



Council of the
European Union

Brussels, 28 November 2019
(OR. en)

14500/19

JAI 1249
COPEN 455
EUROJUST 198
EJN 100

NOTE

From: German delegation
To: Delegations

Subject: Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (*)
- Note by DE on the application of CJEU judgment in case C-182/15 (Petruhhin) - EAW and third States

Implications of the cases Petruhhin (C-182/15), Pisciotti (C-191/16) and Raugevicius (C-247/17)

In Petruhhin the CJEU stated (no. 48): "*Consequently, in a case such as that at issue in the main proceedings, 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 national territory, the opportunity to issue a European arrest warrant for the purposes of prosecution. Article 1(1) and (2) of Framework Decision 2002/584 does not preclude, in such a case, the possibility for the Member State of which the alleged offender is a national of issuing a European arrest warrant with a view to the surrender of that person for the purposes of prosecution.*"

Case example 1:

A non EU state requests from Germany the extradition of a national of another EU member state. The person concerned consents to the extradition. He explicitly states that he does not want that the member state of his origin shall be informed.

Question:

Is there an obligation to inform the member state of origin to enable investigations in that state? If the aim of the information is to "*safeguard EU nationals from measures liable to deprive them of the rights of free movement and residence*" (CJEU in Petruhhin no. 47) that seems not the case as the person concerned does not want to be saved from extradition. And the transmission of personal data might be in conflict with data protection rules as it is not necessary to inform another state as there is no risk that the offence will remain unpunished.

Case example 2:

A non EU state requests the extradition of a German national from another EU member state. The member state informs Germany and asks whether an EAW will be issued. Germany has to deny as the person concerned has already been prosecuted and sentenced because of the same crime and the sentence had been enforced.

Question:

Is there an obligation for the member state to "*safeguard the EU national from measures liable to deprive them of the rights of free movement and residence*" as the extradition will lead to a breach of the right not to be tried or punished twice for the same criminal offence (Art. 50 Charter of Fundamental Rights, Art. 54 CISA)? Those rules will apply only in cases within the EU but not in the relation between requesting and requested state in the extradition proceedings.