article 33

Provisions concerning Austria and Gibraltar

1. As long as Austria has not modified Article 12(1) of the 'Auslieferungs- und Rechtshilfegesetz' and, at the latest, until 31 December 2008, it may allow its executing judicial authorities to refuse the enforcement of a European arrest warrant if the requested person is an Austrian citizen and if the act for which the European arrest warrant has been issued is not punishable under Austrian law.

2. This Framework Decision shall apply to Gibraltar.

Article 34

Implementation

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 31 December 2003.

2. Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. When doing so, each Member State may indicate that it will apply immediately this Framework Decision in its relations with those Member States which have given the same notification.

The General Secretariat of the Council shall communicate to the Member States and to the Commission the information received pursuant to Article 7(2), Article 8(2), Article 13(4) and Article 25(2). It shall also have the information published in the Official Journal of the European Communities.

3. On the basis of the information communicated by the General Secretariat of the Council, the Commission shall, by 31 December 2004 at the latest, submit a report to the European Parliament and to the Council on the operation of this Framework Decision, accompanied, where necessary, by legislative proposals.

4. The Council shall in the second half of 2003 conduct a review, in particular of the practical application, of the provisions of this Framework Decision by the Member States as well as the functioning of the Schengen Information System.

Article 35

Entry into force

This Framework Decision shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Communities.

Done at Luxembourg, 13 June 2002.

For the Council
The President
M. RAJOY BREY

ANNEX II

EAW Form [1]

EUROPEAN ARREST WARRANT [2]

This warrant has been issued by a competent judicial authority. I request that the person mentioned below be arrested and surrendered for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

(a) Information regarding the identity of the requested person:

Name: .....
Forename(s): .....
Maiden name, where applicable: .....
Aliases, where applicable: .....
Sex: .....
Nationality: .....
Date of birth: .....
Place of birth: .....
Residence and/or known address: .....
.....
Language(s) which the requested person understands (if known):
.....
Distinctive marks/description of the requested person: .....
.....
Photo and fingerprints of the requested person, if they are available and can be transmitted, or contact details of the person to be contacted in order to obtain such information or a DNA profile (where this evidence can be supplied but has not been included)

(b) Decision on which the warrant is based:

1. Arrest warrant or judicial decision having the same effect: .....
   Type: .....
2. Enforceable judgment: .....
   .....
   Reference: .....

(c) Indications on the length of the sentence:

1. Maximum length of the custodial sentence or detention order which may be imposed for the offence(s):
   .....
   .....
2. Length of the custodial sentence or detention order imposed:
   .....
   Remaining sentence to be served:
   .....
   .....

[1] Contained in the Annex to the Framework Decision on EAW.
[2] This warrant must be written in, or translated into, one of the official languages of the executing Member State, when that State is known, or any other language accepted by that State.

(d) Indicate if the person appeared in person at the trial resulting in the decision:

1. ☐ Yes, the person appeared in person at the trial resulting in the decision.
2. ☐ No, the person did not appear in person at the trial resulting in the decision.
3. If you have ticked the box under point 2, please confirm the existence of one of the following:

3.1a. ☐ the person was summoned in person on … (day/month/year) and thereby informed of the scheduled date and place of the trial which resulted in the decision and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

3.1b. ☐ the person was not summoned in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the decision, in such a manner that it was unequivocally established that he or she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

3.2. ☐ being aware of the scheduled trial, the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;

OR

3.3. ☐ the person was served with the decision on … (day/month/year) and was expressly informed about the right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and

☐ the person expressly stated that he or she does not contest this decision;

OR

☐ the person did not request a retrial or appeal within the applicable time frame;

OR

3.4. ☐ the person was not personally served with the decision, but
— the person will be personally served with this decision without delay after the surrender, and
— when served with the decision, the person will be expressly informed of his or her right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and
— the person will be informed of the timeframe within which he or she has to request a retrial or appeal, which will be …… days.

4. If you have ticked the box under point 3.1b, 3.2 or 3.3 above, please provide information about how the relevant condition has been met:

……
……

(e) Offences:

This warrant relates to in total: …… offences.
Description of the circumstances in which the offence(s) was (were) committed, including the time, place and degree of participation in the offence(s) by the requested person

……
……
……

Nature and legal classification of the offence(s) and the applicable statutory provision/code:

……

……

……

……

……

I. If applicable, tick one or more of the following offences punishable in the issuing Member State by a custodial sentence or detention order of a maximum of at least 3 years as defined by the laws of the issuing Member State:

☐ participation in a criminal organisation;
☐ terrorism;
☐ trafficking in human beings;
☐ sexual exploitation of children and child pornography;
☐ illicit trafficking in narcotic drugs and psychotropic substances;
☐ illicit trafficking in weapons, munitions and explosives;
☐ corruption;
☐ fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of European Communities' financial interests;
☐ laundering of the proceeds of crime;
☐ counterfeiting of currency, including the euro;
☐ computer-related crime;
☐ environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;
☐ facilitation of unauthorised entry and residence;
☐ murder, grievous bodily injury;
☐ illicit trade in human organs and tissue;
☐ kidnapping, illegal restraint and hostage-taking;
☐ racism and xenophobia;
☐ organised or armed robbery;
☐ illicit trafficking in cultural goods, including antiques and works of art;
☐ swindling;
☐ racketeering and extortion;
☐ counterfeiting and piracy of products;
☐ forgery of administrative documents and trafficking therein;
☐ forgery of means of payment;
☐ illicit trafficking in hormonal substances and other growth promoters;
☐ illicit trafficking in nuclear or radioactive materials;
☐ trafficking in stolen vehicles;
☐ rape;
☐ arson;
☐ crimes within the jurisdiction of the International Criminal Court;
☐ unlawful seizure of aircraft/ships;
☐ sabotage.

II. Full descriptions of offence(s) not covered by section I above:

……

……

(f) Other circumstances relevant to the case (optional information):
(NB: This could cover remarks on extraterritoriality, interruption of periods of time limitation and other consequences of the offence)

……

……

(g) This warrant pertains also to the seizure and handing over of property which may be required as evidence:

This warrant pertains also to the seizure and handing over of property acquired by the requested person as a result of the offence:
Description of the property (and location) (if known):
……
……
……

(h) The offence(s) on the basis of which this warrant has been issued is(are) punishable by/has(have) led to a custodial life sentence or lifetime detention order:

— the legal system of the issuing Member State allows for a review of the penalty or measure imposed – on request or at least after 20 years – aiming at a non-execution of such penalty or measure,
and/or
— the legal system of the issuing Member State allows for the application of measures of clemency to which the person is entitled under the law or practice of the issuing Member State, aiming at non-execution of such penalty or measure.

(i) The judicial authority which issued the warrant:

Official name: ……
Name of its representative: ([3]) ……
……
Post held (title/grade): ……
……
File reference: ……
Address: ……
……
Tel. No.: (country code) (area/city code) (...) ……
Fax No. (country code) (area/city code) (…) ……
Email: ……
Contact details of the person to contact to make necessary practical arrangements for the surrender: ……

Where a central authority has been made responsible for the transmission and administrative reception of European arrest warrants:

Name of the central authority: ……
……
Contact person, if applicable (title/grade and name): ……
……
Address: ……
……
Tel. No.: (country code) (area/city code) (...) ……
Fax No.: (country code) (area/city code) (...) ……
Email: ……

([3]) In the different language versions a reference to the 'holder' of the judicial authority will be included.

Signature of the issuing judicial authority and/or its representative:

.....
Name: .....
Post held (title/grade): .....
Date: .....

Official stamp (if available)

ANNEX III

Guidelines on how to fill in the eaw form

This warrant has been issued by a competent judicial authority. I request that the person mentioned below be arrested and surrendered for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

Comment

— It is recommended to use the EJN Compendium tool on the EJN website, when drafting an EAW. Using this e-tool makes filling in the form as easy as filling in a Word form, but with several modern and user-friendly features, such as: the possibility of directly importing the competent executing judicial authorities from the EJN Judicial Atlas; obtaining the static text of the form in the language(s) accepted by the executing Member State immediately; saving and sending it by e-mail.

— However, it may be advisable to download the form in Word format from the EJN website (Judicial Library section) in the issuing judicial authority's (your own) language and keep it on your own computer, in case there is no access to the website when needed in urgent cases.

— It may also be advisable to download the form from the EJN website (Judicial Library) in all languages, especially in those more frequently accepted by other Member States and keep it on your own computer.

— If you use the Word form, fill in that form in your own language using a computer (not in handwriting). When the Compendium is used, the form is always filled in on the computer.

— If a box is not relevant, write 'not applicable' or indicate clearly, for instance by a specific mark (e. g.: —) that it is not applicable. You should never delete a box or change the EAW form in any way.

— If there are several offences covered by the EAW, please number them offences 1, 2, 3 and so on and keep that numbering throughout the EAW and in particular in box (b).

Box (a)

Information necessary for the identification of the requested person

Comment:

Please fill in all fields, if possible.

(a) Information regarding the identity of the requested person:

Name: ***Comment: obligatory field. Include previous official name, if known, and write the name as it is in national language, name should not be translated. Make sure the order is correct, that you are not stating a forename as the name, and double-check in case there are two or more persons with similar names (maybe in different order, or with small variations) in the same file.***

Forename(s): ***Comment: obligatory field.***

Maiden name, where applicable:

Aliases, where applicable: ***Comment: Include false names. Indicate nicknames in brackets. If the person uses a false identity, this false identity should be inserted in all fields, e.g. false date of birth and false address.***

Sex: ***Comment: obligatory field.***

Nationality: ***Comment: obligatory field. Indicate all of them in case of multiple nationalities.***

Date of birth: ***Comment: obligatory field.***

Place of birth: ***Comment: obligatory field, if information available.***

Residence and/or known address: ***Comment: obligatory field, if information available.***

Indicate 'not known' if there is no information.

Language(s) which the requested person understands (if known):

Distinctive marks/description of the requested person: ***Comment: obligatory field, if information is available. Also indicate if the person is dangerous and/or may carry a weapon.***

Photo and fingerprints of the requested person, if they are available and can be transmitted, or contact details of the person to be contacted in order to obtain such information or a DNA profile (where this evidence can be supplied but has not been included) ***Comment: Obligatory to provide via Interpol or SIS (only in case of photographs, fingerprints or other personal data as specified in Article 20 of the SIS II Decision) if information is available. This is crucial in order to ensure that the right person is arrested.***

Double-check in case there are two or more persons with similar names (maybe in different order, or with small variations) in the same file.

Box (b)

Information concerning the decision on which the EAW is based

Comment:

The Form should be filled in according to the requested purpose of the EAW — prosecution and/or conviction cases. Box (b) uses the terms 'Decision on which the warrant is based' which refer to a judicial decision that is distinct from the EAW. The term 'judicial decision' covers decisions of the Member States authorities that administer criminal justice, but not the police services. Where the decision that has led to the detention order has been changed into, for instance, a judgment in absentia, a new EAW (with the new title) should be issued.

Pre-trial stage (EAW is issued for conducting a criminal prosecution)

— (b) 1. Identify the decision on which the EAW is based (for example, a Court order or an arrest warrant, rendered on dd/mm/year, having imposed a coercive measure of preventive detention). Note that where box (b) 1. is filled in box (c) 1. should also be filled in.

Post-trial stage (EAW issued for execution of a sentence/sentence in absentia)

— (b) 1. When EAW is issued in cases rendered in absentia, please identify the court decision.

— (b) 2. Refer to the relevant judgment or ruling, which became final on dd/mm/yyyy and insert the case number and the name of the court which issued the decision. In some Member States, sentences not yet enforceable, while appeal is possible, while they are not final, are grounds for filling in box (b) 1. and NOT box (b) 2.

Note that where box (b) 2. is filled in box (c) 2. should also be filled in.

(b) Decision on which the warrant is based:

1. Arrest warrant or judicial decision having the same effect:
   Type: ***Comment: specify court order or other judicial order and date and the case reference.***
2. Enforceable judgment: ***Comment: if the judgment is enforceable, also specify the date when it became final.***

   Reference: ***Comment: indicate date, case number, type of decision. Do not translate references.***

Box (c)

Information on the length of the sentence/custodial sentence

Comment:

The purpose of this box is to place on record the fact that the EAW meets the requirements for punishment thresholds laid down in Article 2(1) of the Framework Decision on EAW. During the pre-trial stage, that minimum will apply to the sentence which could be imposed in principle, and where a sentence has been passed, it will apply to the length of the actual penalty. As in box (b), fill in the paragraph(s) which is/are relevant taking into account the stage of criminal proceedings.

Pre-trial stage (EAW is issued for conducting a criminal prosecution)

— (c) 1. Indicate the maximum penalty which can be imposed. Please note that according to Article 2(1) the EAW may be issued for acts punishable by a custodial sentence or detention order of a maximum period of at least 12 months. Where box (b) 1. is filled in box (c) 1. should also be filled in.

Post-trial stage (EAW issued for execution of a sentence/sentence in absentia)

— (c) 2. Indicate the length of the custodial sentence or detention order imposed. Please note that according to Article 2(1) an EAW may be issued for sentences of at least 4 months where a sentence has been passed or a detention order has been made. Where box (b) 2. is filled in, box (c) 2. should also be filled in.

— (c) 2. Indicate years, months and days. It should be noted that the Framework Decision on EAW has not set a minimum amount of the remaining sentence to be served. It is recommended that the proportionality of issuing an EAW is carefully weighed in situations where the remaining sentence is of less than 4 months even though the original sentence was 4 months or more.

(c) Indications on the length of the sentence:

1. Maximum length of the custodial sentence or detention order which may be imposed for the offence(s):
2. Length of the custodial sentence or detention order imposed: ***Comment: in cases where a custodial sentence or detention order has been made, the period of the detention order may be indefinite, e. g. life imprisonment or a sentence involving psychiatric care.***

   Remaining sentence to be served: ***Comment: if the sentence is of indefinite but of at least 4 months' duration, indicate that at least 4 months remain to be served.***

Box (d)

Cases when decisions are rendered in absentia

(d) Indicate if the person appeared in person at the trial resulting in the decision:

1. ☐ Yes, the person appeared in person at the trial resulting in the decision.
2. ☐ No, the person did not appear in person at the trial resulting in the decision.
3. If you have ticked the box under point 2, please confirm the existence of one of the following:

   3.1a. ☐ the person was summoned in person on … (day/month/year) and thereby informed of the scheduled date and place of the trial which resulted in the decision and was informed that a decision may be handed down if he or she does not appear for the trial;
   OR

3.1b. ☐ the person was not summoned in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the decision, in such a manner that it was unequivocally established that he or she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

3.2. ☐ being aware of the scheduled trial, the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;

OR

3.3. ☐ the person was served with the decision on … (day/month/year) and was expressly informed about the right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and

☐ the person expressly stated that he or she does not contest this decision;

OR

☐ the person did not request a retrial or appeal within the applicable timeframe;

OR

3.4. ☐ the person was not personally served with the decision, but

— the person will be personally served with this decision without delay after the surrender; and
— when served with the decision, the person will be expressly informed of his or her right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed; and
— the person will be informed of the timeframe within which he or she has to request a retrial or appeal, which will be …… days.

4. If you have ticked the box under point 3.1b, 3.2 or 3.3 above, please provide information about how the relevant condition has been met:

……
……

Box (e)

Offences concerned

Comment:

Whether the offence belongs to one of the 32 categories for which the verification of double criminality does not apply, is decided by the issuing judicial authority in accordance with the definition of the offence in the issuing Member States' criminal law. It is not necessary to incorporate the text of the national law into the EAW or attach it. This also avoids unnecessary translation of legal texts.

The circumstances of the case must always be described fully, including all relevant information, so that the executing Member States' authorities can assess the application of the rule of speciality, and whether grounds for non-execution, such as the *ne bis in idem* principle and prescription apply.

Pre-trial and post-trial stage

— Insert the number of offences concerned.

— Be consistent with those described.

— Please bear in mind the comments in the Handbook on accessory offences when deciding whether to include them or not (Section 2.3).

— Give a precise explanation of the **facts** justifying the EAW:

  — Focus on those facts concerning the person to be surrendered.

  — Always describe the necessary facts for that purpose (person responsible, degree of participation or execution, place, time, quantity, means, resulting damage or injuries, intention or purpose, profit, etc.).

  — The factual description should consist only of a short summary and not of a full transcript of whole pages of the file. However in more complex cases, and in particular where double criminality applies (not listed offences), a longer description might be necessary in order to document the main aspects of the facts. In those cases, include the data which is **essential** for a decision on the EAW by the executing judicial authority, in particular to identify any possible grounds for non-execution or with a view to application of the rule of specialty.

  — In case of several offences, if possible, describe the facts so that the description correlates with the corresponding legal classification.

  — Use short and simple sentences which are easy to translate.

  — A short description will also be useful for the insertion of alerts in the SIS by the national SIRENE Bureau.

— Indicate the **legal classification** of the offence (which provision of criminal law it violates). However, it is not necessary to add the legal texts in the EAW. This only results in unnecessary translation.

— If the issuing judicial authority recognises the offence as an offence on the list of 32 offences below, and the offence is punishable by a custodial sentence or detention order of a maximum of at least 3 years it should tick the relevant box from the list.

— It is recommended that, where possible, only one form be used for one EAW concerning one person. If it contains several offences, it should be made clear (e.g. by using 'offence 1', 'offence 2', 'offence 3', ...) which tick applies to which offence (see in particular box (b)). Note that the SIS will only allow for the insertion of one alert for arrest. It is nevertheless possible to attach more than one EAW per alert for arrest.

— In the case of several EAWs issued by the same Member State concerning the same person, these EAWs should not be considered to be competing ones.

(e) Offences:

This warrant relates to in total: …… offences.

Description of the circumstances in which the offence(s) was (were) committed, including the time, place and degree of participation in the offence(s) by the requested person: ***Comment: for clarity, where e.g. 3 offences are concerned, the descriptions should be numbered 1, 2 and 3. Use short sentences, but give a complete factual description. Please be precise.***

……

Nature and legal classification of the offence(s) and the applicable statutory provision/code:

Comment: insert the legal classification of the offence and state which provisions of the applicable national law it violates.

. ……
……

I. If applicable, tick one or more of the following offences punishable in the issuing Member State by a custodial sentence or detention order of a maximum of at least 3 years as defined by the laws of the issuing Member State:

☐ participation in a criminal organisation;
☐ terrorism;
☐ trafficking in human beings;
☐ sexual exploitation of children and child pornography;
☐ illicit trafficking in narcotic drugs and psychotropic substances;

☐ illicit trafficking in weapons, munitions and explosives;
☐ corruption;
☐ fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of European Communities' financial interests;
☐ laundering of the proceeds of crime;
☐ counterfeiting of currency, including the euro;
☐ computer-related crime;
☐ environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;
☐ facilitation of unauthorised entry and residence;
☐ murder, grievous bodily injury;
☐ illicit trade in human organs and tissue;
☐ kidnapping, illegal restraint and hostage-taking;
☐ racism and xenophobia;
☐ organised or armed robbery;
☐ illicit trafficking in cultural goods, including antiques and works of art;
☐ swindling;
☐ racketeering and extortion;
☐ counterfeiting and piracy of products;
☐ forgery of administrative documents and trafficking therein;
☐ forgery of means of payment;
☐ illicit trafficking in hormonal substances and other growth promoters;
☐ illicit trafficking in nuclear or radioactive materials;
☐ trafficking in stolen vehicles;
☐ rape;
☐ arson;
☐ crimes within the jurisdiction of the International Criminal Court;
☐ unlawful seizure of aircraft/ships;
☐ sabotage.

II. Full description of offence(s) not covered by section I above: ***Comment: Anything already described above under (e) should not be repeated in section II. Beyond the full description, no information concerning national legislation is needed.***

If the circumstances are already indicated above do not repeat them. Do not insert legal texts if circumstances are clearly identified above; use this box only if double criminality applies and you need to give more details of the circumstances than are already mentioned above. For a judge to examine double criminality it is not necessary to have the legal text but only to know the precise circumstances of the case, although some jurisdictions do request copies of the legal text.

. ……
……

Box (f)

Other circumstances relevant to the case (optional information)

Comment:

This box does not need to be filled in.

It may be used for remarks on extraterritoriality, interruption of periods of time limitation and other consequences of the offence. It is not usually necessary to indicate any interruption of time limitation, but if the offence was committed a long time ago, such an indication may be useful.

It may also be used where there are special circumstances relating to the execution of the EAW and providing further information could facilitate the execution of the EAW, in spite of the possibilities of direct communication, for example:

— Remarks on restrictions regarding contacts with third parties after arrest, indications that there is a risk of destruction of evidence or a risk of re-offending.

— Indication of circumstances which, under Framework Decision 2008/909/JHA, make it likely that the requested person could be in a position to be transferred afterwards to serve the possible custodial sentence in the executing Member State under Article 5(3) of the Framework Decision on EAW (such as having residence, job, family links, etc. in the executing Member State).

— Request for consent under Article 27(4) of the Framework Decision on EAW.

— Other requests for judicial cooperation, for example a European Investigation Order, to be executed simultaneously.

— Relation to other EAWs.

— Agreements relating to concurrent EAWs reached between issuing judicial authorities, so that the executing judicial authority is immediately aware of them and is in a position to take them into consideration, especially those agreements reached at coordination meetings at Eurojust.

— In accordance with Directive 2013/48/EU, information on the lawyer within the issuing Member State that can assist the lawyer in the executing Member State (chosen lawyer or an ex officio lawyer).

— In accordance with Article 22 of Framework Decision 2009/829/JHA, information on any previous supervision measure (breach of the supervision measures).

(f) Other circumstances relevant to the case (optional information):
(NB: This could cover remarks on extraterritoriality, interruption of periods of time limitation and other consequences of the offence).
……
……

Box (g)

Seizure

Comment:

Pre-trial stage (EAW is issued for conducting a criminal prosecution)

— Give a short description of the requested item (e.g. mobile phone, laptop computer, tablet, weapon, ID, travel documents etc.). Where this kind of cooperation is not requested, write 'not applicable'.

— For example, describe the weapon of which the seizure is requested.

— If available, any information concerning a separate European Investigation Order or freezing order should be given.

— Box (g) does not refer to 'personal belongings'; indicate items which can be referred to as evidence, e.g. laptop, personal documents or mobile phones, in order to enable the seizure of property.

(g) This warrant pertains also to the seizure and handing over of property which may be required as evidence:

This warrant pertains also to the seizure and handing over of property acquired by the requested person as a result of the offence:

Description of the property (and location) (if known):
……
……
……

Box (h)

Comment:

The indents have been changed to boxes — tick where applicable. If the law does not permit a life sentence, write 'not applicable'

Pre-trial stage (EAW is issued for conducting a criminal prosecution)

— Tick the box if applicable.

Post-trial stage (EAW issued for execution of a sentence/sentence in absentia)

— Tick the box if applicable

(h) The offence(s) on the basis of which this warrant has been issued is(are) punishable by / has(have) led to a custodial life sentence or lifetime detention order:

☐ the legal system of the issuing Member State allows for a review of the penalty or measure imposed — on request or at least after 20 years — aiming at a non-execution of such penalty or measure,

and/or

☐ the legal system of the issuing Member State allows for the application of measures of clemency to which the person is entitled under the law or practice of the issuing Member State, aiming at non-execution of such penalty or measure.

Box (i)

Information on the issuing judicial authority

Comment:

— Name of its representative: in the different language versions a reference to the 'holder' of the judicial authority will be included.

— Insert address of the issuing judicial authority.

— Insert telephone number / fax / e-mail of the issuing judicial authority, preferably where the authority can be reached 24 hours per day.

— Contact details for practical arrangements: If possible, indicate the name and contact details of a judicial official who has knowledge of a relevant foreign language.

(i) The judicial authority which issued the warrant:

Official name: .....

Name of its representative: .....

Post held (title/grade): .....

File reference: .....

Address: .....

Tel. No.: (country code) (area/city code) (…) .....

Fax No.: (country code) (area/city code) (…) .....

Email: ***Comment: indicate an official e-mail address that is frequently checked*** .....

Contact details of the person to contact to make necessary practical arrangements for the surrender: .....

Contact information on the Central Authority

Where a central authority has been made responsible for the transmission and administrative reception of European arrest warrants:
Name of the central authority: .....
.....
Contact person, if applicable (title/grade and name): .....
.....
Address: .....
.....
Tel. No.: (country code) (area/city code) (…) .....
Fax No.: (country code) (area/city code) (…) .....
Email: .....

Signature and information on the issuing judicial authority

Comment:

— This may be the judicial authority or, for example, a Court Registrar who signs on behalf of the Court.

Signature of the issuing judicial authority and/or its representative:
.....
.....
Name:
.....
.....
Post held (title/grade): .....
Date: .....
Official stamp (if available) ***Comment: this is the official stamp of the issuing*** judicial ***authority under domestic law. Always use if available.***

ANNEX IV

Languages accepted by the member states when receiving an eaw

According to Article 8(2) of the Framework Decision on EAW, the following statements have been made by Member States regarding languages accepted when receiving an EAW:

Austria:	German or other language in reciprocity (accepts receiving the EAW in the official language of a Member State which also accepts receiving EAWs issued by Austrian judicial authorities in German).
Belgium:	French, Dutch, German
Bulgaria:	Bulgarian
Croatia:	Croatian, in urgent cases English will also be accepted on condition of reciprocity
Cyprus:	Greek, Turkish, English
Czech Republic:	Czech; with regard to the Slovak Republic the Czech Republic will accept an EAW produced in the Slovak language or accompanied by a translation into the Slovak language, while with regard to Austria the Czech Republic will accept an EAW in German.
Denmark:	Danish, English, Swedish
Estonia:	Estonian, English
Finland:	Finnish, Swedish, English
France:	French
Germany:	Germany applies reciprocity (accepts receiving the EAW in the official language of a Member State which also accepts receiving an EAW issued by German judicial authorities in German).
Greece:	Greek
Hungary:	Hungarian or a translation of the EAW into Hungarian. In relation to Member States which do not exclusively accept the EAW in their own language or in one of their official languages, Hungary accepts the EAW in English, French or German, or accompanied by a translation into one of those languages.
Ireland:	Irish or English or a language that the Ministry of Justice may by order prescribe, or the EAW with a translation into Irish or English.
Italy:	Italian
Latvia:	Latvian, English
Lithuania:	Lithuanian, English
Luxembourg:	French, German, English
Malta:	Maltese, English
Netherlands:	Dutch, English or any other official language of the Union provided that an English translation is submitted at the same time.
Poland:	Polish
Portugal:	Portuguese
Romania:	Romanian, French, English

Slovakia:	Slovak or, on the basis of prior bilateral treaties, German with regard to Austria, Czech with regard to the Czech Republic, Polish with regard to Poland.
Slovenia:	Slovenian, English
Spain:	Spanish. Where an EAW is issued through a SIS alert, the executing judicial authority will ensure translation if it is not in Spanish.
Sweden:	Swedish, Danish, Norwegian, English or a translation into one of those languages.

ANNEX V

List of judgments of the court of justice concerning the framework decision on eaw

C-303/05, *Advocaten voor de Wereld* (Judgment of 3 May 2007)

C-66/08, *Kozłowski* (Judgment of 17 July 2008)

C-296/08 PPU, *Santesteban Goicoechea* (Judgment of 12 August 2008)

C-388/08 PPU, *Leymann and Pustovarov* (Judgment of 1 December 2008)

C-123/08, *Wolzenburg* (Judgment of 6 October 2009)

C-306/09, *I.B.* (Judgment of 21 October 2010)

C-261/09, *Mantello* (Judgment of 16 November 2010)

C-192/12 PPU, *West* (Judgment of 28 June 2012)

C-42/11, *Lopes da Silva Jorge* (Judgment of 5 September 2012)

C-396/11, *Radu* (Judgment of 29 January 2013)

C-399/11, *Melloni,* (Judgment of 26 February 2013)

C-168/13 PPU, *Jeremy F.* (Judgment of 30 May 2013)

C-237/15 PPU, *Lanigan* (Judgment of 16 July 2015)

C-463/15 PPU, *A.* (Order of 25 September 2015)

C-404/15 and C-659/15 PPU *Aranyosi* and *Căldăraru* Joined Cases (Judgment of 5 April 2016)

C-108/16 PPU, *Dworzecki* (Judgment of 24 May 2016)

C-241/15, *Bob-Dogi* (Judgment of 1 June 2016)

C-294/16 PPU, *JZ* (Judgment of 28 July 2016)

C-182/15, *Petruhhin* (Judgment of 6 September 2016)

C-452/16 PPU, *Poltorak* (Judgment of 10 November 2016)

C-477/16 PPU, *Kovalkovas* (Judgment of 10 November 2016)

C-453/16 PPU, *Özçelik* (Judgment of 10 November 2016)

C-640/15, *Vilkas* (Judgment of 25 January 2017)

C-579/15, *Popławski I* (Judgment of 29 June 2017)

C-270/17 PPU, *Tupikas* (Judgment of 10 August 2017)

C-271/17 PPU, *Zdziaszek* (Judgment of 10 August 2017)

C-473/15, *Schotthöfer and Steiner* (Order of 6 September 2017)

C-571/17 PPU, *Ardic* (Judgment of 22 December 2017)

C-367/16, *Piotrowski* (Judgment of 23 January 2018)

C-191/16, *Pisciotti* (Judgment of 10 April 2018)

C-213/17, *X* (Judgment of 5 July 2018)

C-268/17, *AY* (Judgment of 25 July 2018)

C-216/18 PPU, *LM* (Judgment of 25 July 2018)

C-220/18 PPU, *ML* (Judgment of 25 July 2018)

C-327/18 PPU, *RO* (Judgment of 19 September 2018)

C-247/17, *Raugevicius* (Judgment of 13 November 2018)

C-551/18 PPU, *IK* (Judgment of 6 December 2018)

C-514/17, *Sut* (Judgment of 13 December 2018)

C-492/18 PPU, *TC* (Judgment of 12 February 2019)

C-508/18 and C-89/19 PPU, *OG and PI* (Judgment of 27 May 2019)

C-509/18, *PF* (Judgment of 27 May 2019)

C-573/17, *Popławski II* (Judgment of 24 June 2019)

C-489/19 PPU, *NJ* (Judgment of 9 October 2019)

C-128/18, *Dumitru-Tudor Dorobantu* (Judgment of 15 October 2019)

C-566/19 PPU and C-626/19 PPU, *JR and YC* Joined Cases (Judgment of 12 December 2019)

C-625/19 PPU, *XD* (Judgment of 12 December 2019)

C-627/19 PPU, *ZB* (Judgment of 12 December 2019)

C-813/19 PPU *MN* (Order of 21 January 2020)

C-717/18, *X* (Judgment of 3 March 2020)

C-314/18, *SF* (Judgment of 11 March 2020)

C-659/18, *VW* (Judgment of 12 March 2020)

C-897/19 PPU, *IN* (Judgment of 2 April 2020)

C-195/20 PPU, *XC* (Judgment of 24 September 2020)

C-510/19, *AZ* (Judgment of 24 November 2020)

C-398/19, *BY* (Judgment of 17 December 2020)

C-354/20 PPU and C-412/20 PPU, *L and P* Joined Cases (Judgment of 17 December 2020)

C-416/20 PPU, *TR* (Judgment of 17 December 2020)

C-414/20 PPU, *MM* (Judgment of 13 January 2021)

C-649/19, *IR* (Judgment of 28 January 2021)

C-488/19, *JR* (Judgment of 17 March 2021)

C-648/20 PPU, *PI* (Judgment of 10 March 2021)

C-665/20 PPU, *X* (Judgment of 29 April 2021)

C-206/20, *Prosecutor of the regional prosecutor's office in Ruse, Bulgaria* (Order of 22 June 2021)

C-428/21 PPU and C-429/21 PPU, *HM and TZ* (Judgment of 26 October 2021)

C-479/21 PPU, *Governor of Cloverhill Prison and Others* (Judgment of 16 November 2021)

C-562/21 PPU and C-563/21 PPU, *Openbaar Ministerie (Tribunal établi par la loi dans l'État membre d'émission)* (Judgment of 22 February 2022)

C-804/21 PPU, *C and CD* (Judgment of 28 April 2022)

C-105/21, *Criminal proceedings against IR* (Judgment of 30 June 2022)

C-480/21, *W O and J L v Minister for Justice and Equality* (Order of 12 July 2022)

C-168/21, *Procureur général près la cour d'appel d'Angers* (Judgment of 14 July 2022)

C-492/22 PPU, *CJ* (Judgment of 8 December 2022)

C-237/21, *Generalstaatsanwaltschaft München* (Demande d'extradition vers la Bosnie-Herzégovine) (Judgment of 22 December 2022)

C-158/21, *Puig Gordi and Others* (Judgment of 31 January 2023)

C-514/21 and C-515/21, *Minister for Justice and Equality (Levée du sursis)* (Judgment of 23 March 2023)

C-699/21, *E. D. L.* (Motif de refus fondé sur la maladie) (Judgment of 18 April 2023)

C-700/21, *O. G. (Mandat d'arrêt européen à l'encontre d'un ressortissant d'un État tiers)* (Judgment of 6 June 2023)

Pending:

C-71/21, *KT, Sofiyski gradski sad (Bulgaria)*

C-105/21, *Spetsializiran nakazatelen sad (Bulgaria)*

C-168/21, *Procureur général près la cour d'appel d'Angers*

C-142/22, *The Minister for Justice and Equality (Demande de consentement – Effets du mandat d'arrêt européen initial)*

C-261/22, *GN (Motif de refus fondé sur l'intérêt supérieur de l'enfant)*

C-305/22, *C.J. Request for a preliminary ruling from the Curtea de Apel București*

C-396/22, C-397/22 and C-398/22, *Generalstaatsanwaltschaft Berlin*

C-763/22, *Procureur de la République*

C-208/23 (PPU), *Martiesta*

ANNEX VI

Judgments of the court of justice concerning the principle of ne bis in idem in criminal matters

C-187/01 and C-385/01, *Gözütok and Brügge* (Judgment of 11 February 2003)

C-469/03, *Miraglia* (Judgment of 10 March 2005)

C-436/04, *Van Esbroeck* (Judgment of 9 March 2006)

C-150/05, *Van Straaten* (Judgment of 28 September 2006)

C-467/04, *Gasparini and Others* (Judgment of 28 September 2006)

C-288/05, *Kretzinger* (Judgment of 18 July 2007)

C-367/05, *Kraaijenbrink* (Judgment of 18 July 2007)

C-297/07, *Bourquain* (Judgment of 11 December 2008)

C-491/07, *Turanský* (Judgment of 22 December 2008)

C-261/09, *Mantello* (Judgment of 16 November 2010)

C-617/10, *Åkerberg Fransson* (Judgment of 26 February 2013)

C-129/14 PPU, *Spasic* (Judgment of 27 May 2014)

C-398/12, *M.* (Judgment of 5 June 2014)

C-486/14, *Kossowski* (Judgment of 29 June 2016)

C-217/15 and C-350/15, *Orsi and Baldetti* Joined Cases (Judgment of 5 April 2017)

C-524/15, *Menci* (Judgment of 20 March 2018)

C-537/16, *Garlsson Real Estate and others* (Judgment of 20 March 2018)

C-596/16 and C-597/16, *Di Puma and Zecca* Joined Cases (Judgment of 20 March 2018)

C-268/17, *AY* (Judgment of 25 July 2018)

C-234/17, *XC and Others* (Judgment of 24 October 2018)

C-505/19, *Bundesrepublik Deutschland (Notice rouge d'Interpol)* (Judgment of 12 May 2021)

C-665/20 PPU, *X* (Judgment of 29 April 2021)

C-203/20, *AB and Others* (Judgment of 16 December 2021)

C-435/22 PPU, *Generalstaatsanwaltschaft München* (Judgment of 28 October 2022)

Pending:

C-726/21, Inter Consulting.

C-27/22, *Volkswagen Group Italia and Volkswagen Aktiengesellschaft.*

C-55/22, *Bezirkshauptmannschaft Feldkirch.*

C-58/22, *Parchetul de pe lângă Curtea de Apel Craiova.*

C-147/22, *Központi Nyomozó Főügyészség.*

C-164/22, *Juan.*

Summaries of these cases can be found in Eurojust's compilation entitled *Case-law by the Court of Justice of the European Union on the principle of ne bis in idem in criminal matters* (available at www.eurojust.europa.eu).

ELI: http://data.europa.eu/eli/C/2023/1270/oj

OJ C, 15.12.2023

Standard Form on EAW Decision

This form shall not be understood as replacing the decision on surrender to be transmitted in accordance with Article 22 of the Framework Decision 2002/584/JHA as well as, where applicable and so requested by the issuing authority, the full text of the judicial decision on the European Arrest Warrant.

<table>
<tr><td colspan="6">I.- IDENTIFICATION OF THE EAW</td></tr>
<tr><td>ISSUING REF.:</td><td colspan="2">EXECUTING REF.:</td><td></td><td colspan="2">SIS REF.:</td></tr>
<tr><td colspan="3">ISSUING AUTHORITY:</td><td colspan="2">DATE OF ISSUE:</td><td></td></tr>
<tr><td>EXECUTING AUTHORITY:</td><td colspan="2"></td><td colspan="2">REQUESTED PERSON</td><td></td></tr>
<tr><td>NATIONALITY OF THE PERSON</td><td colspan="2"></td><td></td><td colspan="2"></td></tr>
<tr><td colspan="6">II.- FINAL DECISION ON THE EAW</td></tr>
<tr><td colspan="6">AUTHORITY REF., JUDGMENT OR DECISION No DATED</td></tr>
<tr><td colspan="6">-A- ☐ EXECUTED:</td></tr>
<tr><td>CONSENT OF REQUESTED PERSON (Art. 13 EAW FD)</td><td colspan="2">☐ YES
☐ NO</td><td>RENUNCIATION OF SPECIALITY RULE (Art. 13(2) EAW FD)</td><td>☐ YES
☐ NO</td><td>IN CASE OF PARTIAL SURRENDER, PLEASE INDICATE FOR WHICH OFFENCES THE EAW IS NOT ACCEPTED:</td></tr>
<tr><td rowspan="3">PERIOD OF DETENTION PENDING SURRENDER IN EXECUTING MEMBER STATE (Art. 26 EAW FD)</td><td>☐ DETENTION</td><td>BEGINNING (DATE/ HOUR OF ARREST):</td><td rowspan="3">TRIAL IN ABSENTIA (Art. 4a EAW FD)</td><td>☐ YES</td><td>☐ NEW NOTIFICATION
☐ NEW TRIAL
☐ NEITHER NECESSARY (requirements under Article 4a met)</td></tr>
<tr><td></td><td>END (DATE/ HOUR OF SURRENDER): [1]</td><td></td><td></td></tr>
<tr><td colspan="2">☐ NONE</td><td>☐ NO</td><td></td></tr>
</table>

<table>
<tr><td rowspan="3">GUARANTEES

(Art. 5 EAW FD)</td><td rowspan="3">☐ REVIEW OF LIFE SENTENCE

(Art. 5(2) EAW FD)

☐ RETURN OF NATIONALS OR RESIDENT OF EXECUTING MEMBER STATE

(Art. 5(3) EAW FD)</td><td rowspan="3">POSTPONED

(Art. 24(1) EAW FD)</td><td rowspan="2">☐ YES</td><td colspan="3">☐ FOR PROSECUTION IN EXECUTING MEMBER STATE</td></tr>
<tr><td>☐ TO HAVE SENTENCE SERVED IN EXECUTING MEMBER STATE</td><td>TOTAL DURATION OF THE SENTENCE IMPOSED</td><td></td></tr>
<tr><td colspan="4">☐ NO</td></tr>
<tr><td colspan="2">TEMPORARY SURRENDER</td><td colspan="4">☐ NO
UNTIL (DATE)
☐ YES
(Art. 24(2) EAW FD)</td></tr>
<tr><td colspan="2">1.1.1. MANDATORY GROUNDS FOR REFUSAL:</td><td colspan="4">1.1.2. GROUNDS UNDER NATIONAL LEGISLATION:</td></tr>
<tr><td colspan="2">☐ NE BIS IN IDEM principle (Art. 3(2) EAW FD)
☐ MINOR (Art. 3(3) EAW FD)
☐ AMNESTY (Art. 3(1) EAW FD)</td><td colspan="4">☐ PLEASE SPECIFY:</td></tr>
<tr><td colspan="6">III.- COMMENTS:</td></tr>
<tr><td colspan="6"></td></tr>
</table>

(1) This footnote shall be reproduced in the form: 'This date is to be completed when available by the surrendering authority. It may also be completed by the receiving authority.'

Place, date and signature of the competent authority in the executing Member State

TO THE COMPETENT AUTHORITY IN THE ISSUING MEMBER STATE

ELI: http://data.europa.eu/eli/C/2023/1270/oj

ANNEX VIII

List of Member States whose legal system may allow for surrender for offences punishable by a lower sanction than the threshold set out in Article 2(1) of the Framework Decision on EAW, when such offences are accessory to the main offence(s) in the EAW [1]

Czech Republic

Denmark

Germany

France

Latvia

Lithuania

Hungary

Austria

Slovenia

Slovakia

Finland

Sweden

[1] The list is based on 20 Member States' replies to a Commission's questionnaire – it does not necessarily reflect the situation in all Member States. The list gives an overview of Member States where there is some possibility to surrender for accessory offences. It should be noted that this possibility may depend on various factors, for example double criminality, and on the executing judicial authority's discretion on a case-by-case basis.

ANNEX IX

INDICATIVE MODEL LETTER OF RIGHTS FOR PERSONS ARRESTED ON THE BASIS OF AN EAW

ANNEX II to Directive 2012/13/EU on the right to information in criminal proceedings ([1])

Indicative model Letter of Rights for persons arrested on the basis of a European Arrest Warrant

The sole purpose of this model is to assist national authorities in drawing up their Letter of Rights at national level. Member States are not bound to use this model. When preparing their Letter of Rights, Member States may amend this model in order to align it with their national rules and add further useful information.

A. **INFORMATION ABOUT THE EUROPEAN ARREST WARRANT**

You have the right to be informed about the content of the European Arrest Warrant on the basis of which you have been arrested.

B. **ASSISTANCE OF A LAWYER**

You have the right to speak confidentially to a lawyer. A lawyer is independent from the police. Ask the police if you need help to get in contact with a lawyer, the police shall help you. In certain cases, the assistance may be free of charge. Ask the police for more information.

C. **INTERPRETATION AND TRANSLATION**

If you do not speak or understand the language spoken by the police or other competent authorities, you have the right to be assisted by an interpreter, free of charge. The interpreter may help you to talk to your lawyer and must keep the content of that communication confidential. You have the right to a translation of the European Arrest Warrant in a language you understand. You may in some circumstances be provided with an oral translation or summary.

D. **POSSIBILITY TO CONSENT**

You may consent or not consent to being surrendered to the State seeking you. Your consent would speed up the proceedings. [Possible addition of certain Member States: It may be difficult or even impossible to change this decision at a later stage.] Ask the authorities or your lawyer for more information.

E. **HEARING**

If you do not consent to your surrender, you have the right to be heard by a judicial authority.

([1]) OJ L 142, 1.6.2012, p. 1.

ANNEX X

— TEMPLATE FOR INFORMATION REQUESTS ON DETENTION CONDITIONS

Information request on detention conditions pursuant to Article 15(2) of Framework Decision on EAW

Please provide supplementary information on **the conditions of detention in** the prisons in which it is likely that the requested person will be detained, including on a temporary or transitional basis:

1. **Prison cells**
   - — Minimum personal space for single-occupancy and multiple-occupancy cells (in m^2)
   - — Cell's measurements (height and width)
   - — Equipment (heating, ventilation) and facilities (lighting, windows, washbasin, toilet, shower, furniture) in cell
   - — Cleanliness and hygienic conditions in cell
   - — Video surveillance of cells

2. **Sanitary conditions**
   - — Access to sanitary facilities (frequency)
   - — Structural separation requirements for in-cell sanitary facilities
   - — Hygienic conditions (disinfection and cleaning, provision of sanitary products to detainees)
   - — Access to shower/bathing facilities and hot water

3. **Time out of cell**
   - — Time per day/week spent by detainees outdoors in open air
   - — Sports facilities outdoors and indoors
   - — Time per day/week spent by detainees in common areas
   - — Activities/programmes available to detainees outside of their cells (education and recreational activities)

4. **Solitary confinement**
   - — Standards for the application of solitary confinement
   - — Monitoring of detainees while in solitary confinement

5. **Access to healthcare**
   - — Access to medical services and emergency care in prison
   - — Timing on medical intervention
   - — Availability of qualified medical and nursing personnel in prison facilities
   - — Availability of specialist care (e.g. for long-term diseases, for sick and elderly detainees, mental illnesses, drug addictions)
   - — Medical examination upon arrival in detention facilities
   - — Medical treatment of own choosing

6. **Vulnerable prisoners**
   - — Special measures for young detainees
   - — Special measures for women in detention
   - — Special measures for pregnant women
   - — Special measures for LGBTIQ+ prisoners

7. **Special measures in place to protect detainees from violence**
   - — Staff supervision
   - — Facility arrangements to prevent inter-prisoner violence (emergency button in cells, video monitoring etc.)
   - — Guard training

8. **Nutrition**
   - — Frequency of provision of meals
   - — General nutrition standards

9. **Legal remedies**
   - — Legal remedies available to the detainee in case of violation of national standards on detention conditions

Please provide additional information in relation to the topics for which the boxes are ticked:

ANNEX XI

COMMISSION RECOMMENDATION

of 8 December 2022

on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

(1) In accordance with Article 2 of the Treaty on European Union, the European Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. Articles 1, 4 and 6 of the Charter of Fundamental Rights of the European Union (the Charter) provide that human dignity is inviolable and must be respected and protected, that no one shall be subjected to torture or to inhuman or degrading treatment or punishment and that everyone has the right to liberty and security. Articles 7 and 24 of the Charter enshrine the right to family life and the rights of the child. Article 21 of the Charter provides that no one shall be subject to discrimination. Articles 47 and 48 of the Charter recognise the right to an effective remedy and to a fair trial as well as the presumption of innocence and the right of defence. Article 52 of the Charter provides that any limitation to the exercise of fundamental rights recognised therein must be provided for by law and must respect the essence of those rights and freedoms as well as the principles of necessity and proportionality.

(2) The Member States are already legally bound by existing Council of Europe instruments on human rights and the prohibition of torture and inhuman or degrading treatment, in particular the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the protocols to that Convention, the case law of the European Court of Human Rights and the 1987 European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment. All Member States are furthermore parties to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).

(3) A number of non-legally binding instruments that deal more specifically with the rights of persons who have been deprived of their liberty have also to be taken into account, in particular: at United Nations level, the United Nations standard minimum rules on the treatment of prisoners (Nelson Mandela Rules); the United Nations standard minimum rules for non-custodial measures (Tokyo Rules); as well as, at the Council of Europe level, Recommendation Rec(2006)2-Rev on the European Prison Rules; the Recommendation Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse; Recommendation CM/Rec(2017)3 on the European Rules on community sanctions and measures; Recommendation CM/Rec(2014)4 on electronic monitoring; Recommendation CM/Rec(2010)1 on the Council of Europe Probation Rules; and the White Paper on Prison Overcrowding.

(4) In addition other instruments exist that target specific groups of persons deprived of liberty, in particular: at the United Nations level, the United Nations Rules for the protection of juveniles deprived of their liberty and the United Nations Rules for the treatment of women prisoners and non-custodial measures for women offenders (Bangkok Rules); the United National Convention on the Rights of the Child (UNCRC); as well as, at the Council of Europe level, Recommendation CM/Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures; and the Recommendation CM/Rec(2018)5 concerning children with imprisoned parents; Recommendation CM/Rec (2012)12 concerning foreign prisoners; as well as, at an international non-governmental level, the Principles on the application of international human rights law in relation to sexual orientation and gender identity (Yogyakarta Principles), developed by the International Commission of Jurists and the International Service for Human Rights.

(5) The Court of Justice of the European Union has acknowledged, in the *Aranyosi/Căldăraru* and follow-up judgments ([1]), the importance of detention conditions in the context of mutual recognition and the operation of Framework Decision 2002/584/JHA on the European arrest warrant ([2]). The European Court of Human Rights has also ruled on the impact of poor detention conditions on the operation of the European arrest warrant ([3]).

(6) In the December 2018 Council conclusions on promoting mutual recognition by enhancing mutual trust, Member States were encouraged to make use of alternative measures to detention in order to reduce the population in their detention facilities, thereby furthering the aim of social rehabilitation and also addressing the fact that mutual trust is often hampered by poor detention conditions and the problem of overcrowded detention facilities ([4]).

(7) In the December 2019 Council conclusions on alternatives to detention, Member States committed to taking several actions in the field of detention at national level, such as to adopt alternative measures to detention ([5]).

(8) In the June 2019 Council conclusions on preventing and combating radicalisation in prisons and on dealing with terrorist and violent extremist offenders after release, Member States committed urgently to take effective measures in this area ([6]).

(9) For several years, the European Parliament has urged the Commission to take action to address the issue of material prison conditions and to ensure that pre-trial detention remains an exceptional measure, to be used in compliance with the presumption of innocence. This request was repeated in the European Parliament report on the European arrest warrant ([7]).

(10) At the request of, and funded by, the Commission, the Fundamental Rights Agency has developed a database on detention conditions, which was launched in December 2019 and which is publicly accessible ([8]). The Agency's Criminal Detention Database collates information on detention conditions in all Member States. Drawing on national, Union and international standards, case law and monitoring reports, it informs about selected core aspects of detention conditions, including cell space, sanitary conditions, access to healthcare and protection against violence.

(11) Available statistics on the European arrest warrant demonstrate that, since 2016, Member States have refused or delayed execution on grounds related to a real risk of breach of fundamental rights in close to 300 cases, including on the basis of inadequate material conditions of detention ([9]).

(12) National judicial authorities have requested more concrete guidance on how to deal with such cases. The problems identified by practitioners concerns the lack of harmonisation, dispersion and lack of clarity of detention standards across the Union as a challenge for judicial cooperation in criminal matters ([10]).

([1]) Judgment of the Court of Justice of 5 April 2016, *Aranyosi and Căldăraru,* C-404/15 and C-659/15 PPU, ECLI:EU:C:2016:198. Judgment of the Court of Justice of 25 July 2018, *Generalstaatsanwaltschaft,* C-220/18 PPU, ECLI:EU:C:2018:589 and Judgment of the Court of Justice of 15 October 2019, *Dimitru-Tudor Dorobantu,* C-128/18, ECLI:EU:C:2018:589.

([2]) Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1).

([3]) *Bivolaru and Moldovan v France*, Judgment of 25 March 2021, 40324/16 and 12623/17.

([4]) https://data.consilium.europa.eu/doc/document/ST-14540-2018-INIT/en/pdf

([5]) https://data.consilium.europa.eu/doc/document/ST-14075-2019-INIT/en/pdf

([6]) https://data.consilium.europa.eu/doc/document/ST-9727-2019-INIT/en/pdf

([7]) (2019/2207(INI)) as adopted on 20 January 2021.

([8]) Visit https://fra.europa.eu/en/databases/criminal-detention.

([9]) Period covered 2016-2019. For further reference see: https://ec.europa.eu/info/publications/replies questionnaire-quantitative-information-practical-operation-european-arrest-warrant_en

([10]) The ninth round of mutual evaluations and conclusions of the High-Level Conference on the European arrest warrant, organised by the German Presidency of the Council of the European Union in September 2020.

(13) Half of the Member States that provided to the Commission statistics on their detention populations indicated that they have a problem of overcrowding in their detention facilities with an occupancy rate of more than 100 per cent. The excessive or unnecessary use and length of pre-trial detention also contributes to the phenomenon of overcrowding in detention facilities, which seriously undermines improvements in conditions of detention.

(14) Substantial divergences exist among Member States in relation to important aspects of pre-trial detention, such as the use of pre-trial detention as a last resort and the review of pre-trial detention decisions ([11]). The maximum time limit for pretrial detention also differs from one Member State to another, ranging from less than 1 year to more than 5 years ([12]). In 2020, the average length of pre-trial detention in the different Member States varied from 2 months to 13 months ([13]). The number of pre-trial detainees as a proportion of the total prison population also varies significantly from one Member State to another, ranging from less than 10 % to more than 40 % ([14]). Such vast divergences appear unjustified in a common EU area of freedom, security and justice.

(15) Recent reports of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment draw attention to the persistence of certain serious problems in some Member States, such as ill-treatment, the unsuitability of detention facilities as well as a lack of meaningful activities and of appropriate provision of healthcare.

(16) In addition, the European Court of Human Rights still continues to find Member States in violation of Article 3 or 5 of the ECHR in the context of detention.

(17) Given the vast number of recommendations developed by international organisations in the area of criminal detention, these may not always be easily accessible for individual judges and prosecutors in the Member States who have to assess detention conditions before taking their decisions, either in the context of a European arrest warrant or at national level.

(18) In the Union and, in particular, within the area of freedom, security and justice, Union specific minimum standards, applicable to all Member States' detention systems alike, are required in order to strengthen mutual trust between Member States and facilitate mutual recognition of judgments and judicial decisions.

([11]) See Directorate-General for Justice and Consumers, *Rights of suspects and accused persons who are in pre-trial detention (exploratory study): final report*, Publications Office of the European Union, 2022, https://data.europa.eu/doi/10.2838/293366; Directorate-General for Justice and Consumers, *Rights of suspects and accused persons who are in pre-trial detention (exploratory study). Annex 2, Country fiches*, Publications Office of the European Union, 2022, https://data.europa.eu/doi/10.2838/184080

([12]) Less than 1 year in Austria, Germany, Denmark, Estonia, Latvia, Sweden and Slovakia; Between 1 year and 2 years in Bulgaria, Greece, Lithuania, Malta, Poland and Portugal; Between 2 and 5 years in the Czech Republic, France, Spain, Croatia and Hungary; More than 5 years in Italy and Romania; No time limit in Belgium, Cyprus, Finland, Ireland, Luxembourg, Netherlands.

([13]) In 2020, from just under 2 and a half months in Malta to nearly 13 months in Slovenia. Average per Member State: Austria – 2.9 months; Bulgaria – 6.5 months; Czech Republic – 5.1 months; Estonia – 4.7 months; Finland – 3.7 months; Greece – 11.5 months; Hungary – 12.3 months; Ireland – 2.5 months; Italy – 6.5 months; Lithuania – 2.8 months; Luxembourg – 5.2 months; Malta 2.4 months; Netherlands – 3.7 months; Portugal - 11 months; Romania – 5.3 months; Slovakia – 3.9 months; Slovenia – 12.9 months; Spain – 5.9 months. No data was available for the year 2020 for Belgium, Denmark, France, Latvia, Poland, Germany, Croatia, Cyprus and Sweden.

([14]) Less than 10 % in Bulgaria, Czech Republic and Romania and more than 45 % in Luxembourg in 2019.

(19) To strengthen the trust of Member States in each other's criminal justice systems and thus to improve mutual recognition of decisions in criminal matters, notably six measures on procedural rights in criminal proceedings, namely Directives 2010/64/EU ([15]), 2012/13/EU ([16]), 2013/48/EU ([17]), (EU) 2016/343 ([18]), (EU) 2016/800 ([19]) and (EU) 2016/1919 ([20]) of the European Parliament and of the Council, as well as Commission Recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings ([21]), have already been adopted. These measures aim to ensure that the procedural rights of suspects and accused persons in criminal proceedings are respected, including where pretrial detention is imposed. For this purpose, these Directives contain specific procedural safeguards for suspects and accused persons who are deprived of liberty. Directive (EU) 2016/800 contains specific provisions on conditions of pretrial detention for children; these aim to safeguard their well-being where subject to such a coercive measure. It is necessary to complement the procedural rights standards established in these Directives and the 2013 Recommendation, as well as, in the case of Directive (EU) 2016/800, relevant standards on material detention conditions for children who are subject to pre-trial detention.

(20) The Commission aims to consolidate and build on those minimum standards established within the framework of the Council of Europe as well as the case law of the Court of Justice and of the European Court of Human Rights. To this end, it is necessary to provide an overview of selected minimum standards for procedural rights of suspects and accused persons subject to pre-trial detention and material conditions of detention in key priority areas for judicial cooperation in criminal matters between Member States.

(21) With respect to procedural rights of suspects and accused persons subject to pretrial detention, the guidance in this Recommendation should cover key standards on the use of pre-trial detention as a measure of last resort and alternatives to detention, grounds for pre-trial detention, requirements for decision-making by judicial authorities, periodic review of pre-trial detention, the hearing of suspect or accused persons for decisions on pre-trial detention, effective remedies and the right to appeal, the length of pre-trial detention and the recognition of time spent in pre-trial detention in terms of a deduction from the final sentence.

(22) With respect to material conditions of detention, guidance should be given on key standards in the areas of accommodation, the allocation of detainees, hygiene and sanitation, nutrition, detention regimes with regard to out-of-cell exercise and activities, work and education, healthcare, prevention of violence and ill-treatment, contact with the outside world, access to legal assistance, request and complaint procedures, and inspections and monitoring. Furthermore, guidance should be provided on safeguarding the rights of persons for whom deprivation of liberty constitutes a situation of particular vulnerability, such as women, children, persons with disabilities or serious health conditions, LGBTIQ and foreign nationals, as well as the prevention of radicalisation in prisons.

([15]) Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1).

([16]) Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1).

([17]) Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1).

([18]) Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ L 65, 11.3.2016, p. 1).

([19]) Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ L 132, 21.5.2016, p. 1).

([20]) Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297, 4.11.2016, p. 1.).

([21]) OJ C 378, 24.12.2013, p. 8.

(23) Pre-trial detention should always be used as a measure of last resort based on a case-by-case assessment. The widest possible range of less restrictive measures alternative to detention (alternative measures) should be made available and applied wherever possible. Member States should also ensure that pre-trial detention decisions are not discriminatory and are not automatically imposed on suspects and accused persons based on certain characteristics, such as foreign nationality.

(24) Adequate material conditions of detention are fundamental for safeguarding the rights and dignity of persons deprived of liberty and to prevent violations of the prohibition of torture and inhuman or degrading treatment or punishment (illtreatment).

(25) To ensure appropriate detention standards, Member States should provide each detainee with a minimum amount of personal living space in accordance with the recommendations of the European Committee for Prevention of Torture (CPT) and the case law of the European Court of Human Rights.

(26) Where persons are deprived of liberty, they are rendered particularly vulnerable to violence and ill-treatment as well as social isolation. To ensure their safety and to support their social reintegration, the allocation and separation of detainees should take into account differences in detention regimes as well as the need to protect detainees in situations of particular vulnerability from abuse.

(27) Detention regimes should not unduly limit detainees' freedom of movement inside the detention facility and their access to exercise, outdoor spaces, and meaningful activities and social interaction, to allow them to maintain their physical and mental health and to promote their social reintegration.

(28) Victims of crime committed in detention often have limited access to justice notwithstanding the obligation of States to provide for effective remedies in cases where their rights have been violated. In line with the objectives of the EU Strategy on victims' rights (2020-2025), it is recommended that Member States ensure effective remedies for violations of detainees' rights as well as protection and support measures. Legal assistance, and mechanisms for submitting requests and complaints, should be easily accessible, confidential and effective.

(29) Member States should take into account the special needs of particular groups of detainees, including women, children, elderly persons, persons with disabilities or serious health conditions, LGBTIQ, persons with a minority racial or ethnic background and foreign nationals, in all decisions relating to their detention. In particular, where children are detained, the child's best interest must always be a primary consideration.

(30) With respect to terrorist and violent extremist offenders, Member States should take effective measures to prevent radicalisation in prisons, and to implement rehabilitation and reintegration strategies given the risk posed by terrorist and violent extremist offenders or offenders radicalised while serving time in prison, and the fact that a number of these offenders will be released within a short period of time.

(31) Only an overview of selected standards is provided in this Recommendation and it should be considered in light of, and without prejudice to, the more detailed guidance provided in the Council of Europe standards and of the case law of the Court of Justice and of the European Court of Human Rights. It is without prejudice to existing Union law and its future development. It is also without prejudice to the authoritative interpretation of Union law, which may be given by the Court of Justice of the European Union.

(32) This Recommendation should also facilitate the execution of European arrest warrants under Framework Decision 2002/584/JHA on the European arrest warrant ([22]), as well as the recognition of judgments and the enforcement of sentences under Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgments imposing custodial sentences or measures involving deprivation of liberty ([23]).

([22]) Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1).

([23]) Council Framework Decision 2008/909/JHA of 27 November 2008 (OJ L 327, 5.12.2008, p. 27)

(33) This Recommendation respects and promotes fundamental rights recognised by the Charter of Fundamental Rights of the European Union. In particular, this Recommendation seeks to promote respect for human dignity, the right to liberty, the right to family life, the rights of the child, the right to an effective remedy and to a fair trial as well as the presumption of innocence and the right of defence.

(34) References in this Recommendation to appropriate measures to ensure effective access to justice for persons with disabilities should be understood in light of the rights and obligations under the United Nations Convention on the Rights of Persons with Disabilities to which the European Union and all its Member States are parties. In addition, it should be ensured that if persons with disabilities are deprived of their liberty in criminal proceedings, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of the United Nations Convention on the Rights of Persons with Disabilities, including by providing reasonable accommodation for special needs and by ensuring accessibility.

HAS ADOPTED THIS RECOMMENDATION:

PURPOSE OF THE RECOMMENDATION

(1) This Recommendation sets out guidance for Member States to take effective, appropriate and proportionate measures to strengthen the rights of all suspects and accused persons in criminal proceedings who are deprived of their liberty, in relation both to the procedural rights of persons subject to pre-trial detention and to material detention conditions, in order to ensure that persons subject to deprivation of liberty are treated with dignity, that their fundamental rights are upheld and that they are deprived of their liberty only as a measure of last resort.

(2) This Recommendation consolidates standards established under existing policies at national, Union and international level on the rights of persons deprived of their liberty as a result of proceedings in criminal matters, which are of key relevance in the context of judicial cooperation in criminal matters between Member States.

(3) Member States may extend the guidance set out in this Recommendation in order to provide a higher level of protection. Such higher levels of protection should not constitute an obstacle to the mutual recognition of judicial decisions that this guidance is designed to facilitate. The level of protection should never fall below the standards provided by the Charter or by the ECHR, as interpreted by the case law of the Court of Justice and of the European Court of Human Rights.

DEFINITIONS

(4) Under this Recommendation, ‘pre-trial detention’ should be understood as any period of detention of a suspect or accused person in criminal proceedings ordered by a judicial authority and prior to conviction. It should not include the initial deprivation of liberty by a police or law enforcement officer (or by anyone else so authorised to act) for the purposes of questioning or securing the suspect or accused person until a decision on pre-trial detention has been made.

(5) Under this Recommendation, ‘alternative measures’ should be understood as less restrictive measures as an alternative to detention.

(6) Under this Recommendation, ‘detainee’ should be understood to cover persons deprived of liberty in pre-trial detention and convicted persons serving a sentence of imprisonment. ‘Detention facility’ should be understood as any prison or other facility for the holding of detainees as defined in this Recommendation.

(7) Under this Recommendation, ‘child’ should be understood as a person below the age of 18.

(8) Under this Recommendation, 'young adult' should be understood as a person above the age of 18 and below the age of 21.

(9) Under this Recommendation, 'persons with disabilities' should be understood in accordance with Article 1 of the United Nations Convention on the Rights of persons with Disabilities to include those persons who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

GENERAL PRINCIPLES

(10) Member States should use pre-trial detention only as a measure of last resort. Alternative measures to detention should be preferred, in particular where the offence is punishable only by a short sentence of imprisonment or where the offender is a child.

(11) Member States should ensure that detainees are treated with respect and dignity and in line with their respective human rights obligations, including the prohibition of torture and inhuman or degrading treatment or punishment as laid down in Article 3 of the European Convention on Human Rights and Article 4 of the Charter of Fundamental Rights of the European Union.

(12) Member States are encouraged to manage detention in such a way as to facilitate the social reintegration of detainees, with a view to preventing recidivism.

(13) Member States should apply this Recommendation without distinction of any kind, such as racial or ethnic origin, colour, sex, age, disability, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or any other status.

MIMINUM STANDARDS FOR PROCEDURAL RIGHTS OF SUSPECTS AND ACCUSED PERSONS SUBJECT TO PRE-TRIAL DETENTION

Pre-trial detention as a measure of last resort and alternatives to detention

(14) Member States should impose pre-trial detention only where strictly necessary and as a measure of last resort, taking due account of the specific circumstances of each individual case. To this end, Member States should apply alternative measures where possible.

(15) Member States should adopt a presumption in favour of release. Member States should require the competent national authorities to bear the burden of proof for demonstrating the necessity of imposing pre-trial detention.

(16) To avoid inappropriate use of pre-trial detention, Member States should make available the widest possible range of alternative measures, such as the alternative measures mentioned in Framework Decision 2009/829/JHA on the application of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention ([24]).

(17) Such measures could include: (a) undertakings to appear before a judicial authority as and when required, not to interfere with the course of justice and not to engage in particular conduct, including that involved in a profession or particular employment; (b) requirements to report on a daily or periodic basis to a judicial authority, the police or other authority; (c) requirements to accept supervision by an agency appointed by the judicial authority; (d) requirements to submit to electronic monitoring; (e) requirements to reside at a specified address, with or without conditions as to the hours to be spent there; (f) requirements not to leave or enter specified places or districts without authorisation; (g) requirements not to meet specified persons without authorisation; (h) requirements to surrender passports or other identification papers; and (i) requirements to provide or secure financial or other forms of guarantees as to conduct pending trial.

([24]) Council Framework Decision 2009/829/JHA of 23 October 2009 (OJ L 294, 11.11.2009 p. 20).

(18) Member States should furthermore require that, where a financial surety is fixed as a condition for release, the amount is proportionate to the suspect's or accused person's means.

Reasonable suspicion and grounds for pre-trial detention

(19) Member States should impose pre-trial detention only on the basis of a reasonable suspicion, established through a careful case-by-case assessment, that the suspect has committed the offence in question, and should limit the legal grounds for pretrial detention to: (a) risk of absconding; (b) risk of re-offending; (c) risk of the suspect or accused person interfering with the course of justice; or (d) risk of a threat to public order.

(20) Member States should ensure that the determination of any risk is based on the individual circumstances of the case, but that particular consideration be given to: (a) the nature and seriousness of the alleged offence; (b) the penalty likely to be incurred in the event of conviction; (c) the age, health, character, previous convictions and personal and social circumstances of the suspect, and in particular their community ties; and (d) the conduct of the suspect, especially how they have fulfilled any obligations that may have been imposed on them in the course of previous criminal proceedings. The fact that the suspect is not a national of, or has no other links with, the state where the offence is assumed to have been committed is not in itself sufficient to conclude that there is a risk of flight.

(21) Member States are encouraged to impose pre-trial detention only for offences that carry a minimum custodial sentence of 1 year.

Reasoning of pre-trial detention decisions

(22) Member States should ensure that every decision by a judicial authority to impose pre-trial detention, to prolong such pre-trial detention, or to impose alternative measures is duly reasoned and justified and refers to the specific circumstances of the suspect or accused person justifying their detention. The person affected should be provided with a copy of the decision, which should also include reasons why alternatives to pre-trial detention are not considered appropriate.

Periodic review of pre-trial detention

(23) Member States should ensure that the continued validity of the grounds on which a suspect or accused person is held in pre-trial detention is periodically reviewed by a judicial authority. As soon as the grounds for detaining the person cease to exist, Member States should ensure that the suspect or accused person is released without undue delay.

(24) Member States should permit the periodic review of pre-trial detention decisions to be initiated upon request by the defendant or, ex officio, by a judicial authority.

(25) Member States should, in principle, limit the interval between reviews to a maximum of 1 month, except in cases where the suspect or accused person has the right to submit, at any time, an application for release and to receive a decision on this application without undue delay.

Hearing of the suspect or accused person

(26) Member States should ensure that a suspect or accused person is heard in person or through a legal representative by way of an adversarial oral hearing before the competent judicial authority making a decision on pre-trial detention. Member States should ensure that decisions on pre-trial detention are made without undue delay.

(27) Member States should uphold the suspect or accused person's right to a trial within a reasonable time. In particular, Member States should ensure that cases in which pre-trial detention has been imposed are treated as a matter of urgency and with due diligence.

Effective remedies and the right to appeal

(28) Member States should guarantee that suspects or accused persons who are deprived of their liberty have recourse to proceedings before a court, which is competent to review the lawfulness of their detention and, where appropriate, to order their release.

(29) Member States should grant suspects or accused persons subject to a decision on pre-trial detention the right of appeal against such a decision and inform them of this right when the decision is made.

Length of pre-trial detention

(30) Member States should ensure that the length of pre-trial detention does not exceed, and is not disproportionate to, the penalty that may be imposed for the offence concerned.

(31) Member States should ensure that the length of pre-trial detention imposed does not conflict with the right of a detained person to be tried within a reasonable time.

(32) Member States should consider as a priority cases involving a person subject to pre-trial detention.

Deduction of time spent in pre-trial detention from the final sentence

(33) Member States should deduct any period of pre-trial detention prior to conviction, including where enforced through alternative measures, from the length of any sentence of imprisonment subsequently imposed.

MINIMUM STANDARDS FOR MATERIAL DETENTION CONDITIONS

Accommodation

(34) Member States should assign each detainee a minimum amount of surface area of at least 6 m^2 in single occupancy cells and 4 m^2 in multi-occupancy cells. Member States should guarantee that the absolute minimum personal space available to each detainee, including in a multi-occupancy cell, amounts to the equivalent of at least 3 m^2 surface area per detainee. Where the personal space available to a detainee is below 3 m^2, a strong presumption of a violation of Article 3 of the ECHR arises. The calculation of the available space should include the area occupied by furniture but not that occupied by sanitary facilities.

(35) Member States should ensure that any exceptional reduction of the absolute minimum surface area per detainee of 3 m^2 is short, occasional, minor and accompanied by sufficient freedom of movement outside the cell and appropriate out-of-cell activities. Furthermore, Member States should ensure that, in such cases, the general conditions of detention at the facility are appropriate and that there are no other aggravating factors in the conditions of the concerned person's detention, such as other shortcomings in minimum structural requirements for cells or sanitary facilities.

(36) Member States should guarantee that detainees have access to natural light and fresh air in their cells.

Allocation

(37) Member States are encouraged, and in the case of children, should make sure, to allocate detainees, as far as possible, to detention facilities close to their homes or other places suitable for the purpose of their social rehabilitation.

(38) Member States should ensure that pre-trial detainees are held separately from convicted detainees. Women should be held separately from men. Children should not be detained with adults, unless it is considered to be in the child's best interests to do so.

(39) When a detained child reaches the age of 18 and, where appropriate, for young adults under the age of 21, Member States should provide for the possibility to continue to hold that person separately from other detained adults where warranted, taking into account the circumstances of the person concerned and provided that this is compatible with the best interests of children who are detained with that person.

Hygiene and sanitary conditions

(40) Member States should ensure that sanitary facilities are accessible at all times and that they offer sufficient privacy to detainees, including effective structural separation from living spaces in multi-occupancy cells.

(41) Member States should establish effective measures to maintain good hygienic standards through disinfection and fumigation. Member States should furthermore ensure that basic sanitary products, including hygienic towels, are provided to detainees and that warm and running water is available in cells.

(42) Member States should provide detainees with appropriate clean clothing and bedding, and with the means to keep such items clean.

Nutrition

(43) Member States should ensure that food is provided in sufficient quantity and quality to meet the detainee's nutritional needs and that food is prepared and served under hygienic conditions. Furthermore, Member States should guarantee that clean drinking water is available to detainees at all times.

(44) Member States should provide detainees with a nutritious diet that takes into account their age, disability, health, physical condition, religion, culture and the nature of their work.

Time spent outside the cell and outdoors

(45) Member States should allow detainees to exercise in the open air for at least 1 hour per day and should provide spacious and appropriate facilities and equipment for this purpose.

(46) Member States should allow detainees to spend a reasonable amount of time outside their cells to engage in work, education, and recreational activities as are necessary for an appropriate level of human and social interaction. To prevent a violation of the prohibition of torture and inhuman or degrading treatment or punishment, Member States should ensure that any exceptions to this rule in the context of special security regimes and measures, including solitary confinement, are necessary and proportionate.

Work and education of detainees to promote their social reintegration

(47) Member States should invest in the social rehabilitation of detainees, taking into account their individual needs. To that effect, Member States should strive to provide remunerated work of a useful nature. With a view to promoting the detainee's successful reintegration into society and the labour market, Member States should give preference to work that involves vocational training.

(48) To help detainees prepare for their release and to facilitate their reintegration into society, Member States should ensure that all detainees have access to safe, inclusive and accessible educational programmes (including distance learning) that meet their individual needs while taking into account their aspirations.

Healthcare

(49) Member States should guarantee that detainees have access in a timely manner to the medical, including psychological, assistance they require to maintain their physical and mental health. To this end, Member States should ensure that healthcare in detention facilities meets the same standards as that provided by the national public health system, including with regard to psychiatric treatment.

(50) Member States should provide regular medical supervision and should encourage vaccination and health screening programmes including communicable (HIV, viral hepatitis B and C, tuberculosis and sexually transmitted diseases) and noncommunicable diseases (especially cancer screening), followed up by diagnosis and initiation of treatment where required. Health education programmes can contribute to improving screening rates and health literacy. In particular, Member States should ensure that special attention is paid to treatment for detainees with drug addiction, infectious diseases prevention and care, mental health and suicide prevention.

(51) Member States should require that a medical examination is carried out without undue delay at the beginning of any period of deprivation of liberty and subsequent to any transfer.

Prevention of violence and ill-treatment

(52) Member States should take all reasonable measures to ensure the safety of detainees and to prevent any form of torture or ill-treatment. In particular, Member States should take all reasonable measures to ensure that detainees are not subject to violence or ill-treatment by staff in the detention facility and that they are treated with respect for their dignity. Member States should also require staff in the detention facility and all competent authorities to protect detainees from violence or ill-treatment by other detainees.

(53) Member States should ensure that the fulfilment of this duty of care and any use of force by staff in the detention facility are subject to supervision.

Contact with the outside world

(54) Member States should allow detainees to receive visits from their families and other persons, such as legal representatives, social workers and medical practitioners. Member States should also allow detainees to correspond freely with such persons by letter and, as often as possible, by telephone or other forms of communication including alternative means of communication for persons with disabilities.

(55) Member States should provide suitable facilities to accommodate family visits under child-friendly conditions, compatible with the demands of security but less traumatic for children. Such family visits should ensure the maintenance of regular and meaningful contact between family members.

(56) Member States should consider enabling communication via digital means, such as video calls, in order to, inter alia, enable detainees to maintain contact with their families, to apply for jobs, to take training courses or to look for accommodation in preparation for release.

(57) Member States should ensure that, where detainees are exceptionally prohibited from communicating with the outside world, such a restrictive measure is strictly necessary and proportionate and is not applied for a prolonged period of time.

Legal assistance

(58) Member States should ensure that detainees have effective access to a lawyer.

(59) Member States should respect the confidentiality of meetings and other forms of communication, including legal correspondence, between detainees and their legal advisers.

(60) Member States should grant detainees access to, or allow them to keep in their possession, documents relating to their legal proceedings.

Requests and complaints

(61) Member States should ensure that all detainees are clearly informed of the rules applicable in their specific detention facility.

(62) Member States should facilitate effective access to a procedure enabling detainees to officially challenge aspects of their life in detention. In particular, Member States should ensure that detainees can freely submit confidential requests and complaints about their treatment, through both internal and external complaint mechanisms.

(63) Member States should ensure that detainee complaints are handled promptly and diligently by an independent authority or tribunal empowered to order measures of relief, in particular measures to terminate any violation of the right not to be subjected to torture or inhuman or degrading treatment.

Special measures for women and girls

(64) Member States should take into account women's and girls' specific physical, vocational, social and psychological needs, as well as sanitary and healthcare requirements, when making decisions that affect any aspect of their detention.

(65) Member States should allow detainees to give birth in a hospital outside of the detention facility. Where a child is nevertheless born in the detention facility, Member States should arrange all necessary support and facilities to protect the bond between mother and child and to safeguard their physical and mental wellbeing, including appropriate pre-natal and post-natal health care.

(66) Member States should allow detainees who have infant children to keep such children with them in the detention facility to the extent that this is compatible with the best interests of the child. Member States should provide special accommodation and take all reasonable child-friendly measures to ensure the health and welfare of affected children throughout the execution of the sentence.

Special measures for foreign nationals

(67) Member States should ensure that foreign nationals and other detainees with particular linguistic needs deprived of liberty have reasonable access to professional interpretation services and translations of written materials in a language that they understand.

(68) Member States should ensure that foreign nationals are informed, without undue delay, of their right to request contact, and be allowed reasonable facilities to communicate, with the diplomatic or consular service of their country of nationality.

(69) Member States should ensure that information about legal assistance is provided.

(70) Member States should ensure that foreign nationals are informed of the possibility to request that the execution of their sentence or pre-trial supervision measures be transferred to their country of nationality or permanent residence, such as under Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgments imposing custodial sentences or measures involving deprivation of liberty ([25]) and Framework Decision 2009/829/JHA on the application of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention ([26]).

([25]) Council Framework Decision 2008/909/JHA of 27 November 2008 (OJ L 327, 5.12.2008, p. 27)
([26]) Council Framework Decision 2009/829/JHA of 23 October 2009 (OJ L 294, 11.11.2009 p. 20).

Special measures for children and young adults

(71) Member States should ensure that the child's best interests are a primary consideration in all matters relating to their detention, and that their specific rights and needs are taken into account when making decisions that affect any aspect of their detention.

(72) For children, Member States should establish an appropriate and multidisciplinary detention regime, that ensures and preserves their health and their physical, mental and emotional development, their right to education and training, the effective and regular exercise of their right to family life, and their access to programmes that foster their reintegration into society.

(73) Any use of disciplinary measures, including solitary confinement, use of restraints or use of force should be subject to strict necessity and proportionality considerations.

(74) Where appropriate, Member States are encouraged to apply the juvenile detention regime to young offenders under the age of 21.

Special measures for persons with disabilities or serious medical conditions

(75) Member States should ensure that persons with disabilities or other persons with serious medical conditions receive appropriate care comparable to that provided by the national public health system which meets their specific needs. In particular, Member States should ensure that persons who are diagnosed with mental health related medical conditions receive specialised professional care, where needed in specialised institutions or dedicated sections of the detention facility under medical supervision, and that continuity of healthcare is provided for detainees in preparation of release, where necessary.

(76) Member States should take special care to meet the needs of and ensure accessibility for detainees with disabilities or serious medical conditions with regards to material detention conditions and detention regimes. This should including the provision of appropriate activities for such detainees.

Special measures to protect other detainees with special needs or vulnerabilities

(77) Member States should ensure that placement in detention does not further aggravate the marginalisation of persons because of their sexual orientation, racial or ethnic origin or religious beliefs or on the basis of any other ground.

(78) Member States should take all reasonable measures to prevent any violence or other ill-treatment, such as physical, mental or sexual abuse, against persons because of their sexual orientation, racial or ethnic origin, religious beliefs or on the basis of any other ground by staff in the detention facility or other detainees. Member States should ensure that special protection measures are applied where there is a risk of such violence or ill-treatment.

Inspections and monitoring

(79) Member States should facilitate regular inspections by an independent authority to assess whether detention facilities are administered in accordance with the requirements of national and international law. In particular, Member States should grant unhindered access to the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and to the National Preventive Mechanisms network.

(80) Member States should grant access to detention facilities to national parliamentarians and are encouraged to grant similar access to members of the European Parliament.

(81) Member States should also consider organising regular visits to detention facilities and other detention centres for judges, prosecutors and defence lawyers as part of their judicial training.

Specific measures to address radicalisation in prisons

(82) Member States are encouraged to carry out an initial risk assessment to determine the appropriate detention regime applicable to detainees suspected or convicted of terrorist and violent extremist offences.

(83) Based on this risk assessment, these detainees may be placed together in a separate terrorist wing or may be dispersed among the general prison population. In the latter case, Member States should prevent such individuals from having direct contact with detainees in situations of particular vulnerability in detention.

(84) Member States should ensure that further risk assessments are carried out on a regular basis by the prison administration (at the beginning of detention, during detention and prior to release of detainees suspected or convicted of terrorist and violent extremist offences).

(85) Member States are encouraged to provide general awareness training to all staff, and training to specialised staff, to recognise signs of radicalisation at an early stage. Member States should also consider providing an appropriate number of well-trained prison chaplains representing a variety of religions.

(86) Member States should implement measures providing for rehabilitation, deradicalisation and disengagement programmes in prison, in preparation of release, and programmes after release to promote reintegration of detainees convicted of terrorist and violent extremist offences.

MONITORING

(87) Member States should inform the Commission on their follow-up to this Recommendation within 18 months of its adoption. Based on this information, the Commission should monitor and assess the measures taken by Member States and submit a report to the European Parliament and to the Council within 24 months of its adoption.

Done at Brussels, 8 December 2022

For the Commission
Didier REYNDERS
Member of the Commission

ANNEX XII

Commission Notice – Guidelines on Extradition to Third States

II

(Information)

INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

EUROPEAN COMMISSION

Commission Notice - Guidelines on Extradition to Third States

(2022/C 223/01)

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List of abbreviations

Charter	Charter of Fundamental Rights of the European Union
CISA	Convention implementing the Schengen Agreement
CoE	Council of Europe
Court of Justice	Court of Justice of the European Union
EAW	European arrest warrant
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EEA	European Economic Area
EIO	European Investigation Order
EJN	European Judicial Network
Eurojust	European Union Agency for Criminal Justice Cooperation
Europol	European Union Agency for Law Enforcement Cooperation
EU-IC/NO arrest warrant	Arrest warrant issued under the Agreement between the European Union and the Republic of Iceland (IC) and the Kingdom of Norway (NO) on the surrender procedure between the Member States of the European Union and Iceland and Norway
Framework Decision on the EAW	Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States
Interpol	The International Criminal Police Organization
MLA	Mutual legal assistance
State	27 EU Member States, Iceland and Norway
TFEU	Treaty on the Functioning of the European Union
UK	United Kingdom of Great Britain and Northern Ireland
US	United States of America

Disclaimer

These guidelines are neither legally binding nor exhaustive. They have no bearing on existing EU law and its future development. They also have no bearing on the authoritative interpretation of EU law by the Court of Justice of the European Union.

INTRODUCTION

Extradition proceedings between Member States and third States are primarily regulated by a multi-layered combination of different legal bases: multilateral agreements (e.g. the Council of Europe (CoE) Conventions ([1]), bilateral agreements (concluded either by the EU or by Member States), and national laws.

In general, extradition agreements provide for the possibility of a 'nationality exception,' meaning that contracting parties may refuse to extradite their own nationals.

Furthermore, some agreements that provide for the nationality exception imply that contracting parties should respect the '*aut dedere aut judicare*' principle ([2]) in order to prevent impunity concerning their own nationals ([3]). In general, prosecution of States' own nationals can be based on the active personality principle applying to offences committed by nationals outside a territory of a contracting party.

In 2016, the Court of Justice of the European Union (Court of Justice) introduced in the *Petruhhin* judgment ([4]) specific obligations for Member States that do not extradite their own nationals when they receive an extradition request from a third State for the prosecution of an EU citizen who is a national of another Member State and who has exercised his/her right to free movement under Article 21(1) ([5]) of the Treaty on the Functioning of the European Union (TFEU). The *Petruhhin* judgment is the first case where the Court of Justice held that an EU Member State faced with an extradition request from a third State concerning a national of another EU Member State is obliged to initiate a consultation procedure with the Member State of nationality of the EU citizen (the *Petruhhin* mechanism), thus giving the latter the opportunity to prosecute its citizens by means of a European Arrest Warrant (EAW). The specific obligations imposed on Member States that do not extradite their own nationals find their rationale in ensuring non-discriminatory treatment between own nationals and other EU citizens ([6]). Member States' obligations were further specified in subsequent case-law ([7]). Moreover, the Court of Justice extended the *Petruhhin* mechanism to Iceland and Norway ([8]).

([1]) European Convention on Extradition (ETS No. 24) and its Additional Protocol (ETS No. 086), the Second Additional Protocol (ETS No. 098), the Third Additional Protocol (ETS No. 209) and the Fourth Additional Protocol to the European Convention on Extradition (ETS No. 212).

([2]) The obligation to extradite or prosecute.

([3]) E.g. the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the UK, of the other part (OJ L 149, 30.4.2021, p. 10), provides an explicit obligation concerning the '*aut dedere aut judicare*' principle in Article 603.

([4]) Judgment of the Court of Justice of 6 September 2016, *Petruhhin*, C-182/15, ECLI:EU:C:2016:630.

([5]) Article 21(1) TFEU provides that: 'Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect.'

([6]) Based on the prohibition of discrimination on grounds of nationality established under Article 18 TFEU, which provides that: 'Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.'

([7]) Judgment of 10 April 2018, Pisciotti, C-191/16, ECLI:EU:C:2018:222; judgment of 13 November 2018, *Raugevicius*, C-247/17, ECLI:EU:C:2018:898; judgment of 2 April 2020, *Ruska Federacija*, C-897/19 PPU, ECLI:EU:C:2020:262 and judgment of 17 December 2020, *Generalstaatsanwaltschaft Berlin*, C-398/19, ECLI:EU:C:2020:1032.

([8]) Judgment of 2 April 2020, *Ruska Federacija*, C-897/19 PPU, ECLI:EU:C:2020:262.

On 4 June 2020, the Council asked the Presidency to invite Eurojust and the European Judicial Network (EJN) to analyse how requests for the extradition of EU citizens by third States are handled in practice. They also agreed to make suggestions in this regard, in view of possible EU guidance to be developed by the Commission ([9]).

As a response, Eurojust and the EJN published a joint report in November 2020 ([10]). The main challenges that were identified in this report included:

— Uncertainty about which authority to approach in the Member State of nationality, which Member State should deal with and bear the costs of translation, and/or which judicial cooperation instrument is best applied to ensure prosecution in the Member State of nationality.

— Different practices related to the extent of information provided, deadlines given for replies and decisions, and types of assessments carried out in the framework of the Petruhhin mechanism.

— Tensions between obligations under EU law on the one hand, and bilateral and multilateral extradition treaties on the other.

— Several parallel channels used to inform and transmit information, often leading to duplication of effort, uncertainty and confusion.

Subsequently, in December 2020 the Council adopted conclusions on 'The European arrest warrant and extradition procedures - current challenges and the way forward' ([11]). The conclusions reiterated that 'Following the judgments of the CJEU in the Petruhhin case and several subsequent rulings ([12]), in handling such requests Member States are faced with two obligations: on the one hand, the duty to fulfil existing obligations under international law and to combat the risk that the offence concerned will go unpunished and, on the other hand, Member States that do not extradite their nationals are obliged, in accordance with the principles of freedom of movement and non- discrimination on grounds of nationality, to protect citizens from other Member States as effectively as possible from measures that may deprive them of the rights of free movement and residence within the EU.'

There are further issues affecting extradition as identified in the Eurojust and EJN report. In its 2020 conclusions, the Council emphasised that 'The practical experience of different Member States shows that there are cases where unfounded and abusive requests for extradition are submitted by third countries. The Council invites the Commission to consider the need, in the light of the results of the analysis prepared by Eurojust and the EJN, for further action, such as a suggestion for a common approach in dealing with potentially abusive, including politically motivated, search and extradition requests from third countries. In this context, the best practices of the Member States should be taken into account'.

For the purpose of preparing these guidelines, the Commission consulted the Member States through a questionnaire on extradition requests by third States. The Commission also drew up a table of extradition agreements and mutual legal assistance (MLA) agreements that Member States concluded with third States (available on the EJN web-site). In June and October 2021, the findings of the questionnaire were discussed in dedicated meetings of experts of Member States. The Commission also consulted various stakeholders and experts, including Eurojust and the EJN.

These guidelines summarise the case-law of the Court of Justice. They also take into account experience that has been gained over the last five years in applying the *Petruhhin* mechanism across the EU, Iceland and Norway.

([9]) Council of the European Union Working Paper, Informal videoconference of the Ministers of Justice, 4 June 2020: Preparation - Extradition of EU citizens to third countries - Presidency discussion paper, Document WK 5231/2020 INIT.

([10]) Joint report of Eurojust and the European Judicial Network on the extradition of EU citizens to third countries: https://www.eurojust.europa.eu/joint-report-eurojust-and-ejn-extradition-eu-citizens-third-countries.

([11]) OJ C 419, 4.12.2020, p. 23.

([12]) Order of the Court of Justice of 6 September 2017, *Schotthöfer & Steiner v Adelsmayr*, C-473/15, ECLI:EU:C:2017:633, judgment of the Court of Justice of 10 April 2018, *Pisciotti*, C-191/16, ECLI:EU:C:2018:222; judgment of the Court of Justice of 13 November 2018, *Raugevicius*, C-247/17, ECLI:EU:C:2018:898; judgment of the Court of Justice of 2 April 2020, *Ruska Federacija*, C-897/19 PPU, ECLI:EU:C:2020:262 and judgment of the Court of Justice of 17 December 2020, *Generalstaatsanwaltschaft Berlin*, C-398/19, ECLI:EU:C:2020:1032.

1. SUMMARY OF THE CASE-LAW OF THE COURT OF JUSTICE

Extradition requests can be issued for the purposes of conducting a criminal prosecution or executing a custodial sentence or a detention order.

In relation to the first category - extradition requests issued for the purpose of conducting a criminal prosecution, the Court of Justice has developed the so-called *'Petruhhin doctrine'* ([13]).

In relation to the second category - extradition requests issued for the purpose of executing a custodial sentence or detention order, the only case of reference so far has been the *Raugevicius* judgment ([14]). Currently, another case is pending before the Court of Justice concerning an extradition request for the purpose of executing a custodial sentence ([15]).

1.1. Extradition requests for the purpose of conducting a criminal prosecution

Judgment of the Court of Justice of 6 September 2016, Petruhhin, C-182/15 ([16])

The *Petruhhin* judgment is the first case where the Court of Justice held that an EU Member State faced with an extradition request from a third State concerning a national of another EU Member State is obliged to initiate a consultation procedure with the Member State of nationality of the EU citizen, thus giving the latter the opportunity to prosecute its citizen by means of an EAW.

Facts of the case

The case related to an extradition request issued by the Russian authorities to Latvia in relation to an Estonian national, Mr Petruhhin, accused of attempted large-scale, organised drug-trafficking. The Public Prosecutor's Office of the Republic of Latvia authorised the extradition to Russia. However, Mr Petruhhin filed an application against the extradition decision on the ground that, under the treaty between the Republic of Estonia, the Republic of Latvia and the Republic of Lithuania on judicial assistance and judicial relations, he enjoyed the same rights in Latvia as a Latvian national, including protection from unjustified extradition.

The referred questions

The Latvian Supreme Court asked the Court of Justice whether, for the purposes of applying an extradition agreement concluded between a Member State and a non-Member State (Latvia and Russia), the nationals of another Member State must benefit, in the light of the principle of non-discrimination on grounds of nationality under Article 18 TFEU and the right to free movement and of residence of Union citizens under Article 21(1) TFEU, from the rule which prohibits the extradition by the requested Member State of its own nationals. The Latvian Supreme Court also asked whether the requested Member State (namely, the Member State from which a non-member State requests the extradition of a national of another Member State, in this case Latvia) must verify (and, if necessary, according to which criteria) that the extradition will not prejudice the rights protected by the Charter of Fundamental Rights of the European Union ([17]) (the Charter).

Reasoning and reply of the Court of Justice

Preliminarily, the Court of Justice specified that, although the rules on extradition in principle fall under the competence of the Member States, where there is no international agreement between the European Union and the third country concerned, a situation such as that at issue in the main proceedings, still falls within the scope of application of the Treaties within the meaning of Article 18 TFEU, since it involves the exercise of the freedom to move and reside within the territory of the Member States, as conferred by Article 21 TFEU.

([13]) Judgment of the Court of Justice of 6 September 2016, *Petruhhin*, C-182/15, ECLI:EU:C:2016:630.
([14]) Judgment of 13 November 2018, *Raugevicius*, C-247/17, ECLI:EU:C:2018:898.
([15]) Case C-237/21, *Generalstaatsanwaltschaft München*.
([16]) Judgment of the Court of Justice of 6 September 2016, *Petruhhin*, C-182/15, ECLI:EU:C:2016:630.
([17]) OJ C 202, 7.6.2016, p. 389.

A Member State is not required to grant every Union citizen who has moved within its territory the same protection against extradition as that granted to its own nationals.

In the absence of rules of EU law governing extradition between the Member States and a third State, it is, however, necessary, in order to combat the risk of impunity while at the same time safeguarding EU nationals from measures liable to deprive them of the right to freedom of movement, to implement all the cooperation and mutual assistance mechanisms provided for in the criminal field under EU law. Consequently, the exchange of information with the Member State of which the person concerned is a national must be given priority in order to afford the authorities of that Member State, in so far as they have jurisdiction pursuant to their national law to prosecute that person for offences committed outside their territory, the opportunity to issue an EAW for the purposes of prosecution. In cooperating accordingly with the Member State of which the person concerned is a national and giving priority to that potential EAW over the extradition request, the host Member State acts in a manner which is less prejudicial to the exercise of freedom of movement while avoiding, as far as possible, the risk of impunity. The EAW is considered to be equally effective as the extradition in achieving the objective of preventing the risk of impunity for a person alleged to have committed a criminal offence.

The Court of Justice also found that where a Member State receives a request from a third State seeking the extradition of a national of another Member State, the requested Member State must verify that the extradition will not prejudice the rights referred to in Article 19 of the Charter ([18]). In so far as the competent authority of the requested Member State is in possession of evidence of a real risk of inhuman or degrading treatment of individuals in the third State concerned, it is bound to assess the existence of that risk when it decides on the extradition request. To that end, the competent authority of the requested Member State must rely on information that is objective, reliable, specific and properly updated. That information may be obtained from, inter alia, judgments of international courts, such as judgments of the European Court of Human Rights, judgments of courts of the non-member State concerned, and also decisions, reports and other documents produced by bodies of the Council of Europe or under the aegis of the United Nations.

Order of the Court of Justice of 6 September 2017, Schotthöfer & Steiner v Adelsmayr, C-473/15 ([19])

In the *Schotthöfer & Steiner v Adelsmayr* order the Court of Justice repeated the reasoning from the *Petruhhin* judgment that the Charter applies where a Union citizen has made use of his right to move freely in the Union by moving from the Member State of which he is a national to another Member State. Moreover, the Court of Justice held that an extradition request must be rejected by the requested Member State where that citizen runs a serious risk of being subjected to the death penalty in the event of extradition.

Facts of the case

Mr Adelsmayr had practised as an anaesthetist and intensive care physician for a number of years beginning in 2004. In February 2009, one of the patients that Mr Adelsmayr was treating in the United Arab Emirates, who was in a serious condition and had suffered several heart attacks, died following an operation and after suffering yet another heart attack. Mr Adelsmayr was blamed for his death. After a complaint was lodged by a doctor of the hospital where Mr Adelsmayr was practising, an investigation was carried out. The report of that investigation reached a finding of murder and manslaughter. In 2011, proceedings were commenced in United Arab Emirates, in the course of which the public prosecution service requested the death penalty for Mr Adelsmayr. In 2012, however, he left the United Arab Emirates. In his absence, he was sentenced to life imprisonment in interim proceedings which could be resumed at any time and in which he would still be liable to the death penalty.

([18]) Article 19(2) of the Charter provides: 'No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.'

([19]) Order of the Court of Justice of 6 September 2017, *Schotthöfer & Steiner v Adelsmayr*, C-473/15, ECLI:EU:C:2017:633.

Criminal proceedings were also instituted against Mr Adelsmayr in his state of nationality – Austria, involving the same charges as those lodged against him in the United Arab Emirates. In 2014, however, those proceedings were discontinued by the Austrian Public Prosecutor's Office, which stated that 'the defendant was able to present a prima facie case to show that the proceedings brought in Dubai appeared to have been motivated by a hate campaign against him'.

The referred questions

The referring court put a number of questions to the Court of Justice; however, the Court of Justice replied only to the question concerning Articles 19(2) and 47 ([20]) of the Charter. With this question, the referring court asked whether the two articles are to be interpreted as meaning that a Member State of the European Union must reject an application for extradition emanating from a non-Member State concerning an EU citizen residing in that Member State where the criminal proceedings from which the application for extradition arose and the decision rendered *in absentia* in the non- Member State did not respect the minimum standard of international law and the non-mandatory principles of the public order of the European Union (*ordre public*) or the right to a fair trial.

Reasoning and reply of the Court of Justice

The Court of Justice recalled that the provisions of the Charter and in particular Article 19 thereof are applicable to a decision of a Member State to extradite a Union citizen, in a situation where that citizen has made use of its rights to move freely within the Union. It held that Article 19(2) of the Charter must be interpreted as meaning that a request for extradition originating from a non-Member State concerning a Union citizen who, in exercising his freedom of movement, leaves his Member State of origin in order to reside on the territory of another Member State, must be rejected by the latter Member State where that citizen runs a serious risk of being subjected to the death penalty in the event of extradition. Therefore, it was not necessary to examine the question in so far as it concerned Article 47 of the Charter.

Judgment of the Court of Justice of 10 April 2018, Pisciotti, C-191/16 ([21])

In its ruling in the *Pisciotti* judgment, the Court of Justice applied the reasoning from the *Petruhhin* judgment to a situation where there was an extradition agreement in force between the European Union and the third State requesting extradition. The Court of Justice held that a Member State is not required to extend a prohibition to extradite its own nationals to the United States to every EU citizen travelling in its territory. However, before extraditing an EU citizen, a requested Member State must put the citizen's Member State of nationality in a position to seek the surrender of that citizen pursuant to an EAW.

Facts of the case

In 2010, a US court issued an arrest warrant against Mr Pisciotti, an Italian national. Mr Pisciotti was arrested in Germany, when his flight from Nigeria to Italy made a stopover at a German airport. He was placed in provisional detention pending surrender and in 2014, his extradition was approved by a German court. The consular authorities of Italy were kept informed of Mr Pisciotti's situation before the request for extradition was granted but the Italian judicial authorities did not issue an EAW. Before being extradited, Mr Pisciotti claimed that his extradition was contrary to EU law since Article 16(2) of the German Basic Law infringes the general prohibition of discrimination on grounds of nationality as it limits its nationality exception to German nationals.

([20]) Article 47 of the Charter provides: 'Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.'

([21]) Judgment of the Court of Justice of 10 April 2018, *Pisciotti*, C-191/16, ECLI:EU:C:2018:222.

The referred questions

The referring court asked whether Article 18 TFEU should be interpreted as precluding the requested Member State from drawing a distinction, on the basis of a rule of constitutional law, between its nationals and the nationals of other Member States and from granting extradition of the latter whilst not permitting extradition of its own nationals.

Reasoning and reply of the Court of Justice

The Court of Justice held that EU law does not preclude the requested Member State (Germany) from drawing a distinction, on the basis of a rule of constitutional law, between its nationals and the nationals of other Member States and from granting extradition of the EU citizen whilst prohibiting the extradition of its own nationals, provided that the requested Member State had put the competent authorities of the Member State of which the citizen was a national (Italy) in a position to seek the surrender of that citizen pursuant to an EAW and that the latter Member State had not taken any action in that regard.

The Court of Justice followed the same reasoning as developed in the *Petruhhin* judgment, stating that it has to be considered applicable also to an international agreement between the EU and a third State (the Agreement on extradition between the European Union and the United States of America ([22])) which allows a Member State, on the basis either of the provisions of a bilateral treaty or of rules of its constitutional law (such as the German Basic Law) to provide for a nationality exception.

The Court of Justice also specified that, in order to safeguard the objective of preventing the risk of impunity for the person concerned in respect of the offences alleged against him or her in the request for extradition, an EAW issued by a Member State other than the requested Member State, must, at least, relate to the same offences and the Member State of nationality must have jurisdiction, pursuant to national law, to prosecute that person for such offences, even if committed outside its territory.

Judgment of the Court of Justice of 2 April 2020, Ruska Federacija, C-897/19 PPU ([23])

In its *Ruska Federacija* judgment, the Court of Justice clarified that the *Petruhhin* mechanism applies *mutatis mutandis* to extradition requests concerning nationals of States of the European Free Trade Association (EFTA) with which the EU has concluded a surrender agreement, namely the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway ([24]).

Facts of the case

In 2015, I.N., a Russian national, was the subject of an international wanted persons notice published by the International Criminal Police Organisation's (Interpol) bureau in Moscow. On the basis of this notice, I.N., who in the meantime had acquired Icelandic nationality, was arrested in Croatia in 2019, where he was on holiday. The Croatian authorities received an extradition request from Russia, which was authorised by a Croatian court. Croatian law provides for a nationality exception in relation to extradition requests. I.N. lodged an appeal to the Supreme Court of Croatia, challenging the decision authorising the extradition.

Referred question

The Supreme Court of Croatia asked the Court of Justice in essence whether the *Petruhhin* mechanism also applies in a situation concerning a person who is not an EU citizen, but is a national of a State of the EFTA, as Iceland, which is party to the Agreement on the European Economic Area (EEA Agreement).

([22]) Agreement on extradition between the European Union and the United States of America (OJ L 181, 19.7.2003, p. 27).
([23]) Judgment of the Court of Justice of 2 April 2020, *Ruska Federacija*, C-897/19 PPU, ECLI:EU:C:2020:262.
([24]) OJ L 292, 21.10.2006, p. 2.

Reasoning and reply of the Court of Justice

Preliminarily, the Court of Justice addressed the question whether the situation of a national of a State of the EFTA which is a party to the EEA Agreement falls within the scope of EU law. It recalled that Articles 18 and 21 TFEU do not apply to nationals of third States. However, the Court of Justice considered that Article 36 of the EEA Agreement, which is an integral part of EU law, guarantees the freedom to provide services, in a manner that is identical, in essence, to Article 56 TFEU, including the right to travel to another State to receive services there. On this basis, the situation of I.N., who went to Croatia to spend his holidays and thus to receive services related to tourism, had to be considered falling within the scope of EU law.

Moreover, the Court of Justice held that Iceland has a special relationship with the European Union, which goes beyond economic and commercial cooperation. It implements and applies the Schengen *acquis*, participates in the common European asylum system and has concluded an Agreement on the surrender procedure with the European Union.

Concerning the extradition request, as already set out in the *Petruhhin* judgment, the requested Member State must first of all verify, in accordance with Article 19(2) of the Charter, that in the event of extradition, the person concerned would not run the risk of being subject to the death penalty, torture, or other inhuman or degrading treatment or punishment. For the purposes of this verification the requested State must rely on information that is objective, reliable, specific and properly updated. In the context of that verification, the Court of Justice added that a particularly substantial piece of evidence is the fact that the person concerned, before acquiring the nationality of the EFTA State concerned, was granted asylum by that state, precisely on account of the criminal proceedings which are the basis of the extradition request.

Before considering executing the request for extradition, the requested Member State is obliged, in any event, to inform that same EFTA State and, should that State so request, surrender that national to it, in accordance with the provisions of the surrender agreement, provided that that EFTA State has jurisdiction, pursuant to its national law, to prosecute that national for offences committed outside its national territory.

Judgment of the Court of Justice of 17 December 2020, Generalstaatsanwaltschaft Berlin, C-398/19 ([25])

In its ruling in case C-398/19 *Generalstaatsanwaltschaft Berlin*, the Court of Justice further specified the requirements of the cooperation mechanism as developed in the *Petruhhin* judgment. The Court of Justice held that a Union citizen may be extradited to a third State only after consultation with the Member State of which that citizen is a national. As part of that consultation, the Member State of nationality must be informed by the Member State from which extradition is requested of all the elements of fact and law communicated in the extradition request and must be allowed a reasonable time to issue an EAW in respect of that citizen. Moreover in the event in which the Member State of nationality does not formally take a decision on the issuance of an EAW, the requested Member State is not obliged to refuse the extradition of a Union citizen who is a national of another Member State, and itself to conduct a criminal prosecution of that person for offences committed in a third State,

Facts of the case

Ukraine sought the extradition from Germany of a Ukrainian national who had moved to Germany in 2012. The person concerned, BY, obtained Romanian nationality in 2014, being a descendent of Romanian nationals. However, he never resided in Romania. In 2016, an arrest warrant was issued against him by a Ukrainian criminal court for misappropriation of funds in 2010 and 2011. Following the extradition request, BY was arrested in Germany. In view of the application of the *Petruhhin* mechanism, the German authorities contacted the Romanian Ministry of Justice, asking whether they intended to conduct a criminal prosecution of BY themselves. The Romanian authorities informed the German authorities that in order to issue an EAW, sufficient evidence concerning the commission of the offences abroad was necessary. Moreover, the Romanian authorities requested the General Prosecutor's Office in Berlin to provide documents and copies of the evidence from Ukraine. Given that the Romanian judicial authorities did not formally make a decision on the possible issuance of an EAW, the German referring court submitted three questions for a preliminary ruling on the interpretation of Articles 18 and 21 TFEU and on the application of the *Petruhhin* mechanism.

([25]) Judgment of the Court of Justice of 17 December 2020, *Generalstaatsanwaltschaft Berlin (Extradition towards Ukraine)*, C-398/19, ECLI:EU:C:2020:1032.

Referred questions

The referring court asked whether:

— the rights deriving from Union citizenship (Articles 18 and 21 TFEU) apply in a situation where the person concerned moved his or her centre of interests to the requested Member State at a time when he or she was not a Union citizen;

— either the Member State of nationality or the requested Member State are obliged to request that the requesting third State provides the files of the case in order to examine whether to undertake itself a criminal prosecution;

— the requested Member State is obliged, based on the Petruhhin judgment, to refuse extradition and to undertake a criminal prosecution itself, if it is possible for it to do so under its national law under certain conditions.

Reasoning and reply of the CJEU

In relation to the first question on the applicability of Articles 18 and 21 TFEU, the Court of Justice held that the fact that a person has acquired the nationality of an EU Member State, and therefore Union citizenship, at a time when he or she was already residing in another Member State is not capable of invalidating the consideration that by virtue of the acquired Union citizenship, the person is entitled to rely on Article 21(1) TFEU, and falls within the scope of the Treaties, within the meaning of Article 18 TFEU, which sets out the principle of non-discrimination on grounds of nationality. The Court of Justice further specified that that same reasoning applies when the requested Union citizen also holds the nationality of the third State requesting extradition: the fact of holding a dual nationality cannot deprive the person concerned of the freedoms deriving from EU law as a national of a Member State.

In relation to the second question the Court of Justice reiterated the line of interpretation of its previous case-law, underlining that the requested Member State has an obligation to inform the Member State of nationality so that that Member State's judicial authority is in a position to request the surrender of the person concerned by means of an EAW. As regards the details of the required exchange of information the Court of Justice held that:

— the requested Member State must inform the competent authorities of the Member State of nationality not only of the existence of the extradition request, but also of all the matters of fact and law communicated by the third State requesting extradition in the context of that extradition request;

— the competent authorities of the Member State of nationality are bound to respect the confidentiality of such matters where confidentiality has been sought by the third State;

— the requested Member State must keep the competent authorities of the Member State of nationality informed of any changes in the situation of the requested person that might be relevant to the possibility of an EAW being issued with respect to that person;

— there is no obligation neither for the requested Member State nor for the Member State of nationality to make an application to the third State for the transmission of the criminal investigation file;

— it is for the requested Member State to set a reasonable time-limit on the expiry of which, if the Member State of nationality has not issued an EAW, the extradition may be carried out;

— the requested Member State may carry out the extradition without being obliged to wait longer than a reasonable time, for the Member State of nationality to adopt a formal decision waiving the right to issue an EAW in respect of the person concerned.

Finally, in reply to the third question, the Court of Justice specified that under EU law the requested Member State has no obligation to refuse extradition and to prosecute itself the EU citizen for the offences committed in the third State, where the national law of the requested Member State permits it to do so. This would go beyond the limits that EU law may impose on the exercise of the discretion enjoyed by that Member State in relation to the decision on whether or not to conduct a criminal prosecution.

Judgment of the Court of Justice of 12 May 2021, WS, C-505/19 ([26])

The *ne bis in idem* principle can preclude the arrest, within the Schengen Area and the European Union, of a person who is the subject of an Interpol notice. This is the case where the competent authorities are aware of a final judicial decision, taken in a State that is a party to the Schengen Agreement or a Member State, which establishes that that principle applies.

Facts of the case

In 2012, Interpol published, at the request of the United States on the basis of an arrest warrant issued by the authorities of that country, a red notice in respect of WS, a German national, with a view to his potential extradition. Where a person who is the subject of such a notice is located in a State affiliated to Interpol, that State could, in principle, provisionally arrest that person or monitor or restrict his or her movements.

However, before that red notice was published, a procedure investigating WS, which at least partially related to the same acts as those which formed the basis for that notice, had been carried out in Germany. That procedure was definitively discontinued in 2010 after a sum of money had been paid by WS as part of a specific settlement procedure provided for under German criminal law. The Federal Criminal Police Office of Germany subsequently informed Interpol that, in its view, as a result of that earlier procedure, the *ne bis in idem* principle was applicable in the present case. That principle, which is enshrined in both Article 54 of the Convention implementing the Schengen Agreement (CISA) ([27]) and Article 50 of the Charter, prohibits, inter alia, that a person whose trial has been finally disposed of is prosecuted again for the same offence.

In 2017, WS brought an action against Germany before the Administrative Court of Wiesbaden seeking an order requiring Germany to take the measures necessary to arrange for that red notice to be withdrawn. In that regard, WS relied not only on an infringement of the *ne bis in idem* principle, but also on an infringement of his right to free movement, as guaranteed under Article 21 TFEU, since he could not travel to any State that is a party to the Schengen Agreement or to any Member State without risking arrest.

Referred question

The referring court put a number of questions to the Court of Justice. However, the main question which is relevant in the context of extradition following a red notice is whether Article 54 ([28]) CISA and Article 21(1) TFEU, read in the light of Article 50 ([29]) of the Charter, must be interpreted as precluding the provisional arrest, by the authorities of a State that is a party to the Schengen Agreement or by those of a Member State, of a person in respect of whom Interpol has published a red notice, at the request of a third State, in the case where, first, that person has already been the subject of criminal proceedings in a Member State which have been discontinued by the public prosecutor after the person concerned fulfilled certain conditions and, second, the authorities of that Member State have informed Interpol that, in their opinion, those proceedings relate to the same acts as those covered by that red notice.

Reasoning and reply of the CJEU

The Court of Justice found that the *ne bis in idem* principle applies in a situation where a decision has been adopted which definitively discontinues criminal proceedings, provided that the person concerned meets certain conditions, such as the payment of a sum of money set by the public prosecutor.

([26]) Judgment of the Court of Justice of 12 May 2021, *WS*, C-505/19, ECLI:EU:C:2021:376.

([27]) Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ L 239, 22.9.2000, p. 19).

([28]) Article 54 of the CISA provides: 'A person whose trial has been finally disposed of in one Contracting Party may not be prosecuted in another Contracting Party for the same acts provided that, if a penalty has been imposed, it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing Contracting Party.'

([29]) Article 50 of the Charter provides: 'No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.'

However, Article 54 of the CISA, Article 50 of the Charter and Article 21(1) TFEU do not preclude the provisional arrest of a person who is the subject of an Interpol red notice where it has not been established that that person's trial has been finally disposed of by a State that is a party to the Schengen Agreement or by a Member State in respect of the same acts as those forming the basis of the red notice and that, consequently, the *ne bis in idem* principle applies.

Where the application of the *ne bis in idem* principle remains uncertain, provisional arrest may be an essential step in order to carry out the necessary checks while avoiding the risk that the person concerned may abscond. That measure may therefore be justified by the legitimate objective of preventing the impunity of the person concerned, 'provided that it is essential for the purpose of those checks' ([30]). By contrast, as soon as it has been established by a final judicial decision that the *ne bis in idem* principle applies, both the mutual trust between the States that are parties to the CISA and the right to free movement prohibit that person from being provisionally arrested or from being kept in custody. The Member States and the Contracting States of the CISA must ensure the availability of legal remedies enabling the person concerned to obtain such a final judicial decision establishing that the *ne bis in idem* principle applies.

1.2. **Extradition requests for execution of a sentence or a detention order**

Judgment of the Court of Justice of 13 November 2018, Raugevicius, C-247/17 ([31])

In the *Raugevicius* case the Court of Justice dealt with an extradition request for the purpose of the execution of a custodial sentence. The Court of Justice followed to some extent the reasoning introduced in the *Petruhhin* case-law, however, with a different outcome. This was necessary since cases concerning extradition for the execution of a sentence may give rise to *ne bis in idem* issues if the *Petruhhin* mechanism were to apply ([32]). However, the Court of Justice took into account that there are mechanisms under national and/or international law that make it possible for requested persons to serve their sentences, in particular, in the Member State of which they are nationals. For example, the Council of Europe 1983 Convention on the Transfer of Sentenced Persons ([33]) provides a legal framework for this possibility.

Facts of the case

Mr Raugevicius is a Lithuanian and a Russian national who has moved to Finland and has lived there for several years. He is also the father of two children residing in Finland and having Finnish nationality. In 2011, after a conviction in Russia, Russian authorities issued an international arrest warrant for the execution of the custodial sentence imposed. In order to decide on the request for extradition, the Finnish Ministry of Justice asked the Supreme Court of Finland for an opinion. The Supreme Court was uncertain as to whether the *Petruhhin* judgment would be applicable and therefore decided to refer a request for preliminary ruling to the Court of Justice.

The relevant Finnish law (the Finnish Constitution) provides that a custodial sentence may be enforced in Finland if the convicted person is a Finnish national or a foreign national permanently residing in Finland and the convicted person has agreed to enforcement.

Referred questions

By its first question, the Finnish Supreme Court asked in essence whether national provisions on extradition are to be assessed with respect to the freedom of movement of nationals of another Member State in the same way, regardless of whether the extradition request of a third State concerns the enforcement of a custodial sentence or a prosecution as in the *Petruhhin* judgment. The second question asked how a request for extradition was to be answered in a situation in which the extradition request is notified to the Member State of nationality, which, however, does not, because of legal obstacles, adopt measures concerning its nationals.

([30]) Judgment of the Court of Justice of 12 May 2021, *WS*, C-505/19, ECLI:EU:C:2021:376, paragraph 84.
([31]) Judgment of the Court of Justice of 13 November 2018, *Raugevicius*, C-247/17, ECLI:EU:C:2018:898.
([32]) Since the requested person was already sentenced in the third State.
([33]) Convention on the Transfer of Sentenced Persons (ETS No. 112).

Reasoning and reply of the Court of Justice

The Court of Justice applied by analogy the reasoning of the *Petruhhin* judgment, by stating that a national of a Member State who moved to another Member State made use of his right to move freely within the Union and therefore falls under the scope of Article 18 TFEU. Holding dual nationality of a Member State and a third State cannot deprive the person concerned of the freedoms he derives from EU law as a national of a Member State.

A national rule which prohibits only own nationals from being extradited introduces a difference in treatment between those nationals and nationals of other Member States and gives rise to a restriction of free movement within the meaning of Article 21 TFEU: such a restriction must be necessary and proportionate in relation to the legitimate objective of preventing the risk of impunity for nationals of Member States other than the requested Member State, and there should not be less intrusive measures to attain that objective, taking into account all the factual and legal circumstances of the case.

However, the Court of Justice acknowledged that in cases of extradition requests for the purpose of execution of a sentence, the conflict with the principle of non-discrimination cannot be settled by giving the possibility to the Member State of nationality to exercise its jurisdiction in prosecuting the person concerned anew since such fresh prosecution of a person who has already been tried and sentenced may be contrary to the principle of *ne bis in idem*. In order to prevent the risk of impunity of persons in such situations, the Court of Justice referred to other mechanisms of national and international law which make it possible for those persons to serve their sentences, for example, in their State of origin, thereby increasing their chances of social reintegration after they have completed their sentences.

In this context, the Court of Justice observed that Article 3 of the Finnish Law on International Cooperation provides foreigners who permanently reside in Finland with the possibility to serve a sentence of imprisonment imposed by a third State in Finland, provided that both the person concerned and the third State consent to this. Therefore, the Court of Justice also observed that Mr Raugevicius could serve the sentence which he received in Russia in Finland, provided that both Russia and Mr Raugevicius himself consented to this.

The Court of Justice held that nationals of the requested Member State, on the one hand, and nationals of other Member States who reside permanently in the requested Member State and demonstrate a certain degree of integration into that State's society, on the other hand, are in a comparable situation. It is for the authorities of the requested State to establish whether such link between the nationals of other Member States and the requested Member State exists. In the affirmative, Articles 18 and 21 TFUE require that nationals of other Member States may, under the same conditions as nationals of the requested Member State, serve their sentence on the territory of the requested Member State.

The Court of Justice therefore concluded that Articles 18 and 21 TFEU must be interpreted as meaning that, where an extradition request has been made by a third State for an EU citizen who has exercised his right to free movement, not for the purpose of prosecution, but for the purpose of enforcing a custodial sentence, the requested Member State, whose national law prohibits the extradition of its own nationals for the purpose of enforcing a sentence and makes provision for the possibility that such a sentence pronounced abroad may be served on its territory, is required to ensure that that EU citizen, provided that he resides permanently in its territory, receives the same treatment as that accorded to its own nationals in relation to extradition.

C-237/21 Generalstaatsanwaltschaft München [currently pending case]

Facts of the case

The case is based on the request for extradition from Bosnia-Herzegovina to Germany regarding S.M. for the purpose of enforcing a custodial sentence. The person whose surrender is sought is a citizen of Serbia, Bosnia-Herzegovina and Croatia, who has lived in Germany with his wife since mid-2017 and who has been working in Germany since May 2020. The *Generalstaatsanwaltschaft München* (Public Prosecution Service, Munich), referring to the judgment in *Raugevicius*, requested to find that the extradition of the person whose surrender is sought is inadmissible.

Referred question

In the light of the request of the Public Prosecutor's Office, the referring German court decided to ask the Court of Justice if the principles governing the application of Articles 18 and 21 TFEU established by the Court of Justice in the *Raugevicius* judgment require that a request from a third State under the European Convention on Extradition of 13 December 1957 ([34]) seeking the extradition of an EU citizen for the purpose of enforcing a sentence is to be refused, even where the requested Member State is obliged by international law under that Convention to extradite the EU citizen, because it has defined the term 'nationals' within the meaning of Article 6(1)(b) of the Convention as meaning that it refers only to its own nationals, not to other EU citizens ([35]).

2. GUIDELINES APPLICABLE IN CASES WHEN STATES APPLY THE NATIONALITY EXCEPTION

2.1. Extradition requests for prosecution purposes

2.1.1. *Scope of the Petruhhin mechanism*

a. *Material scope: when does the Petruhhin mechanism apply?*

The *Petruhhin* (notification) mechanism must be triggered in cases where:

— an extradition request is issued for prosecution purposes

and

— the requested State applies the nationality exception to own its nationals only, leading to potential discriminations between its own nationals and nationals of other States who have exercised their right to free *movement (c.f. Annex 2 - an overview of national systems):*

The *Petruhhin* mechanism applies to all extradition requests, either on the basis of:

— the Agreement on extradition between the European Union and the United States of America ([36]);

— the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the UK, of the other part (TCA) ([37]), which includes provisions reflecting the Petruhhin mechanism ([38]);

— multilateral agreements concluded by States;

— bilateral agreements concluded by States; or

— national law.

([34]) European Convention on Extradition (ETS No. 24)

([35]) *Cf.* Finland made the following declaration pursuant to Article 6 of the European Convention on Extradition: 'Within the meaning of this Convention the term "nationals" shall denote nationals of Finland, Denmark, Iceland, Norway and Sweden as well as aliens domiciled in these States.'

([36]) OJ L 181, 19.7.2003, p. 27.

([37]) OJ L 149, 30.4.2021, p. 10.

([38]) Article 614(1) and (3) of the TCA provides: 1. If two or more States have issued a European arrest warrant or an arrest warrant for the same person, the decision as to which of those arrest warrants is to be executed shall be taken by the executing judicial authority, with due consideration of all the circumstances, especially the relative seriousness of the offences and place of the offences, the respective dates of the arrest warrants or European arrest warrants and whether they have been issued for the purposes of prosecution or for the execution of a custodial sentence or detention order, and of legal obligations of Member States deriving from Union law regarding, in particular, the principles of freedom of movement and non-discrimination on grounds of nationality. 3. In the event of a conflict between an arrest warrant and a request for extradition presented by a third country, the decision as to whether the arrest warrant or the extradition request takes precedence shall be taken by the competent authority of the executing State with due consideration of all the circumstances, in particular those referred to in paragraph 1 and those mentioned in the applicable convention.'

b. *Personal scope: to whom does the Petruhhin mechanism apply?*

The *Petruhhin* mechanism applies to nationals of the 27 EU Member States located on the territory of another Member State, who exercised their right to free movement. Nationals holding also the nationality of the third State requesting extradition are also covered. The Court of Justice clarified that holding a dual nationality cannot deprive the person concerned of the freedoms deriving from EU law as a national of a Member State ([39]). Moreover, the timing when a person obtained the nationality of a Member State is also irrelevant ([40]).

The Court of Justice clarified that the *Petruhhin* mechanism also applies to nationals of a Member State of the EFTA which is a party to the Agreement on the EEA and with which the European Union has concluded a surrender agreement (Iceland and Norway) ([41]). Articles 18 and 21 TFEU do not apply to nationals of third States. However, the Court of Justice considered that Article 4 of the EEA Agreement ([42]) read together with Article 36 of the EEA Agreement ([43]), which is an integral part of EU law, guarantee the freedom to provide services, in a way that is identical to Article 56 TFEU, including the right to travel to another State to receive services ([44]).

Furthermore, the Court of Justice confirmed that the right to free movement under Article 21(1) TFEU/ Article 36 EEA, also applies to a person merely in transit at an airport ([45]) or receiving services as a tourist ([46]) in another State.

c. *Territorial scope: which authorities are bound by the Petruhhin mechanism?*

National authorities of the 27 EU Member States, Iceland and Norway, when applying the nationality exception, are bound by the *Petruhhin* mechanism.

2.1.2. ***Steps to be followed by the competent authorities when the nationality exception applies***

a. *Obligations for the requested State*

Articles 18 and 21 TFEU/ Article 4 of the EEA Agreement read together with Article 36 of the EEA Agreement do not require the establishment of absolute equivalence between own nationals and nationals of other States as regards protection against extradition to third States. However, they require States which provide for a

([39]) Judgment of the Court of Justice of 13 November 2018, *Raugevicius*, C-247/17, ECLI:EU:C:2018:898, paragraph 29 and judgment of the Court of Justice of 17 December 2020, *Generalstaatsanwaltschaft Berlin (Extradition towards Ukraine)*, C-398/19, ECLI:EU:C:2020:1032, paragraph 32.

([40]) Judgment of the Court of Justice of 17 December 2020, *Generalstaatsanwaltschaft Berlin (Extradition towards Ukraine)*, C-398/19, ECLI:EU:C:2020:1032, paragraph 31.

([41]) Judgment of the Court of Justice of 2 April 2020, *Ruska Federacija*, C-897/19 PPU, ECLI:EU:C:2020:262.

([42]) Article 4 of the EEA Agreement provides that: 'Within the scope of application of this Agreement, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.'

([43]) Article 36(1) of the EEA Agreement provides that: 'Within the framework of the provisions of this Agreement, there shall be no restrictions on freedom to provide services within the territory of the Contracting Parties in respect of nationals of EC Member States and EFTA States who are established in an EC Member State or an EFTA State other than that of the person for whom the services are intended.'

([44]) Judgment of the Court of Justice of 2 April 2020, *Ruska Federacija*, C-897/19 PPU, ECLI:EU:C:2020:262, paragraphs 52-55.

([45]) Judgment of the Court of Justice of 10 April 2018, *Pisciotti*, C-191/16, ECLI:EU:C:2018:222, paragraph 34.

([46]) Judgment of the Court of Justice of 2 April 2020, *Ruska Federacija*, C-897/19 PPU, ECLI:EU:C:2020:262, paragraph 54.

different treatment in extradition of their own nationals compared to nationals of other States, to verify, before authorising extradition, whether the legitimate objective of avoiding the impunity pursued by extradition can be achieved by a less prejudicial measure to the exercise of the right to free movement, which would be equally effective ([47]).

In the case of a request for extradition for the purpose of criminal prosecution, the requested State is obliged to consult the State of nationality, in order to give that State of nationality the opportunity to issue an EAW/ EU-IC/ NO arrest warrant, which would be considered an equally effective but less prejudicial measure.

However, the requested State has no obligation to refuse the extradition of a Union citizen who is a national of another Member State or an IC/ NO national and to prosecute the EU citizen/ IC/ NO national for the offences committed in a third State, where its national law permits it to do so ([48]). This would go beyond the limits that EU law may impose on the exercise of the discretion enjoyed by that State in relation to the decision on whether to conduct or not a criminal prosecution.

b. *Launching the consultation procedure*

The requested State is obliged to notify the State of nationality of a pending extradition request.

Regarding the timing for such notification, it is suggested that the requested State notifies the State of nationality of an incoming or pending extradition request at the earliest opportunity. This can happen already when a person is provisionally arrested, if sufficient information is available from an Interpol red notice, and/or at a later stage when the requested State receives the extradition request.

c. *Type of information to be provided to a State(s) of nationality*

As a minimum, authorities of the requested State should inform the focal point ([49]) of the State of nationality of:

— the existence of an extradition request concerning that person; and

— all the matters of fact and law communicated by the third State requesting extradition in the context of that extradition request ([50]) (c.f. Annex 3 - template).

Moreover, authorities of the requested State should keep the authorities of the State of nationality informed of any changes in the situation of the requested person that might be relevant to the possibility of an EAW/ EU-IC/NO arrest warrant being issued with respect to that person ([51]) (*c.f. Annex* 4 - template).

d. *Relations with the requesting third State and confidentiality*

Neither the requested State nor the State of nationality are obliged under EU law to submit an application for the transmission of the criminal investigation file to the third State that is requesting extradition ([52]). If the requested State or the State of which the requested person is a national were obliged to ask the third State requesting extradition to send the criminal investigation file, the extradition procedure might become substantially more complicated and its duration might be significantly extended, with the risk of jeopardising, ultimately, the objective of ensuring that criminal offences do not go unpunished ([53]). Moreover, long proceedings may also be detrimental to the person sought, in particular if the person is kept in detention.

([47]) Judgment of the Court of Justice of 6 September 2016, *Petruhhin*, C-182/15, ECLI:EU:C:2016:630, paragraph 41.
([48]) Judgment of the Court of Justice of 17 December 2020, *Generalstaatsanwaltschaft Berlin (Extradition towards Ukraine)*, C-398/19, ECLI: EU:C:2020:1032, paragraphs 49-50.
([49]) A list of national focal points nominated by the 27 EU Member States, NO and IC is published on the EJN website, cf. 4.1.
([50]) Judgment of the Court of Justice of 17 December 2020, *Generalstaatsanwaltschaft Berlin (Extradition towards Ukraine)*, C-398/19, ECLI: EU:C:2020:1032, paragraph 48.
([51]) *Idem*.
([52]) *Idem*, paragraph 49.
([53]) *Idem*, paragraph 51.

Authorities of the State of nationality are bound to respect the confidentiality of such matters where confidentiality has been sought by the requesting third State. Moreover, the requesting third State should be kept duly informed on that point ([54]).

However, the State of nationality can apply any cooperation and/or mutual assistance mechanism to obtain evidence from the requested State (e.g. issuing a European Investigation Order (EIO) ([55])).

e. *Obligations for the State of nationality*

After the notification, competent authorities of the State of nationality should assess whether it is appropriate to issue an EAW/ EU-IC/NO arrest warrant relating to the same offences as those of which the person concerned is accused in the extradition request, in so far as they have jurisdiction, pursuant to their national law, to prosecute that person for offences committed outside national territory.

2.1.3. ***Time limit to respond to a notification***

The requested State should set a reasonable time limit for the State(s) of nationality to submit a reply. The requested State has a margin of appreciation when determining a reasonable time limit, in particular taking into consideration whether a requested person is in custody based on the extradition procedure and the complexity of the case ([56]).

The imposed time limit should be indicated in the certificate (c.f. Annex 3 - template).

If necessary, the focal point or the issuing judicial authority ([57]) of the State(s) of nationality could request an extension of the time limit (c.f. Annex 5 - template). The focal point or the authority dealing with the extradition request in the requested State should decide upon the extension (c.f. Annex 6 - template).

2.1.4. ***Refusal of an extradition request***

Only in cases, where a judicial authority of a State of nationality issues an EAW/ EU- IC/NO arrest warrant related to the same offence(s) ([58]) or acts and informs the requested State accordingly, the requested State should refuse the extradition and surrender the person to the State of nationality (c.f. Annex 7 – template).

2.1.5. ***Resumption of the extradition proceedings***

In the absence of a reply within the imposed time limit from authorities of the State(s) of nationality or in the case of a negative reply within the time limit, the authorities of the requested State may, where appropriate, carry out the extradition without being obliged to wait for the State of nationality to reply and/or adopt a formal decision waiving the right to issue an EAW/ EU-IC/NO arrest warrant in respect of that person ([59]) (c.f. Annex 7 – template).

2.2. **Extradition requests for the execution of a custodial sentence or a detention order**

2.2.1. ***Scope***

a. *Material scope*

The *Raugevicius* judgment applies in cases where:

— the request is an extradition request for execution of a custodial sentence or detention order

and

([54]) *Idem*, paragraph 48.
([55]) Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130, 1.5.2014, p. 1).
([56]) Judgment of the Court of Justice of 17 December 2020, *Generalstaatsanwaltschaft Berlin (Extradition towards Ukraine)*, C-398/19, ECLI: EU:C:2020:1032, paragraph 55.
([57]) As designated under Article 6(1) of the Framework Decision on EAW or under Article 9(1) of the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway.
([58]) Judgment of the Court of Justice of 10 April 2018, *Pisciotti*, C-191/16, ECLI:EU:C:2018:222, paragraph 54.
([59]) Judgment of the Court of Justice of 17 December 2020, *Generalstaatsanwaltschaft Berlin (Extradition towards Ukraine)*, C-398/19, ECLI: EU:C:2020:1032, paragraphs 53 and 54.

— the requested State applies the nationality exception to own nationals only, leading to potential discrimination between own nationals and nationals of other States who have exercised their right to free *movement (c.f. Annex 2 - an overview of national systems).*

b. *Personal scope concerning extradition requests for the execution of a sentence: to whom does the Raugevicius judgment apply?*

The obligation of equal treatment in this respect applies only to the extent that own nationals and nationals of other States are in a comparable situation with regard to the objective of avoiding the risk of impunity. Since the execution of custodial sentences in the State of origin of the person concerned promotes the social reintegration of the person concerned once his/her sentence has been completed, a comparable situation exists only with regard to nationals of other States who are permanently resident in the requested State and thus have a certain degree of integration into the society of that State.

Therefore, the Court of Justice held that the personal scope is limited to nationals of other States who reside permanently in a requested State and demonstrate a certain degree of integration into that State's society ([60]) because they are in a comparable situation with nationals of the requested State. On the other hand, a national of a State being arrested at an airport of a requested State, while only transiting, would not fulfil the criterion of being in a comparable situation.

If a requested person cannot be regarded as residing permanently in the requested State, the issue of their extradition is to be settled based on the applicable national or international law ([61]).

2.2.2. ***Steps to be followed by the competent authorities when the nationality exception applies***

In cases of a request for extradition for the purpose of executing a sentence, the less prejudicial measure to the exercise of the right to free movement is for the requested State to assume responsibility for the execution of the sentence on its territory instead of extraditing the national of another State to the third State, where such a possibility is also provided for its own nationals. It is expected that the Court of Justice will further clarify the detailed steps to be followed (in particular the extent of obligations for States and whether a consent of a third State is required) in the pending case C-237/21 ([62]).

2.2.3. ***Information exchange between the requested State and the State of nationality***

Articles 18 and 21 TFUE do not require the requested State to inform the State of nationality of a pending extradition request for an execution of a sentence or a detention order. However, the requested State is not prevented from contacting the State of nationality in order to obtain any relevant information it might find useful.

3. GUIDELINES APPLICABLE TO ALL STATES REGARDLESS OF THE NATIONALITY EXCEPTION

3.1. Fundamental rights assessment before an extradition

3.1.1. ***Application of the Charter***

The Court of Justice held that the decision to extradite a Union citizen/IC/NO national, in a situation which comes within the scope of Article 18 TFEU and Article 21 TFEU or Article 4 of the EEA Agreement read together with Article 36 of the EEA Agreement, falls under the scope of EU law for the purposes of Article 51(1) of the Charter ([63]). Therefore, the provisions of the Charter, and in particular Article 19 thereof, are applicable to such a decision.

([60]) Judgment of the Court of Justice of 13 November 2018, *Raugevicius*, C-247/17, ECLI:EU:C:2018:898, paragraph 46.
([61]) *Idem*, paragraph 48.
([62]) Case C-237/21, *Generalstaatsanwaltschaft München*.
([63]) Judgment of the Court of Justice of 6 September 2016, *Petruhhin*, C-182/15, ECLI:EU:C:2016:630, paragraphs 52 and 53, and judgment of the Court of Justice of 2 April 2020, *Ruska Federacija*, C-897/19 PPU, ECLI:EU:C:2020:262, paragraph 63. Article 51(1) of the Charter provides: '1. The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.'

Moreover, the existence of an international agreement of the Union on extradition is sufficient to trigger the application of the Charter. Therefore, the Charter also applies to extradition requests issued by the US or the UK respectively under the Agreement on extradition between the European Union and the United States of America ([64]) and the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the UK, of the other part ([65]), even when there is no exercise of free movement within the EEA area. Moreover, in such cases the Charter applies also to nationals of third States and stateless persons.

Where the Charter applies, a requested State must first verify that the extradition will not prejudice the rights referred to in Article 19 of the Charter ([66]).

Under Article 19(2) of the Charter, no one may be removed, expelled or extradited to a State where there is a serious risk that they would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

The Court of Justice further specified that the mere 'existence of declarations and accession to international treaties guaranteeing respect for fundamental rights in principle are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment where reliable sources have reported practices resorted to or tolerated by the authorities which are manifestly contrary to the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

It follows that, in so far as the competent authority of the requested Member State is in possession of evidence of a real risk of inhuman or degrading treatment of individuals in the requesting third State, it is bound to assess the existence of that risk when it is called upon to decide on the extradition of a person to that State (see, to that effect, as regards Article 4 of the Charter, judgment of 5 April 2016 in *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 88).

To that end, the competent authority of the requested Member State must rely on information that is objective, reliable, specific and properly updated. That information may be obtained from, inter alia, judgments of international courts, such as judgments of the ECtHR, judgments of courts of the requesting third State, and also decisions, reports and other documents produced by bodies of the Council of Europe or under the aegis of the United Nations (see, to that effect, judgment of 5 April 2016 in Aranyosi and Căldăraru, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 89)' ([67]).

3.1.2. ***Application of the European Convention for the Protection of Human Rights and Fundamental Freedoms***

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) applies to the extradition from States to third States in situations to which the Charter does not apply ([68]), such as the extradition of a Union citizen, who has not exercised the right to free movement, or of a third country national to a third State with which the Union has not concluded an extradition agreement.

Article 3 and Article 6 of the ECHR are relevant in particular. Article 3 of the ECHR provides:

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

([64]) OJ L 181, 19.7.2003, p. 27.
([65]) OJ L 149, 30.4.2021, p. 10.
([66]) Judgment of the Court of Justice of 6 September 2016, *Petruhhin*, C-182/15, ECLI:EU:C:2016:630, paragraph 60, order of the Court of Justice of 6 September 2017, *Schotthöfer & Steiner v Adelsmayr*, C-473/15, ECLI:EU:C:2017:633, judgment of the Court of Justice of 13 November 2018, *Raugevicius*, C-247/17, ECLI:EU:C:2018:898, paragraph 49, judgment of the Court of Justice of 2 April 2020, *Ruska Federacija*, C-897/19 PPU, ECLI:EU:C:2020:262, paragraphs 63 to 68.
([67]) Judgment of the Court of Justice of 6 September 2016, *Petruhhin*, C-182/15, ECLI:EU:C:2016:630, paragraphs 57, 58 and 59.
([68]) *Cf.* 3.1.1. *supra*.

Article 6 of the ECHR (right to a fair trial, the presumption of innocence and the rights of defence) provides:

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly by the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights: a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; b) to have adequate time and the facilities for the preparation of his defence; c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

3.2. **Unfounded or abusive, including politically motivated red notices, arrest warrants and extradition requests**

States have been facing cases of unfounded or abusive, including politically motivated extradition requests and parallel Interpol red notices. Therefore, this section could apply already at a stage where no extradition request has yet been issued or where the person has not yet been arrested on the basis of a red notice (e.g. when a State is aware of abusive Interpol red notices, it can inform other focal points proactively, even before the person sought moves to another State).

3.2.1. ***The existing Interpol mechanism on misuse of red notices***

There is an automated screening and detection system of red notices ([69]) in place within Interpol. It allows misuse cases to be filtered out. Each incoming request is checked against a watch list containing requests that have been denied in the past so that they are automatically rejected. Interpol is working to develop new IT automated safeguards to enhance the assessment of incoming requests for the publication of notices and diffusions.

Moreover, a special Task Force, composed of lawyers and police officers from different Interpol Member States, has been established in the Interpol General Secretariat. The Task Force assesses all incoming requests for publications of notices and diffusions from Interpol member countries with regard to their compatibility with the respective legal framework and requirements.

Interpol red notices can be removed on a number of grounds by making submissions to the independent Commission for the Control of Files (CCF) claiming that they breach Interpol's Constitution and its Rules on the Process of Data. Member States can advise the individual concerned by an abusive red notice, in particular by a politically motivated red notice, to exercise their rights before the CCF and alert them beforehand, or ask for the notices or diffusions to be deleted.

([69]) A Red Notice is neither an extradition request, nor an international arrest warrant. It is an alert to law enforcement worldwide to locate and provisionally arrest a person pending extradition, surrender, or similar legal action. However, a red notice refers to an international arrest warrant or judicial decision, supports the extradition proceedings and contains national crime data (except if the red notice is issued by an international tribunal). According to Article 82 of INTERPOL's Rules on the Processing of Data [IRPD, III/IRPD/GA/2011 (2019)], 'Red notices are published at the request of a National Central Bureau or an international entity with powers of investigation and prosecution in criminal matters in order to seek the location of a wanted person and his/her detention, arrest or restriction of movement for the purpose of extradition, surrender, or similar lawful action.'

A permanent notice advisory group supports these activities.

3.2.2. ***Information exchange by focal points concerning unfounded or abusive, in particular politically motivated extradition requests***

The State of nationality often possesses information of substantial importance to decide whether an extradition request is unfounded or abusive, in particular politically motivated. Therefore, close cooperation and exchange of information with the State of nationality of the requested person can be essential, when a requested State evaluates an extradition request regarding a citizen of another State.

In cases of reasonable suspicion that a request for extradition is abusive, in particular politically motivated or otherwise unfounded (unlawful), the focal point of a State that has received an extradition request from a third State regarding a national of another State, should always inform the focal point of the State of nationality. This will allow to exchange relevant information to take an informed decision on whether the request for extradition is politically motivated or otherwise unfounded (unlawful) (*c.f.* Annex 3 - template and Annex 8 - template).

Moreover, any focal point should in cases of reasonable suspicion that an extradition request is unfounded or abusive, in particular politically motivated, promptly and proactively inform and consult other focal points, as well as Eurojust, Europol and Interpol (*c.f.* Annex 8 - template).

This notification mechanism among the focal points in cases of unfounded or abusive, including politically motivated extradition requests applies to nationals of States, as well as to nationals of third States and stateless persons.

4. PRACTICAL ASPECTS OF THE PETRUHHIN MECHANISM AND POLITICALLY MOTIVATED EXTRADITION REQUESTS

4.1. Focal points

For the purposes of the Petruhhin mechanism and unfounded or unlawful, in particular politically motivated extradition requests, States nominated focal points (e.g. central authorities).

The updated list of the focal points is available at:

https://www.ejn-crimjust.europa.eu/ejn/AtlasChooseCountry/EN

State should swiftly inform the EJN of any changes in their focal points. Focal points can consult Eurojust and the EJN if they have any issues.

4.2. Language regime and costs

An official language of the State of nationality is proposed as the language regime for documents transmitted between the requested State and the State of nationality.

States can also notify the Commission if they decide to accept translations in one or more other official languages of the EU, Icelandic or Norwegian languages.

The requested State and the State of nationality should each cover their own costs (mainly translation costs).

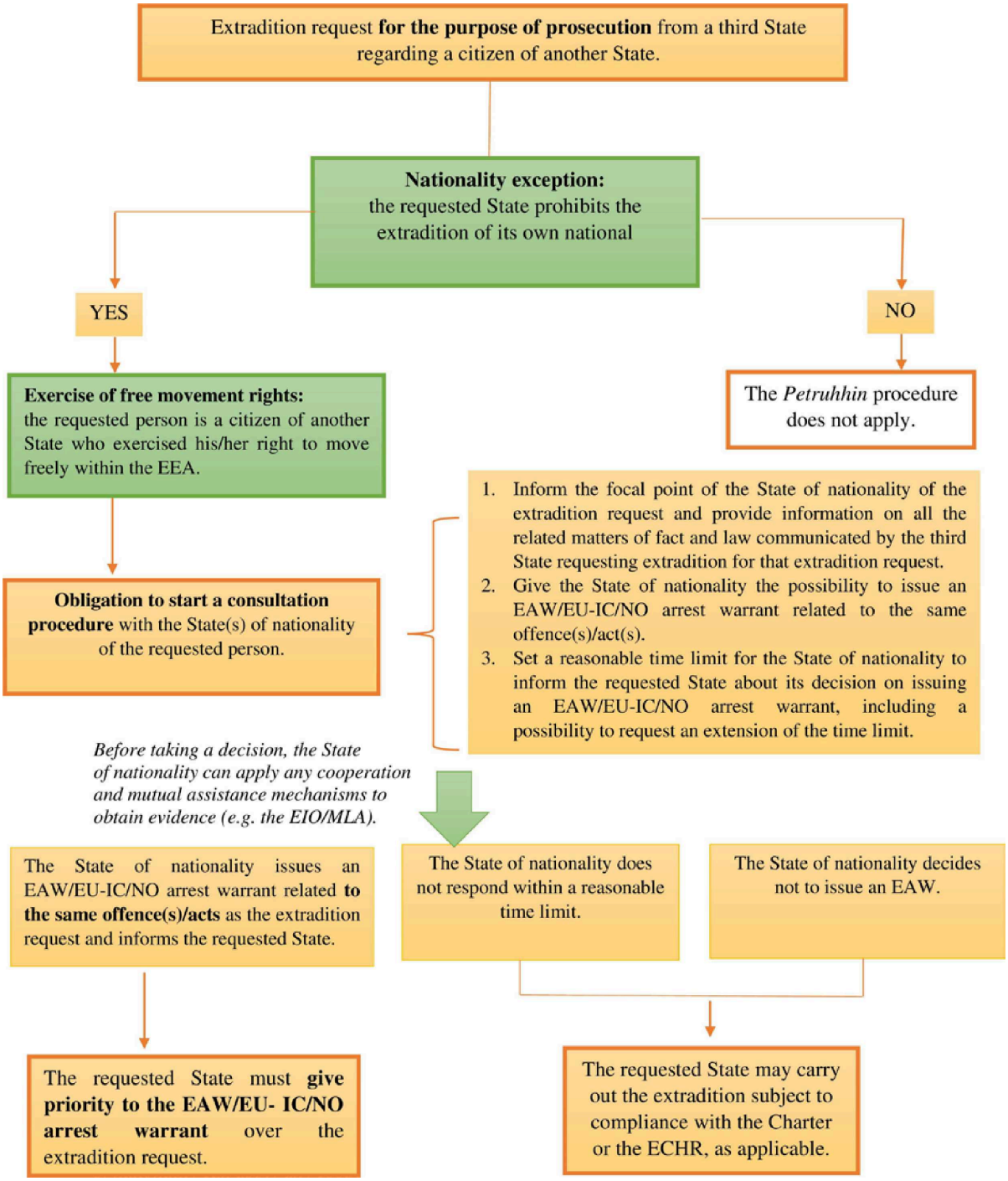
4.3. Data protection regime

Directive (EU) 2016/680 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data ([70]) applies.

([70]) Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

ANNEX 1

Illustration of steps to be taken concerning extradition requests for prosecution purposes – main steps of the *Petruhhin* mechanism



ANNEX 2

An overview of nationality exceptions (*information as provided by States*)

AT:	Federal Law of December 4, 1979 on Extradition and Mutual Assistance in Criminal Matters (Extradition and Mutual Assistance Law (ARHG)), Section 12.
BE:	Law of 15 March 1874 on extraditions, Articles 1 and 2.
BG:	Constitution, Article 25(4).
CY:	Constitution, Article 11 (f) (extradition of a national is only permitted in accordance with an international treaty binding upon the Republic, on condition that such treaty is respectively applied by the counterparty and in relation to acts that have occurred after the entry into force of the 5th amendment of the Constitution in 2006).
CZ:	Charter of Fundamental Rights and Freedoms as a part of the constitutional order of the Czech Republic, Article 14(4). Extradition of a Czech national to a third country is possible if the national consents to his/her extradition to that state (Section 91(1)(a) of the Act on International Judicial Cooperation in Criminal Matters).
DE:	Basic Law for the Federal Republic of Germany, Article 16(2).
EE:	Constitution, Article 36 (unless extradition is admitted on the basis of an international treaty).
EL:	Procedural Penal Code, Article 438.
ES:	Law on Passive Extradition, 1985, Article 3 (unless provided for in a treaty, in accordance with the principle of reciprocity).
FI:	Constitution, Section 9(3) (it may be laid down by an Act that due to a criminal act, for the purpose of legal proceedings, a Finnish citizen can be extradited to a country in which his or her human rights and legal protection are guaranteed). Extradition Act (456/1970) Section 2 (regarding cooperation with other countries than EU Member States; A Finnish national may not be extradited. Same applies to the United Kingdom).
FR:	Procedural Penal Code, Article 696-4.
HR:	Constitution, Article 9 (unless extradition is admitted on the basis of a treaty).
HU:	Act XXXVIII, 1996, on International Legal Assistance in Criminal Matters, Section 13.
IC:	Act No. 13 of 1984, Extradition of Criminals and Other Assistance in Criminal Proceedings Act (not applicable to requests from Denmark, Finland, Norway and Sweden).
IE:	In accordance with Ireland's Extradition Act 1965, Ireland can extradite its own citizens where there is an extradition agreement in place with a third country and that country can extradite its own nationals to Ireland.
IT:	Constitution, Article 26(1) (unless extradition is admitted based on a treaty).
LT:	Constitution, Article 13 (unless extradition is admitted based on a treaty).
LU:	Modified law of 20 June 2001, Article 7.
LV:	Constitution, Article 98 (unless extradition is admitted based on a treaty).
MT:	Constitution, Article 43 (unless extradition is admitted based on a treaty).
NL:	Uitleveringswet, Article 4 (extradition is admitted for prosecution when guarantees are provided).
NO:	Act No. 39 of 13. June 1975 pertaining to Extradition of Offenders (not applicable to requests from States within the European Union and Iceland).

PL:	Constitution, Article 55.
PT:	Constitution, Article 33(1) (unless extradition is admitted based on a treaty or under guarantees and only for prosecution).
RO:	Constitution, Article 19(2) (unless extradition is admitted based on international agreements Romania is a party to, according to the law and on a mutual basis).
SE:	Act (1957:668) on Extradition, Section 2.
SI:	Constitution, Article 47.
SK:	Code of Criminal Procedure, Section 501 (except for cases where an obligation to extradite is provided by law, an international treaty, or the decision of an international organisation by which the Slovak Republic is bound).
	State that does not provide explicitly for a nationality exception:
DK:	The Danish extradition act, Article 18 (however, providing stricter rules for extradition of own nationals than other nationals).

ANNEX 3

Template to inform the State of nationality

For the attention of the competent authority of:……*[State(s)]*

This document is to notify and inform you that an arrest warrant / an extradition request for the purpose of *[tick box]*:

☐ prosecution

☐ execution of a custodial sentence or a detention order

has been issued by a third State with regard to a citizen who is a national of your State.

Information regarding the identity of the requested person

Name:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Date of birth:

Place of birth:

Residence and/or known address:

Language(s) that the requested person understands (if known):

Distinctive marks/description of the requested person:

Information on the requesting third State authority

Issuing third State:

(Judicial) authority which issued the arrest warrant /extradition request:

Name of its representative:

Post held (title/grade):

File reference:

Address:

Contact details:

Information on the offences the person concerned is accused of

The extradition request relates to, in total ……*[number]* offences.

Description of the circumstances in which the offence(s) was (were) committed, including the time, place and degree of participation in the offence(s) by the requested person:

Nature and legal classification of the offence(s), including the applicable statutory provision/code:

Further information provided by the third State (if possible, documents provided by the third State will be attached to this form as Annexes):

Based on the information above, the competent authorities of the State of nationality are invited to take a decision on the issuance of a European arrest warrant/ EU-IC/NO arrest warrant against the concerned person in view of undertaking the prosecution related to the same offence(s)/act(s) which are the object of the extradition request.

This authority considers ..... *[period of time]* as a reasonable time to be informed of the decision by..... *[relevant date]*.

After this period of time, if no reply by the State of nationality is received, the requested State will proceed with the extradition proceeding.

Concerning the extradition request to execute a custodial sentence or a detention order, please provide any relevant information:

Alternatively, please indicate and substantiate if a reasonable suspicion exists that the extradition request is politically motivated:

Contact details of the competent authority transmitting information on the extradition request

State:

Competent authority:

Contact person:

Post held:

File reference:

Contact details (email/phone numbers):

Date and signature

ANNEX 4

Template to provide additional information to the State of nationality

For the attention of the competent authority of:.....

Following the notification sent on..... *[date]*, pursuant to the obligation to initiate a consultation procedure established in the *Petruhhin* judgment ([1]) of the Court of Justice of the European Union, this State is transmitting additional information which may be useful in view of the issuance of the European arrest warrant / EU-IC/NO arrest warrant.

Information on the identity of the requested person

Name:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Date of birth:

Place of birth:

Residence and/or known address:

Language(s) that the requested person understands (if known):

Distinctive marks/description of the requested person:

Information regarding the requesting third State authority

Issuing third State:

(Judicial) authority which issued the arrest warrant / extradition request:

Name of its representative:

Post held (title/grade):

File reference:

Address:

Contact details:

Further relevant information:

([1]) Judgment of the Court of Justice of 6 September 2016, *Petruhhin*, C-182/15, ECLI:EU:C:2016:630.

Contact details of the State transmitting information on the extradition request

State:

Competent authority:

Contact person:

Post held:

File reference:

Contact details (email/phone numbers):

Central authority:

Date and signature

ANNEX 5

Template to request an extension of the time limit to inform the requested authority pursuant to the *Petruhhin* mechanism

Following the notification received from …… on …… *[date]*, on the extradition request for the purpose of prosecution against the national of this State. …… *[name of the person concerned]* and issued by …… *[third State]*, this State kindly requests an extension of the time limit provided by the requested State to be informed about the decision on the issuance of a European arrest warrant/EU-IC/No arrest warrant pursuant to the application of the *Petruhhin* mechanism.

In particular, it is requested to extend the time limit for …… *[period of time/ days]* and therefore to inform the requested State about such decision by…… *[date]*.

Please provide further information on the need for the extension:

Relevant contact details

State:

Competent authority:

Contact person:

Post held:

File reference:

Contact details (email/phone numbers):

Date and signature

ANNEX 6

Template to reply to a request for an extension of the time limit

Following the request of your State to extend the time limit to be informed about a decision on the issuance of a European arrest warrant/ EU-IC/NO arrest warrant pursuant to the application of the Petruhhin mechanism in relation to the notification sent by this State on..... *[date]*, on the extradition request for the purpose of prosecution against ..... *[name of the person concerned]* and issued by..... *[third State]*,

the requested State .....*[tick box]*:

- a. accepts to extend the time limit as proposed by the State of nationality;
- b. accepts to extend the time limit for ..... *[period of time/days]*: information should be provided by ..... *[date]*;
- c. cannot extend the time limit as indicated by the State of nationality.

If c), please explain the reasons for not granting the extension:

Relevant contact details

State:

Competent authority:

Contact person:

Post held:

File reference:

Contact details (email/phone numbers):

Date and signature

ANNEX 7

Template for the State of nationality to provide a reply to the requested State

Following the notification received from …… on …… *[date]* concerning the extradition request for the purpose of prosecution and issued by …… …… *[third State]* against a national of this State, and the information contained therein, this State *[tick box]:*

- a. issued a European arrest warrant / EU-IC/NO arrest warrant against the person concerned related to the same offence(s)/act(s) as the extradition request;

- b. is not going to issue a European arrest warrant / EU-IC/NO arrest warrant against the person concerned;

- c. is providing information since the extradition request is unfounded/ abusive/ politically motivated:

Details of the person concerned

Name:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Date of birth:

Place of birth:

Residence and/or known address:

Details of the competent authority

Issuing State:

Competent authority:

Name of its representative:

Post held (title/grade):

File reference:

Address:

Contact details:

Competent issuing judicial authority, if applicable

Name of its representative:

Post held (title/grade):

File reference:

Address:

Contact details:

The formal decision on the issuance of the European arrest warrant / EU-IC/NO arrest warrant (attached as an annex if already issued):

Further information:

Relevant contact details

State:

Competent authority:

Contact person:

Post held:

File reference:

Contact details (email/phone numbers):

Date and signature

ANNEX 8

Template to notify or request information on unfounded, abusive, in particular politically motivated extradition requests and/or requests, which raise the Charter/the ECHR concerns

For the attention of *[tick box]*:

— the appointed focal point of ..... *[State(s)]*;

— all 29 focal points;

— Eurojust;

— Europol;

— Interpol.

This document is to request information or to notify the existence of an extradition request from a third State, which is considered to be unfounded, abusive, in particular politically motivated.

Information on the identity of the requested person

Name:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Date of birth:

Place of birth:

Residence and/or known address:

Language(s) that the requested person understands (if known):

Distinctive marks/description of the requested person:

Information on the requesting third State authority and the extradition request

1. Issuing third State:

   (Judicial) authority which issued the arrest warrant /extradition request:

   Name of its representative:

   Post held (title/grade):

   File reference:

   Address:

   Contact details:

2. Extradition request [tick box]:

   — For the purpose of prosecution;

   — For the purpose of executing a sentence or a detention order.

   Extradition request reference number:

3. Information on the offences the person concerned is accused of:

The extradition request relates to, in total……*[number]* offences.

Description of the circumstances in which the offence(s) was (were) committed, including the time, place and degree of participation in the offence(s) by the requested person:

Nature and legal classification of the offence(s), including the applicable statutory provision/code:

Grounds for considering the extradition request as unfounded, abusive, in particular politically motivated and/or requests, which raise the Charter or the ECHR concerns:

(please specify):

Contact details of the State transmitting information on the extradition request

State:

Competent authority:

Contact person:

Post held:

File reference:

Contact details (email/phone numbers):

Date and signature