

# AG Gives Opinion on EAW Competing with Extradition Request



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**News**

On 5 September 2024, Advocate General (AG) *Nicholas Emiliou* presented his opinion in *case C-763/22 (Procureur de la République v OP)*. The case concerns the conditions under which EU Member States may decide on the competition between a European Arrest Warrant and an extradition request from a non-EU country.

According to AG *Emiliou*, Art. 16(3) of the Framework Decision on the European Arrest Warrant (FD EAW) does not preclude the Spanish regulation whereby a governmental body (the *Consejo de Ministros* [Council of Ministers]) rather than a judicial authority decides on the precedence of a European Arrest Warrant over an extradition request concerning the same person but with different facts underlying the requests. However, such a decision must be subject to judicial review. This follows from Art. 1(3) FD EAW and Art. 47(1) of the Charter of Fundamental Rights of the European Union. Admittedly, the scope of judicial review is limited, namely with regard to the assessment of the precedence criteria set out in Art. 16(3) FD EAW.

The proceedings are based on a request for a preliminary ruling from a French court. That court is conducting criminal proceedings against OP, a French citizen, who is, *inter alia*, prosecuted for counterfeiting payment cards committed in France, Thailand, and Romania. The suspect was arrested in Spain and the Spanish Council of Ministers decided that an extradition request from Switzerland should take precedence over the European Arrest Warrant from France. OP did not agree with this, because he wanted to face the criminal proceedings in France. Apparently, the extradition request from Switzerland and the European Arrest Warrant from France were based on different facts, so that the “Petruhhin mechanism” does not apply, as the AG emphasised.

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