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COVER NOTE

From: Commission
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 Commission

Delegations will find attached a paper by the Commission services on the judgment of the Court of Justice of the European Union (CJEU) of 13 November 2018 in case C-247/17, Raugevicius.

Discussion paper on the recent case-law of the CJEU on European arrest warrant (EAW)
for the COPEN meeting on 12 December 2018

- 1) Consequences of CJEU Raugevicius Judgment (C-247/17, 13 November 2018)**
regarding the equal treatment of a permanent resident of an EU Member State in case of extradition to a third State for the purpose of enforcing a sentence.

In the Raugevicius judgment¹, the CJEU ruled that “*Articles 18 and 21 TFUE must be interpreted as meaning that, where an extradition request has been made by a third country 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 out of the European Union 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*”.

In the Petruhhin judgment², the CJEU ruled that "Article 18 TFUE and Article 21 TFUE must be interpreted as meaning that, when a Member State to which a Union citizen, a national of another Member State, has moved receives 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".

¹ Judgment of the CJEU of 13 November 2018, *Raugevicius*, C-247/17, ECLI:EU:C:2018:898.

² Judgment of the CJEU of 6.9.2016, *Petruhhin*, C-182/15, ECLI:EU:C:2016:630.

In the Pisciotti judgment³, the CJEU ruled that “*In a case, such as that in the main proceedings, in which a Union citizen who has been the subject of a request for extradition to the United States of America under the Agreement on extradition between the European Union and the United States of America of 25 June 2003 has been arrested in a Member State other than the Member State of which he is a national, for the purposes of potentially acceding to that request, 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 European arrest warrant and the latter Member State has not taken any action in that regard*”.

In the Raugevicius judgment, the CJEU dealt with a situation that was in several respects different from the situations in the Petruhhin and Pisciotti cases: contrary to the latter two cases, the extradition request was for the purpose of enforcement and concerned a permanent resident of the requested Member State (Finland). The ruling by the CJEU is therefore different as well.

As regards the particular circumstances of the case, it is to be noted that under the law of the Member State concerned, permanent residents, including citizens of other Member States, are assimilated to nationals as regards the possibility to enforce foreign convictions. Moreover, under the applicable extradition convention, the Member State concerned made a declaration to the effect that the term “nationals” shall include aliens domiciled in its territory.

³ Judgment of the CJEU of 10.4.2018, *Pisciotti*, C-191/16, ECLI:EU:C:2018:222.

Considering that extradition between Member States and third countries mainly rests on bilateral agreements or other international conventions, with some exceptions, in particular the EU-US extradition agreement (which does however not cover the matter of non-extradition of nationals), and in light of the above, the Commission would like to ask Member States the following questions:

- a) What is your national authorities' understanding of this ruling?*
- b) What legal and/or practical consequences do you foresee following this judgment?*
- c) How do you see the potential implementation of this ruling with regard to national rules and bilateral or multilateral conventions on extradition?*
- d) Does your national legislation or any international treaty on extradition your Member State is a Party to already authorise to refuse the extradition of an EU citizen of another Member State to a third State? If so, on what legal basis? (please explain).*
- e) How do you see the impact of the ruling in cases where*
 - a) the third State and/or*
 - b) the person concerned**do not consent to the enforcement of the sentence in the requested Member State?*