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*(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.

⁽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).

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⁾.

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.

⁽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.

⁽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>.

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.

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.

⁽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.

⁽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.

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.

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.

⁽¹⁷⁾ OJ C 202, 7.6.2016, p. 389.

⁽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.'

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.

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.

⁽¹⁹⁾ Order of the Court of Justice of 6 September 2017, *Schotthöfer & Steiner v Adelsmayr*, C-473/15, ECLI:EU:C:2017:633.

⁽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.'

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.

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⁾.

⁽²¹⁾ Judgment of the Court of Justice of 10 April 2018, *Pisciotti*, C-191/16, ECLI:EU:C:2018:222.

⁽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.

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).

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,

⁽²⁵⁾ Judgment of the Court of Justice of 17 December 2020, *Generalstaatsanwaltschaft Berlin (Extradition towards Ukraine)*, C-398/19, ECLI: EU:C:2020:1032.

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.

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.

⁽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.'

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.

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 TFEU 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 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.

⁽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.

⁽⁴⁷⁾ Judgment of the Court of Justice of 6 September 2016, *Petruhhin*, C-182/15, ECLI:EU:C:2016:630, paragraph 41.

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.

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⁾).

⁽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.

⁽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).

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
- 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).

⁽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.

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 EJNI of any changes in their focal points.

Focal points can consult Eurojust and the EJNI 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.

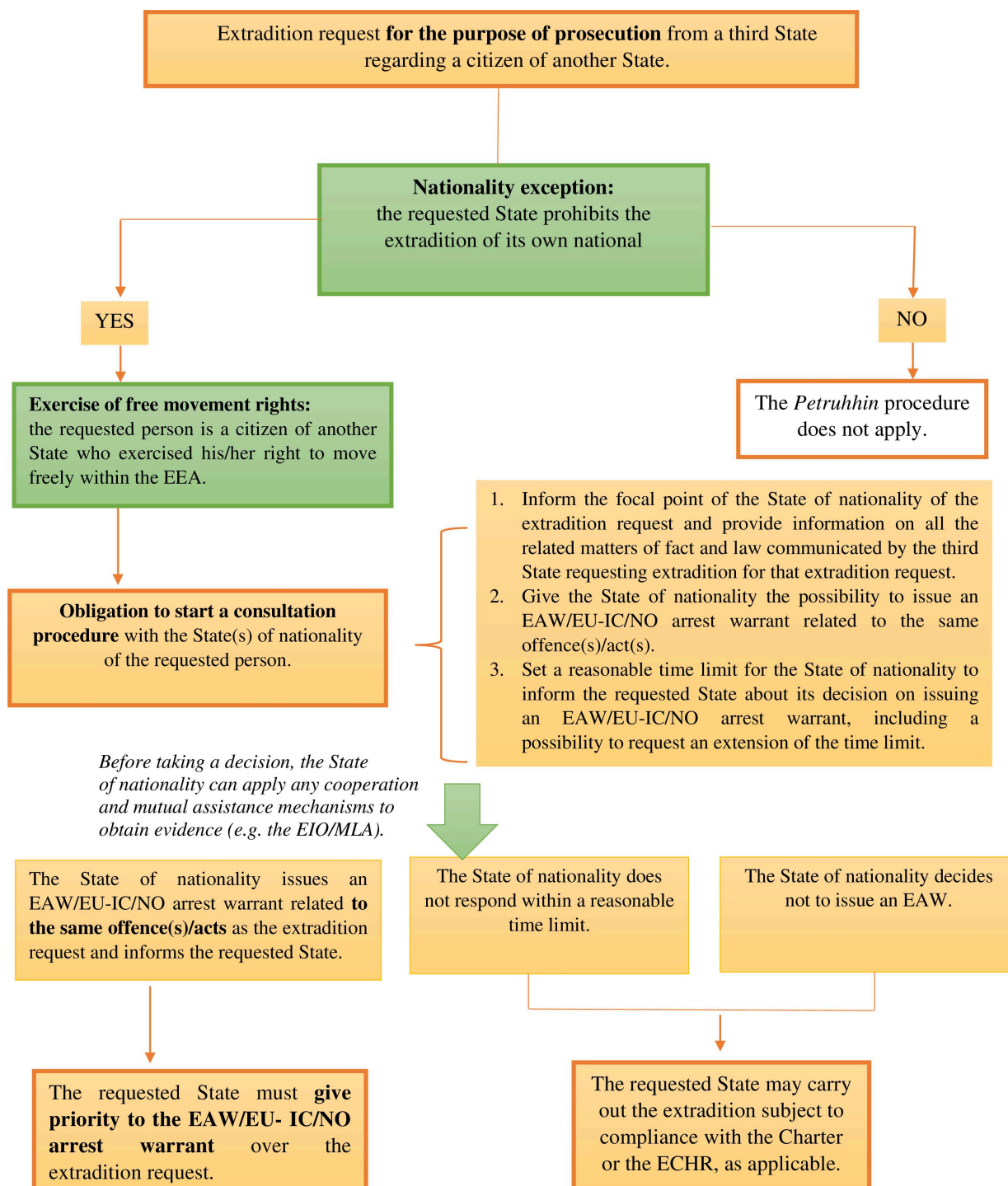
The requested State and the State of nationality should each cover their own costs (mainly translation costs).

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 5 th 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
