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NOTE

From: General Secretariat of the Council
To: Delegations

Subject: Case-law by the Court of Justice of the European Union on the European Arrest Warrant
- Updated overview by Eurojust

Delegations will find attached the executive summary of the above-mentioned overview drafted by Eurojust. The full overview is available on Eurojust's [website](#).

Executive summary

This document, which is updated annually, provides an overview of the case-law of the Court of Justice of the European Union (CJEU) with regard to the application of Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant (EAW) and the surrender procedures between Member States (EAW FD).

The case-law overview contains summaries of the CJEU's judgments categorised according to a set of important keywords that largely reflect the structure of the EAW FD. A table of keywords and a chronological list of judgments and pending cases is also provided at the beginning of the document.

The index and summaries of judgments are not exhaustive and are to be used only for reference and as a supplementary tool for practitioners. They have been prepared by Eurojust and do not bind the CJEU. The summaries contain links to the full texts of the judgments of the CJEU that can be found, in all EU official languages, on the [CJEU's website](#). Where relevant, reference is made also to the Charter of Fundamental Rights of the European Union (the Charter), the European Convention on Human Rights (ECHR) and the case-law of the European Court of Human Rights (ECtHR).

The current document provides updates to the following topics in particular.

- **Human rights scrutiny (see Sections 6 and 15).** The CJEU delivered two judgments in the field of fundamental rights protection. Both cases relate to requests stemming from third countries. First, in *Alchaster II*, the CJEU clarified the interpretation of the principle that 'offences and penalties must be defined by law' (Article 49(1) Charter) in a case that concerned the application of changes to a licence regime. The CJEU held that if such changes (i) do not, in essence, repeal the possibility of such release and (ii) do not lead to an increase in the intrinsic seriousness of the penalty provided for on the date of the alleged commission of the offences at issue, their application to offences committed before their entry into force does not infringe the second sentence of Article 49(1) Charter. Second, in *Kamekris*, the CJEU held that, when a national legislation on extradition gives rise to a restriction of freedom of movement within the meaning of Article 21 TFEU, such legislation can only be justified in the light of EU law insofar as it is compatible with fundamental rights. In that context, the CJEU clarified that the authority of a second requested Member State is not bound by a previous decision of another Member State that refused earlier the same extradition request due to the existence of a serious risk of infringement of the fundamental rights guaranteed by the Charter. The requested authority of that second Member State is only obliged to give due consideration to the reasons underlying the refusal decision within the framework of its own examination.

- **Refusal grounds (see Sections 7.2, 7.3 and 7.5).** The CJEU delivered three judgments on refusal grounds. First, the CJEU interpreted, for the first time, the refusal ground related to **statute barred**. The CJEU clarified that the two conditions included in Article 4(4) EAW FD must be met simultaneously. Therefore, an executing judicial authority cannot refuse to execute an EAW based on that provision where the acts do not fall within the jurisdiction of the executing Member State (*Sangas*). Second, the CJEU provided further clarifications on the refusal ground related to **nationals, residents and persons staying in the executing Member State** (Article 4(6) EAW FD). An executing judicial authority cannot refuse to execute an EAW based on this ground if the EAW has been issued for the purposes of prosecution (e.g. when an appeal is still pending) (*Sangas*). The CJEU also confirmed that the application of Article 4(6) EAW FD triggers the application of the Transfer of Sentenced Persons Framework Decision (FD 2008/909) (*C.J. (Enforcement of a sentence further to an EAW)*). The CJEU held that a judicial authority cannot refuse to execute an EAW and assume responsibility itself for the enforcement of the sentence without the consent of the issuing Member State. That consent entails the transmission of the sentence accompanied by the certificate of Framework Decision 2008/909/JHA. Without that consent, the issuing Member State may maintain the EAW and enforce the sentence itself on its own territory. The CJEU also held that, when an executing authority has refused under Article 4(6) EAW FD to execute an EAW for the purposes of enforcing a custodial sentence and has undertaken to enforce that sentence, another competent judicial authority of the executing Member State cannot subsequently suspend the enforcement of that sentence (*Fira*). Third, the CJEU interpreted again the **in absentia** refusal ground (*Abbottly*). The CJEU concluded that the concept of ‘trial resulting in the decision’ covers proceedings at the end of which a national court may order, due to a breach of the conditions attached to a sentence of police supervision previously imposed on the person concerned in addition to a custodial sentence, the conversion of the unserved term of that additional sentence into a custodial sentence.
- **Competing requests (see new Section 9).** The CJEU interpreted for the first time Article 16 EAW FD. The CJEU clarified that, in the event of a conflict between an EAW and an extradition request (Article 16(3) EAW FD), an executive authority may be competent to decide which instrument takes precedence (*Procureur de la République (Concurrence of a European arrest warrant and an extradition request)*). This differs from the case of competing EAWs, where only a judicial authority is competent to make such a decision (Article 16(1) EAW FD). Furthermore, the CJEU affirmed that a legal remedy must be available to challenge such a decision. To that effect, the competent authority has an obligation to state the reasons underlying the decision. A judicial authority with jurisdiction to hear the action on the legal remedy must be able to review whether the decision was taken with due consideration of all the relevant criteria referred to in Article 16(3) EAW FD.