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NOTE

From: Presidency
To: Delegations

Subject: Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States

- Discussion on recent case-law of the Court of Justice EU
- = Paper by the Commission (including questions for Member States)

Delegations will find attached a discussion paper by the Commission services on recent case-law of the CJEU on European arrest warrant.

Discussion paper by DG JUSTICE on the recent case-law of the CJEU on European arrest warrant (EAW) for the COPEN meeting on 22 June 2018

1) Obligation to inform for Member States receiving an extradition request from a third State regarding a national of another Member State - follow-up to Petruhhin (Case C-182/15) and Pisciotti (Case C-191/16).

In the Petruhhin judgment¹, the CJEU ruled that "*articles 18 and 21 must be interpreted as meaning that, when a Member State to which a Union citizen, a national of another Member State, has moved received an extradition request from a third State with which the first Member State has concluded an extradition agreement, it must inform the Member State of which the citizen in question is a national and, should that Member State so request, surrender that citizen to it in accordance with the provisions of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant (...), provided that that Member State has jurisdiction to prosecute that person for offences committed outside its national territory*".

In the Petruhhin case, the requested person was an Estonian national arrested in Latvia, whose extradition was sought by the Russian Federation. Therefore, in that case, the Union had not concluded an extradition agreement with the requesting third State, unlike the Pisciotti case.

Indeed, in its recent Pisciotti judgment², the CJEU extended the Petruhhin jurisprudence to the situation of an Italian national arrested in Germany on the basis of an extradition request presented by the United States of America, which whom the Union has concluded an extradition agreement.

¹ Judgment of the CJEU of 6.9.2016 *Petruhhin*, C-182/15, ECLI:EU:C:2016:630.

² Judgment of the CJEU of 10.4.2018 *Pisciotti*, C-191/16, ECLI:EU:C:2018:222

The CJEU ruled that "*Articles 18 and 21 TFEU must be interpreted as not 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 that extradition whilst not permitting extradition of its own nationals, provided that the requested Member State has already put the competent authorities of the Member State of which the citizen is a national in a position to seek the surrender of that citizen pursuant to a EAW and the latter Member State has not taken any action in that regard*".

In light of the above, DG JUSTICE would like to ask Member States the following questions:

- ***Could you evaluate, to the best of your possibilities, the number of cases per year handled by your national authorities in which the person arrested on the basis of an extradition request was a national of another Member State, and for which information was given to that latter Member State, according to :***
 - ***Petruhhin ruling? (no existence of an EU- third State extradition agreement)***
 - ***Pisciotti ruling? (existence of an EU- third State extradition agreement)***

 - ***Could you indicate at which moment information was given to the Member State of nationality? (before/after the arrest/hearing of the person...)***

 - ***Could you evaluate, to the best of your possibilities, among all the cases identified above:***
 - ***the number of cases per year in which the Member State of nationality issued an EAW?***
 - ***The number of cases per year which led to the effective surrender of the person to the Member State of nationality following the issuance of an EAW after it was informed of the extradition request from a third State?***
- 2) Detention conditions as ground for non-execution of an EAW based on a breach of the person's fundamental rights in the issuing State - follow-up to joined cases Aranyosi and Căldăraru (Cases C-404/15 and C-659/15 PPU)**

The Framework Decision on the EAW lists exhaustive grounds for mandatory and optional non-execution of an EAW in Articles 3 and 4.

However, according to article 1(3), 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 of the TEU.

In its judgement *Aranyosi and Căldăraru*, the CJEU established a multiple-step test to be followed by executing judicial authorities on a case-by-case basis, in the situation where they are in possession of evidence of a real risk of inhuman and degrading treatment of individuals detained in the issuing Member State:

- 1) Verification of whether there is a real risk of inhuman and degrading treatment of the requested person because of general detention conditions;
- 2) If the existence of such a risk is identified, verification of whether there are substantial grounds to believe that such a real risk exists in the particular circumstances of the case for the requested person, by requesting 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;
- 3) If the existence of such a risk is identified, based on information received from the issuing judicial authority and any other available information:
 - obligation to postpone the execution of the EAW and to inform Eurojust, in accordance with article 17(7) of the Framework Decision on the EAW;
 - possibility to hold the person concerned in custody or to release him or her;
- 4) Final decision:
 - if the executing judicial authority can discount the existence of the risk, it must decide on the execution of the EAW;
 - otherwise, it must decide whether the surrender procedure should be brought to an end.

In light of the time elapsed since the Aranyosi judgment, which has already been on the agenda of previous meetings, but considering also ongoing cases related to detention conditions in the context of the EAW, DG JUSTICE would like to ask Member States the following questions:

- Since the Aranyosi ruling, in how many cases did your national judicial authorities request information regarding detention conditions?

- In how many of the identified cases was the execution of the EAW:

- postponed because of concerns regarding detention conditions?

- refused because of concerns regarding detention conditions?

- What challenges have you been experiencing in the application of the Aranyosi judgment?
