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NOTE

From:	General Secretariat of the Council
To:	Working Party on Judicial Cooperation in Criminal Matters (COPEN)
Subject:	Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States - Judgment of the Court of Justice of the European Union (CJEU) of 8 December 2022, C-492/22 PPU, CJ - Note by the AT delegation

Introduction

The Austrian Delegation would like to raise questions for discussions among Member States in respect of the judgment of the CJEU of 8 December 2022, C-492/22 PPU, CJ (Decision to postpone surrender for reasons of criminal proceedings). The decision interprets several provisions of Framework Decision 2002/584/JHA on the European Arrest Warrant, namely Articles 12 and 24:

Article 12 - Keeping the person in detention

When a person is arrested on the basis of a European arrest warrant, the executing judicial authority shall take a decision on whether the requested person should remain in detention, in accordance with the law of the executing Member State. The person may be released provisionally at any time in conformity with the domestic law of the executing Member State, provided that the competent authority of the said Member State takes all the measures it deems necessary to prevent the person absconding.

Article 24 - Postponed or conditional surrender

1. *The executing judicial authority may, after deciding to execute the European arrest warrant, postpone the surrender of the requested person so that he or she may be prosecuted in the executing Member State or, if he or she has already been sentenced, so that he or she may serve, in its territory, a sentence passed for an act other than that referred to in the European arrest warrant.*
2. *Instead of postponing the surrender, the executing judicial authority may temporarily surrender the requested person to the issuing Member State under conditions to be determined by mutual agreement between the executing and the issuing judicial authorities. The agreement shall be made in writing and the conditions shall be binding on all the authorities in the issuing Member State.*

The case

The person concerned was held in detention for the purpose of the execution of an EAW. Surrender was sought for the execution of a sentence of largely two years of imprisonment. The court in the executing Member State approved the surrender.

At the same time CJ was the subject of an ongoing criminal prosecution in the executing Member State on a different account. CJ was ordered to pay a fine of EUR 360 or, in the alternative, to seven days' detention. However, this conviction was not final at the time of surrender and CJ did not waive his right to appear in person at the hearings. Therefore, the surrender was postponed by the prosecution service.

In addition, the detention period in the surrender proceedings was extended on application of the prosecution service by the court.

The judgment and issues for discussion

The CJEU's judgment answers three questions.

The Austrian delegation would like to focus on the first question, which was answered by the CJEU as follows:

‘2. Article 12 and Article 24(1) of Framework Decision 2002/584, as amended by Framework Decision 2009/299, read in conjunction with Article 6 of the Charter of Fundamental Rights of the European Union,

must be interpreted as:

not precluding a person who is the subject of a European arrest warrant, whose surrender to the authorities of the issuing Member State has been postponed for the purposes of a criminal prosecution instituted against him or her in the executing Member State, from being kept in detention on the basis of the European arrest warrant whilst the criminal prosecution is being conducted.’

As indicated above, the EAW aimed at execution of a sentence. This raises the first question which we would propose to discuss:

Question 1: Would this rule apply to EAWs that have been issued for the purposes of investigation and prosecution, too?

Under Austrian law it is only possible to postpone the surrender of a person for the purpose of a national criminal procedure if the person is held in pre-trial detention. We would be interested to know the situation in other Member States:

Question 2: In your national law, is the postponement of surrender for the purposes of a criminal procedure in the executing Member State limited to a case where the person concerned is held in custody?

Furthermore, the Austrian Delegation would like to discuss the relationship with Article 26 of the FD EAW:

Article 26 - Deduction of the period of detention served in the executing Member State

1. *The issuing Member State shall deduct all periods of detention arising from the execution of a European arrest warrant from the total period of detention to be served in the issuing Member State as a result of a custodial sentence or detention order being passed.*
2. *To that end, all information concerning the duration of the detention of the requested person on the basis of the European arrest warrant shall be transmitted by the executing judicial authority or the central authority designated under Article 7 to the issuing judicial authority at the time of the surrender.*

We would be interested in hearing Member States' views on the following question:

Question 3: How should Art. 26(1) of the Framework Decision on the EAW, in particular 'periods of detention arising from the execution of a European arrest warrant' be interpreted in such situations?
