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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 CJEU
= Paper by the Presidency

Delegations will find attached a paper by the Presidency on the judgment of the Court of Justice of the European Union (CJEU) of 25 July 2018 in case C-220/18 PPU ('ML').

Presidency Paper

The *Aranyosi* and *Căldăraru* judgment of 5 April 2016 provides guidelines on how the executing authority should deal with information on prison conditions in the issuing State in the light of Article 4 of the Charter. It requires that the executing authority ask the issuing authority to provide supplementary information on the conditions, especially regarding which prison facilities the person will be detained in after his or her surrender. This should allow the executing authority to assess the current state of detention conditions in those facilities.

It remains unclear *which authority* in the issuing State can provide this information on prison conditions and which authority can give guarantees that the person will be detained only in the prison facility indicated.

The judgment in case C-220/18 of 25 July 2018 ('ML') deals with information and guarantees provided by the Ministry of Justice of the issuing State (paragraph 113) and not endorsed by the issuing judicial authority. These guarantees must be evaluated by carrying out an overall assessment of all the information available to the executing authority (paragraph 114).

In a considerable number of Member States, the judicial authorities can only decide where the person will be detained in the pre-trial phase. After the final judgment, the enforcement of the sentence normally falls within the competence of the respective prison administration. The court is not in a position to order that the sentence has to be executed in a specific prison facility.

The Presidency is interested in the legal situation in the Member States, especially whether courts or prosecutors' offices can guarantee that the person will be detained in a specific prison facility. Furthermore, the issue of whether or not the issuing authority can endorse the information provided by the Ministry of Justice or by the general prison administration, to the effect that these are reliable guarantees which have never been violated in the past, could be discussed.

Delegations are invited to share their views on these issues.