EUROJUST

Guidelines for deciding on competing requests for surrender and extradition

Revised 2019

Criminal justice across borders

EN

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Part I: Background

Introduction

Article 16 of the Council Framework Decision on the European arrest warrant and the surrender procedure between Member States (EAW FD, 2002/584/JHA) regulates the decision-making process for the competent authority of the executing Member State that receives multiple requests for surrender/extradition of the same person. It covers both the situation of multiple European arrest warrants (EAWs) (Article 16(1) EAW FD) and the situation of conflicts between an EAW and a request for extradition presented by a third country (Article 16(3) EAW FD).

To support the decision-making process in the event of multiple EAWs, Eurojust published guidelines for deciding on Competing EAWs in its 2004 annual report. Since their publication, these guidelines have assisted the competent national executing authorities in taking informed decisions on competing requests for surrender/extradition. Eurojust has also regularly referred to these published guidelines when providing guidance to national authorities on this matter.

The guidelines distinguish different scenarios and suggest factors that must be given due consideration before the executing authority takes a decision on which of the requests it shall execute. The guidelines include the factors mentioned in Article 16 EAW FD, but complement and develop these factors further in light of different scenarios.

Over the past 15 years EU law has significantly evolved in the area of freedom, security and justice, including following developments in the case-law of the Court of Justice of the European Union (CJEU). Moreover, in 2017, the European Commission published its Handbook on how to issue and execute a European arrest warrant[1], which also addresses the scenario of multiple EAWs and/or extradition requests concerning the same person. Eurojust has also acquired valuable operational experience in the context of competing requests for surrender/extradition.

Against this background and with the aim of ensuring effective and full support to practitioners, Eurojust publishes herewith a revised version of the guidelines. The revised guidelines enlarge the scope of the original guidelines by including scenarios not only for Article 16(1) but also for Article 16(3). Moreover, these revised guidelines further develop the factors to be used in the decision-making process. They also address coordination and follow-up measures that could be relevant before and after the executing authority decides on which of the requests it will execute.

The guidelines are a flexible tool to guide and remind the competent authorities of the factors they can consider when deciding which request to execute. They provide a shared starting point in view of reaching an informed decision. The guidelines do not constitute binding rules and are without prejudice to applicable, national, EU and international law.

1 Commission Notice — Handbook on how to issue and execute a European arrest warrant (Official Journal, 2017/C 335/01), pp. 36-39. The Commission's handbook is a revised version of the European handbook on how to issue a European arrest warrant issued by the Council in 2008 (Council doc. 8216/2/08) and revised in 2010 (Council doc. 17195/1/10).

For the purpose of these guidelines, the following terminology applies.

- 'Multiple' requests are referred to as 'competing' requests, to indicate that such requests are not only concurrent, but also require a decision by the competent authority of the executing Member State as to which request shall be executed (first).
- The term 'request' includes both EAWs and requests for extradition.
- The term 'requesting authority' includes both issuing judicial authorities of Member States and competent authorities of third countries.
- The term 'executing authority' refers to the executing authority that has to take a decision pursuant to Article 16(1) or Article 16(3) EAW FD.
- The term 'subsequent executing authority' refers, in the context of a subsequent surrender/extradition, to the competent authority of the issuing state to which the requested person is initially surrendered and which should decide afterwards on the subsequent surrender/extradition of that same person to another issuing/requesting state.

Legal framework

The guidelines take into account the relevant legal framework, in particular the following.

- Article 85(1)(c) of the Treaty on the Functioning of the European Union (TFEU).
- Articles 16 (multiple requests) and 28 (subsequent surrender/extradition) EAW FD.
- Articles 6 and 7 of Council Decision 2002/187/JHA setting up Eurojust, as amended by Council Decision 2009/426/JHA (applicable until 11 December 2019).
- Articles 2 (tasks), 3 (competence of Eurojust) and 4 (operational functions of Eurojust) of Regulation (EU) 2018/1727 on the European Union Agency for Criminal Justice Cooperation (Eurojust), replacing and repealing Council Decision 2002/187/JHA (applicable as of 12 December 2019).
- Article 19 of the Charter of Fundamental Rights of the European Union ('Charter').
- Article 10 of the Agreement of 25 June 2003 on Extradition between the United States of America and the European Union.
- Article 19 of the Agreement of 28 June 2006 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 (applicable as of 1 November 2019).
- Article 17 of the European Convention on Extradition (Council of Europe, Paris, 13 December 1957).

Key principles

- Mutual recognition is the key principle governing judicial cooperation in criminal matters within the EU area of freedom, security and justice (Article 82(1) TFEU). In the context of the EAW FD, it implies that Member States are, in principle, obliged to give effect to an EAW (Article 1(2) EAW FD).
- Creating a risk of impunity of the requested person is not compatible with the EAW FD[2]. Where a Member State receives an EAW from another Member State, it may only refuse to execute an EAW in the exhaustively listed cases of mandatory non-execution (Article 3 EAW FD) and optional non-execution (Article 4 EAW FD), and it may make the execution only subject to one of the conditions exhaustively listed in Article 5 EAW FD. The executing judicial authority must also, when taking its decision on the execution of an EAW, give due consideration to the Charter[3]. Similarly, in the context of extradition requests, the competent authority of the executing Member State must verify that the extradition will not prejudice the rights referred to in Article 19 Charter.

2 See, for instance, Case C-573/17, Poplawski, para. 82 and the case-law cited there.
3 In light of the Charter of Fundamental Rights of the EU, the CJEU has recognised that limitations may be placed on the principles of mutual recognition and mutual trust between Member States 'in exceptional circumstances'. See, for instance, CJEU, Joint Cases C404/15 and C659/15 PPU, Aranyosi and Căldăraru, para. 82.

- In a scenario of competing requests, the executing authority is requested to execute two or more requests, but is only entitled to execute one of them (Article 16 EAW FD). The remaining not-executed requests will, as far as they concern EAWs and not extradition requests, remain valid and remain included in the Schengen Information System, unless the issuing judicial authorities decide to withdraw them.
- Where, in a scenario of competing requests, a Member State receives a request from a third country seeking the extradition of a national of another Member State, the executing authority must take its decision in conformity with Article 18 TFEU (non-discrimination based on nationality) and Article 21 TFEU (free movement of EU citizens).
- Each case is unique, and, consequently, the executing authority, when reaching its decision on the competing requests, should base its decision on the facts of each individual case and consider all the factors that it deems relevant. It should balance, carefully and fairly, all the factors both for and against executing one request instead of the other.
- In order to avoid impunity of the requested person for the offences mentioned in the EAWs or extradition requests that were not executed and that did not relate to the same acts, it is important that the authorities involved consider other relevant mechanisms, such as a subsequent surrender or extradition (Article 28 EAW FD). This should be done in a timely manner and as a matter of urgency within the time limits provided for in Article 17 EAW FD.

What to do?

Assessing multiple, competing requests

- When there are multiple requests for surrender/extradition for the same person, the competent executing authority decides which one to execute, with due consideration of all the circumstances (Article 16 EAW FD).
- When the executing authority assesses which of the requests for surrender/extradition it should execute, it should consider only the requests that are executable. Before taking its decision on Article 16 EAW FD, it should assess the 'executability' of the requests. Where there are two competing EAWs, it will assess the EAWs in light of Articles 3 to 5 EAW FD and possibly other exceptional circumstances[4]. It is only in the absence of any grounds for non-recognition (Articles 3 and 4 EAW FD) and of other exceptional circumstances as developed in the CJEU's case-law, for both EAWs, that the executing judicial authority effectively faces two 'competing' EAWs because they are both 'executable'. Only in that scenario, the executing judicial authority will proceed with the assessment of the criteria included in Article 16(1) EAW FD and in the Eurojust guidelines in view of taking a decision on which of the competing EAWs it shall execute.
- Therefore, the executing authority could initially assess each of the requests to determine whether it would be possible to execute each one on its own. If any ground for refusal applies to any of the requests, the executing authority could take a separate decision, for the sake of clarity, not to execute that request.
- Where there are several EAWs issued by the same Member State concerning the same person, these EAWs should not be considered to be competing EAWs[5].

4 In a number of judgments the CJEU underlined that limitations may be placed on the principles of mutual recognition and mutual trust between Member States 'in exceptional circumstances' (see, to that effect, e.g. Cases C404/15 and C659/15 PPU Aranyosi and Căldăraru, para. 82; Case C-216/18 PPU, Minister for Justice and Equality (Deficiencies in the System of Justice), para. 43.
5 See Commission Handbook on how to issue and execute a European arrest warrant (see footnote 1), p. 69.

Taking an informed decision on which request to execute

- Before the executing authority decides which of the executable requests it will execute, it is advisable that the executing authority try to coordinate among the authorities that have issued the different requests.

- In the context of this consultation and coordination process, the authorities involved should provide all the relevant additional information that the executing authority needs in view of taking an informed decision on which of the competing requests it will execute[6]. They could also discuss, depending on the circumstances of the case, the application of additional legal provisions and/or other legal instruments that might become relevant at some stage. Depending on the concrete facts of the case, this could be, for instance, a subsequent surrender/extradition[7], a transfer of proceedings[8] or a transfer of prisoners[9]. In some cases, a temporary surrender/extradition could be relevant[10], for instance, if one of the requesting authorities requires the requested person's (short) presence on its territory in view of taking a formal decision with regard to the requested person's indictment or to attend trial. Another legal instrument that could be used is the European Investigation Order for the temporary transfer to the issuing state of a person held in custody for the purpose of carrying out an investigative measure[11].

- The requesting authorities should communicate any agreements reached between them to the executing authority so that the latter can consider these when taking its decision on which of the competing requests it will execute.

- When the executing authority reaches its decision on which of the requests it will execute, it should communicate this decision to each of the requesting authorities. In its decision, the executing authority could also indicate, if applicable and if its national law so allows, whether it consents to a subsequent surrender/extradition.

6 Articles 15(2) and 15(3) EAW FD.
7 See p. 4-5 Procedure for subsequent surrender/extradition.
8 On the basis of e.g. Article 6 of the EU Convention on Mutual Assistance in criminal matters between the Member States of the European Union (29 May 2000), Article 21 of the European Convention on Mutual Assistance in criminal matters (Strasbourg, 20 April 1959) or the European Convention on the Transfer of Proceedings in criminal matters (Strasbourg, 15 May 1972).
9 See, particularly, Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union ('Framework Decision 2008/909/JHA on the transfer of prisoners').
10 For instance, on the basis of Article 24(2) EAW FD or Article 19(2) of the European Convention on Extradition (Paris, 13 December 1957).
11 Article 22 Directive 2014/41/EU regarding the European Investigation Order in criminal matters.

Procedure for subsequent surrender/extradition

- The decision on a subsequent decision/extradition lies with the competent authority of the requesting state to which the requested person is surrendered[12] first ('the subsequent executing authority'). That authority can in principle, only decide after obtaining the consent of the competent authority of the Member State that carried out the last surrender[13], and subject to the conditions set forth in Article 28 EAW FD.

- Where there is a request for subsequent surrender/extradition, consent is not required if a Member State made a notification pursuant to Article 28(1) EAW FD to the General Secretariat of the Council[14], or if any of the circumstances of Article 28(2) EAW FD apply.

- The request for consent to subsequent surrender/extradition must contain the same information as a normal EAW (Article 8(1) EAW FD) and requires translation under the same rules as an EAW.

- The executing authority must take its decision on consent no later than 30 days after receipt of the request (Article 28(3) EAW FD). However, if the executing authority so wishes and if its national law allows it, Article 16 EAW FD in conjunction with Article 28 EAW FD do not seem to prevent an executing authority from consenting to a subsequent surrender/extradition already when taking its decision on Article 16 EAW FD. Such consent does not bind, in any way, the subsequent executing authority's decision on the subsequent surrender/extradition.

- Where there is a subsequent surrender to another Member State, the executing authority may only refuse to give its consent in the exhaustively listed cases of mandatory non-execution (Articles 3 EAW FD) and optional non-execution (Article 4 EAW FD) and it must also give due consideration to the Charter. It may also make the consent subject to one of the conditions exhaustively listed down in Article 5 EAW FD. The subsequent executing authority is, when taking its decision on the subsequent surrender, bound by the same provisions as the executing authority. Any relevant change in factual or legal circumstances between the time that the executing authority that carried out the last surrender consents with a subsequent surrender and the time that the subsequent executing authority decides on the subsequent surrender, can and should, be taken into consideration by the latter.

- Where there is a subsequent extradition to a third country, the competent executing authority shall give its consent in accordance with the applicable convention and its domestic law (Article 28(4) EAW FD).

- The executing authority can also seek advice from Eurojust (see p. 11). Eurojust can facilitate and speed up the coordination and can give, on request, an opinion on the competing requests. When seeking Eurojust's advice, it is recommended that the executing authority contact Eurojust as soon as it is aware of the coexistence of multiple requests.

12 It is understood that in circumstances where the executing authority decided in a case of competing requests to execute the extradition request, the EAW FD will not apply to a request for subsequent extradition.
13 CJEU, Case C-192/12 PPU, West, para. 79, where the CJEU clarified that, where there are successive EAWs, the subsequent surrender of that person to another Member State is subject to the consent only of the Member State that carried out the last surrender.
14 For an overview of the notifications made by the Member States in relation to the EAW FD, see the judicial library at the European Judicial Network (EJN) website: https://www.ejn-crimjust.europa.eu/ejn/EJN_Library_StatusOfImpByCat.aspx?l=EN&CategoryId=14

Part II: Practical guidelines

Main factors

Article 16 EAW FD provides that the executing authority take a decision with due consideration of all the circumstances and especially the following factors.

- Relative seriousness of the offence(s).
- Place(s) where the offence(s) was/were committed.
- Dates of the requests.
- Purpose of issuing the request for prosecution or for the execution of a custodial sentence or detention order.

In addition, other factors that could be relevant include the following.

- Dates when the offence(s) was/were committed.
- Stage of the proceedings and impact of the decision on the various proceedings.
- Prosecution of co-accused and/or prosecution of different members of a criminal organisation;
- Interests of victims.
- The nationality or usual place of residence of the requested person and any other strong personal connections with a country.
- Possibility of any subsequent surrender or extradition between the requesting states.

Main scenarios

The revised guidelines distinguish between five main scenarios.

Scenario 1: Two or more EAWs against the same person for prosecution of the same offence(s).

Scenario 2: Two or more EAWs against the same person for prosecution of different offences.

Scenario 3: Two or more EAWs against the same person of which one (or more) EAW(s) for prosecution and one (or more) EAW(s) for the execution of a custodial sentence or a detention order in relation to different offences.

Scenario 4: Two or more EAWs against the same person for the execution of two (or more) custodial sentences or detention orders in relation to different offences.

Scenario 5: One or more EAW(s) and one (or more) request(s) for extradition.

The use and importance of the abovementioned factors will depend on the specific circumstances of each scenario.

Scenario 1: Two or more EAWs against the same person for prosecution of the same offence(s)

If two or more Member States have issued EAWs against the same person for prosecution of the same criminal acts, there is a conflict of jurisdiction. When deciding which of the competing EAWs the executing authority should execute, it is essentially a matter of deciding which jurisdiction should prosecute. Therefore, in cases that fall within Scenario 1, the point of departure could be the factors outlined in the Eurojust *Guidelines for deciding 'Which jurisdiction should prosecute?'* (Revised 2016).

Many of the factors related to competing requests for surrender and extradition correspond to the factors in the *Guidelines for deciding 'Which jurisdiction should prosecute?'* whilst those that are not covered there do not seem to be relevant for the present scenario. For instance, the relative seriousness of the offences will be of little importance as the EAWs relate to the same criminal offence(s). Similarly, the date of issuance of the EAWs, should not have much weight either except where the earlier date of one of the EAWs means that the prosecution in one of the competing Member States is further advanced and that Member State is able to bring the case to trial more quickly.

Scenario 2: Two or more EAWs against the same person for prosecution of different offences

If two or more Member States have issued EAWs against the same person for the prosecution of different offences, the key question concerns the sequence of prosecutions. Contrary to Scenario 1, where the main question was which jurisdiction should prosecute, the main question under Scenario 2 is rather which jurisdiction should prosecute **first**. Consequently, in the context of such a scenario, it is important that the competent authorities involved also consider the possibility of a subsequent surrender[15] or a transfer of proceedings[16].

For cases that fall within Scenario 2, the main factors that the executing authority could consider are as follows.

Impact on the criminal proceedings in the respective Member States

In cases that fall within Scenario 2, the point of departure should be the question of which jurisdiction will suffer the greatest loss if the prosecution must await the outcome of a prosecution in another jurisdiction. The executing authority could consider a number of elements in connection with this factor, such as the following.

- Dates the offences were committed and the national rules on prescription.
- Advanced stage of the proceedings in one of the Member States.
- Prosecution of co-accused and/or prosecution of different members of a criminal organisation.
- Interests of victims.
- Possibility of confiscation.

Possibility of any subsequent surrender between the issuing Member States

It is important to check whether (one of) the issuing Member States would have any prima facie objections against a subsequent surrender and/or whether they would, in principle, agree with it.

Relative seriousness of the offences

The executing authority should assess the relative seriousness of the offences from different perspectives, including the following.

- Relative seriousness of the individual offences.
- Number of offences committed.
- Impact of the criminal acts on the victims, the number of victims and, if applicable, any particular condition of the victims (e.g. vulnerability of certain victims).

Dates of the competing EAWs

The dates of issuance should only be a significant factor if the earlier date of one of the EAWs means that the prosecution in one of the competing Member States is further advanced and therefore able to bring its case(s) to trial more quickly.

Place of the offences

In many cases that fall within Scenario 2, the offences will have been committed within the territory of the respective competing Member States. In such cases, the place of the offence should not be a decisive factor. However, where the acts of the competing EAWs were predominantly committed within one of the competing Member States, the place of the offences could be a relevant factor to take into consideration.

15 Article 28 EAW FD, see p. 4-5, Procedure for subsequent surrender/extradition.
16 See footnote 8.

Scenario 3: Two or more EAWs against the same person for prosecution and for the execution of a custodial sentence or detention order in relation to different offences

Where two or more Member States have issued EAWs against the same person for prosecution of offences and for serving a custodial sentence or detention order, the key question concerns the sequence with regard to the prosecution of the offences and the serving of the custodial sentence or detention order.

Therefore, in the context of Scenario 3, it is important that the competent authorities involved also consider the possibility of a subsequent surrender (Article 28 EAW FD) or a transfer of prisoners (subject to the criteria of Framework Decision 2008/909/JHA on the transfer of prisoners).

For cases that fall within Scenario 3, the main factors that the executing authority could consider are as follows.

EAW for the purpose of prosecution to prevail

The executing authority should start from a preliminary presumption that, in principle, the surrender of a person for the purpose of prosecution has priority over the surrender of a person for the purpose of the execution of a custodial sentence or detention order. However, in special cases, the execution of the EAW issued for the purpose of execution of a custodial sentence or detention order may exceptionally prevail. In this regard, other factors, including the ones mentioned below, should be given due consideration.

Rules on prescription

Where there is a risk of prescription due to statutes of limitation applicable to the execution of a custodial sentence or detention order and that same risk does not apply to the case subject to prosecution, the former should prevail.

Possibility of any subsequent surrender between the issuing Member States

It is important to check whether (one of) the issuing Member States would have any prima facie objections against a subsequent surrender and/or whether they would, in principle, agree with it.

Possibility of a transfer of prisoners between the issuing Member States

It is important to check whether (one of) the issuing Member States would have any prima facie objections against a transfer of prisoners (if applicable) and/or whether they would, in principle, agree with it.

Relative seriousness of the offences

The relative seriousness of the offences can be a relevant factor in this scenario if the difference in the relative seriousness of the offences in the EAWs is significant.

Dates of the competing EAWs

The dates of the competing EAWs merits generally little attention in the present scenario. In principle, it should therefore not be a decisive factor.

Place of the offences

The location where the offences were committed merits generally little attention in the present scenario. In principle, it should therefore not be a decisive factor.

Scenario 4: Two or more EAWs against the same person for the execution of two or more custodial sentences or detention orders in relation to different offences

Where two or more Member States have issued EAWs against the same person for the execution of two (or more) custodial sentences or detention orders, the key question concerns the sequence for serving two or more custodial sentences or detention orders in different Member States. Consequently, in the context of such a scenario, it is important that the competent authorities involved also consider the possibility of a subsequent surrender (Article 28 EAW FD) or a transfer of prisoners (subject to the criteria of Framework Decision 2008/909/JHA on the transfer of prisoners). Moreover, it will be, to a large extent, the responsibility of the prison authorities in the Member States concerned to cooperate closely together on the planning and practical arrangements for the serving of the sentences, also taking into account the personal circumstances of the person sentenced.

For cases that fall within Scenario 4, the main factors that the executing authority could consider are as follows.

Prescription

The risk of prescription of sentences due to statutes of limitation must weigh heavily on the decision as to which EAW should be executed first.

Rehabilitation objective

Framework Decision 2008/909/JHA on the transfer of prisoners provides a system for transferring convicted prisoners back to their Member State of nationality or habitual residence or to another Member State with which they have close ties. Enforcement of the sentence in one of these states should enhance the possibility of social rehabilitation of the person sentenced. It is important to note that this instrument also applies where the person sentenced is already in that Member State. Therefore, if the requested person has the nationality of one of the competing Member States or has their habitual residence there or has close ties with it, this could be a relevant factor to take into consideration for prioritising that EAW. Moreover, if surrender takes place to this Member State, the person sentenced could stay there for the execution of the other custodial sentence(s) or detention order(s), pursuant to Framework Decision 2008/909/JHA. This sequence would not only serve the rehabilitation objective, but would also be beneficial from a practical point of view since it would avoid additional travel for the requested person.

Possibility of any subsequent surrender between the issuing Member States

It is important to check whether (one of) the issuing Member States would have any prima facie objections against a subsequent surrender and/or whether they would, in principle, agree with it.

Possibility of a transfer of prisoners between the issuing Member States

It is important to check whether (one of) the issuing Member States would have any prima facie objections against a transfer of prisoners (if applicable) and/or whether they would, in principle, agree with it.

Dates of the offences

The executing authority may take into consideration the dates on which the criminal acts were committed to ensure that the requested person serves the oldest sentence first.

Relative seriousness of the offences

The executing authority may take into consideration the seriousness of the offences to ensure that the requested person will serve the sentence for the more serious offence before the less serious one (see above, Scenario 2).

Dates of issuance of the competing EAWs

In the present scenario, the dates of issuance are likely to merit little attention.

Scenario 5: EAW(s) and request(s) for extradition regarding the same person

Contrary to the four preceding scenarios, Scenario 5 addresses situation where one or more EAW(s) compete(s) with one or more request(s) for extradition.

Scenarios 1 to 4 as a point of departure

In principle, the executing authority can apply *mutatis mutandis* the factors and scenarios mentioned above to a case that falls within Scenario 5. Therefore, Scenarios 1 to 4 could be the point of departure for Scenario 5. However, before taking its decision, the executing authority should, whilst bearing in mind the differences between the EAW regime and the classic extradition regime, also take into account the following.

Nationality or EU citizenship of the requested person

It is recommended that the executing authority gives, in principle, due consideration to *all* relevant factors rather than automatically prioritising a request from an EU Member State. However, in some specific cases, the nationality/EU citizenship of the requested person can be a predominant factor, particularly if the cooperation mechanism that the CJEU developed in the *Petruhhin* judgment and subsequent case-law applies.

If an executing authority receives **an extradition request for prosecution**, and the executing authority's Member State has rules in place granting its own nationals protection against extradition and the request concerns a national of another Member State, the cooperation mechanism developed in *Petruhhin* implies the following. The executing judicial authority must inform the Member State of which the citizen in question is a national, and, should that Member State so request, surrender the requested person to that Member State[17]. Thus if an executing authority is in the possession of two competing requests and one of them constitutes an EAW issued following the abovementioned cooperation mechanism, the executing authority should give priority to that EAW over the extradition request. Similarly, if (one of) the extradition request(s) concerns a citizen of an EU Member State, the executing authority, prior to taking any decision, must first verify whether the abovementioned cooperation mechanism would need to apply. In the affirmative, it should suspend its decision on Article 16 EAW FD until it has finalised the procedure related to the cooperation mechanism.

If an executing authority receives **an extradition request to enforce a sentence**, and the executing authority's Member State has rules in place granting its own nationals protection against extradition and the request concerns a national of another Member State, there are other cooperation mechanisms under national law and/or international law that the executing authority might need to consider, e.g. the Convention on the Transfer of Sentenced Persons of 1983[18].

Specific bilateral or multilateral agreements

The executing authority should also assess whether an applicable bilateral or multilateral agreement contains any additional relevant factors that it would need to consider when deciding which request it should execute.

17 CJEU, Case C-182/15 Petruhhin, paras 48-49. See also CJEU, Case C-191/16 Pisciotti, paras 52-54, where the CJEU holds that this cooperation mechanism also applies in a situation in which the EU-US agreement on extradition applies. Commission Handbook on how to issue and execute a European arrest warrant (see footnote 1), p. 39; Note by Eurojust on the Petruhhin judgment (Case C-182/15) and the role of Eurojust, Council doc. 15786/17.

18 Case C-247/17 Raugevicius, paras 36-37 and para. 50. In this judgment, the CJEU held, in a case where the person requested had established close links with the executing Member State, that Articles 18 and 21 TFEU must be interpreted as meaning that, where an extradition request has been made by a third country for an EU citizen who has exercised their 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 out of the European Union 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 that person resides permanently in its territory, receive the same treatment as that accorded to its own nationals in relation to extradition.

Eurojust's support

- The coordinating and advisory role of Eurojust can avoid that authorities issue competing requests in cases already handled by Eurojust. Through effective and early coordination, the authorities may agree on the way forward together and thus ensure that parallel proceedings do not lead to the issuing of competing requests. Also in cases where two or more competing EAWs were issued, the coordinating and advisory role of Eurojust can assist the executing national authority in taking an informed decision on which request should be executed.
- National authorities are encouraged to consult Eurojust at an early stage of a case and as soon as possible after the existence of competing requests has become apparent, to ensure efficient coordination among the competent authorities involved.
- Within its mandate, Eurojust can ensure the fast and efficient transmission of information to the competent authorities in the Member States concerned. Eurojust will support the national authorities in reaching a reasoned and informed decision on the competing requests within the available time limits.
- When making the decision on competing requests for surrender or extradition, the executing judicial authority may seek the advice of Eurojust (Article 16(2) EAW FD). The Eurojust national desks of the Member States involved will immediately liaise with each other and with their respective competent authorities in view of reaching an agreement on the execution of competing requests. All possible legal issues will be duly examined. Subsequently, Eurojust can issue a reasoned opinion in which it advises the executing authority with regard to the execution of the competing requests.
- In cases where cooperation with third countries is needed, Eurojust can rely on that cooperation based on the cooperation agreements concluded with some third countries. Moreover, liaison prosecutors seconded to Eurojust provide a direct link to certain third-country partners. Updated information on concluded cooperation agreements and liaison prosecutors is available on Eurojust's website.

These guidelines are available on Eurojust's website and will be made available online in all official EU languages.

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