

# CJEU: Executing MS Must Ensure Enforcement of Foreign Custodial Sentences against Residents

Poplawski II



**euclid**

European Law Forum: Prevention • Investigation • Prosecution

**News**

**Thomas Wahl**

In a judgement delivered on 24 June 2019 in case C-573/17, the CJEU made fundamental statements on consequences of the primacy of Union law, the importance of interpretation in conformity with Union law, and the extent of limits to these principles. The legal background was shaped by Framework Decision 2002/584 on the European Arrest Warrant (FD EAW). The case concerned the enforcement of a custodial sentence imposed by a Polish court in the Netherlands that denied the surrender of Polish citizen *Daniel Adam Poplawski* to Poland, because he is considered a resident in the Netherlands (refusal ground of Art. 4 No. 6 of the FD EAW)

The case at issue follows a first judgment of the CJEU in the same case (judgment of 29 June 2017, C-579/15 – *Poplawski I*), in which the Court held that Dutch legislation establishing only a “willingness” to take over the sentence, if the optional refusal ground of Art. 4 No. 6 FD EAW is applied, is contrary to EU law. Furthermore, the 2017 judgment called to mind the obligation of national courts to interpret domestic law, so far as possible, in accordance with that framework decision (for details, see euclid 2/2017, pp. 74-75).

By its second reference for a preliminary ruling, the *Rechtbank Amsterdam* essentially enquired whether it must disapply the national provisions in conflict with the FD EAW if it is unable to fulfil the obligation to interpret its domestic law in compliance with EU law.

In its answer of 24 June 2019, the CJEU first reestablishes the fundamental principle of the primacy of Union law over national law. It also reiterates the duties of national courts to give full effect to the provisions of EU law. However, a provision of EU law that has no direct effect cannot be the basis for disapplying a national law that conflicts with it. This is the case for framework decisions adopted on the basis of the former third pillar (Art. 34(2)(b) EU). Therefore, the referring court “is not required, solely on the basis of EU law, to disapply a provision of its national law which is contrary to those framework decisions.”

The CJEU stresses, however, that the binding character of framework decisions places on national authorities/courts an obligation to interpret national law in conformity with EU law “to the greatest extent possible.” Such interpretation in conformity with EU law has (only) two limits:

- The principles of legal certainty and non-retroactivity preclude the establishment of criminal liability of individuals being determined or aggravated, on the basis of a framework decision alone;

## AUTHOR

**Thomas Wahl**

Senior Researcher  
Max Planck Institute for the  
Study of Crime, Security and  
Law

ISSN: 1862-6947

<https://euclid.eu>



- Conforming interpretation would lead to an interpretation of national law *contra legem*, i.e., the obligation to interpret national law in conformity with EU law ceases when the former cannot be applied in a way that leads to a result compatible with that envisaged by the framework decision concerned.

In the present case, the CJEU believes that both limits do not apply. In particular, the Dutch court would be able to treat the FD EAW as a formal basis for applying the Dutch law allowing the execution of a foreign sentence to be taken over.

Furthermore, the FD EAW stipulates that the executing authority may only refuse surrender on the basis of Art. 4 No. 6 FD EAW if assurance is given that the custodial sentence passed in the issuing State against the person concerned can actually be enforced in the executing Member State. In this context, the CJEU emphasizes the paramount importance of avoiding all risk of impunity for the requested person.

As a result, the referring court is required to interpret its national law to the greatest extent possible, in conformity with EU law, which enables it to ensure an outcome that is compatible with the objective pursued by the FD EAW.

---

## About eucrim

eucrim is the leading journal which regularly informs about current developments in European criminal and “criministrative” law.

All news items are freely accessible at: <https://eucrim.eu/news/>

Stay informed by emailing to [eucrim-subscribe@csl.mpg.de](mailto:eucrim-subscribe@csl.mpg.de) to receive alerts for new releases of issues.

The project is co-financed by the [Union Anti-Fraud Programme \(UAFP\)](#), managed by the [European Anti-Fraud Office \(OLAF\)](#).



**Co-funded by  
the European Union**