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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
- Rule of speciality

In view of the COPEN meeting that is scheduled for 19 June 2019, delegations will find attached a paper with questions by the Presidency on the application of the rule of speciality in the context of the Framework Decision on the European arrest warrant (EAW).

European Arrest Warrant and the Speciality Principle

Presidency Paper

The speciality rule is one of the principles that forms the basis of international judicial cooperation. Initially developed in the context of extradition, it has been extended to other areas, such as mutual legal assistance. States have specific rules in their domestic legislation that regulate the speciality rule.

The application of the speciality rule in the context of other the EIO Directive was discussed at the COPEN meeting on 12 December 2018 (14750/18).

The speciality rule is specifically mentioned in the text of Framework Decision 2002/584/JHA.

Article 27 of this Framework Decision clearly establishes how the principle of speciality should function in practice. The exceptions to the application of the speciality rule are stipulated in its paragraph 3, as follows:

(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.

Where none of the exceptions are applicable, the competent judicial authority needs to seek the consent of the executing judicial authority, by transmitting a request comprising the same information as the one mentioned in Article 8(1) of the Framework Decision. On the matter of consent, the executing judicial authority has to take a decision no later than 30 days following receipt of the request (see Article 27(4) of the Framework Decision).

Although the provisions established in Framework Decision 2002/584/JHA are quite unequivocal, in practice the interpretation of these provisions by the judicial authorities of the Member States has given rise to some practical issues. Due to direct contact between issuing and executing judicial authorities, it is difficult for the central authorities to have an exact understanding of the application of this principle. However, information on the methodology applied by the Member States' judicial authorities and recurrent issues can also be useful in order to have an idea about the application of this principle in specific cases and the role played by central authorities in this respect.

Questions

The Presidency invites the delegations to provide answers to the following questions:

1. On a general note, as issuing judicial authorities, do you receive information ex officio from the executing judicial authority or its central authority as to whether the requested person has renounced the speciality rule in accordance with Article 27(e) of the FD? Is such information transmitted together with the surrender decision or separately (we are referring to the wider context of information transmitted on the basis of Article 22 of the FD?) Please also answer from the perspective of the executing judicial authority.
2. As issuing State, how do you ensure the observance of the speciality rule after the surrender? Do you have a centralised system that allows prosecutors/judges to check whether the person has previously been surrendered based on a European Arrest Warrant? If not, what kind of methodology do you have in place in the event that an additional case is pending and the court/prosecutor office is different from the one/ones that have dealt with the initial European Arrest Warrant/European Arrest Warrants?
3. As executing judicial authorities, have there been cases in which the speciality principle was breached? How did you become aware of this and what solutions did you find together with the competent judicial authorities of the issuing State? Please also answer from the perspective of the issuing State.
4. As an executing judicial authority have there been cases in which you refused to give consent for possible prosecution for other offences? What were the reasons? Please also answer from the perspective of the issuing State.
5. Can you confirm that the deadline of 30 days as established by Article 27(4) of Framework Decision 2002/584/JHA is observed? Please state your position as both issuing and executing judicial authorities.
