

CJEU Sets Conditions for Surrender of Minors

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News

On 23 January 2018, the CJEU delivered its [judgment in the *Piotrowski* case \(C-367/16\)](#). The case had been referred to the CJEU by the Court of Appeal, Brussels/Belgium and concerned the scope and possible depth of examination as to the ground for refusal in Art. 3(3) of the Framework Decision on the European Arrest Warrant (FD EAW). Art. 3(3) allows the judicial authorities of the executing State to refuse to execute the EAW if the person concerned, owing to his age, may not be held criminally responsible for the acts upon which the arrest warrant is based under the law of the executing State. It is the first time that the CJEU was asked to interpret the refusal ground covering minors deemed responsible for having committed offences in another EU Member State. For a summary of the case as well as the opinion of the Advocate General, see [euclid 3/2017, p. 119](#).

In its first question, the Belgian court basically wanted to know whether Art. 3(3) FD EAW allows the refusal of all persons not having reached the age of majority under the law of the executing state. The CJEU opposes this view and points out the wording, the *travaux préparatoires*, and the current legislative context of the FD with Directive 2016/800 laying down minimum rules concerning the protection of the procedural rights of children, i.e., persons under 18 years of age. In this context, Art. 3(3) of the FD EAW is to be interpreted such that the executing judicial authority must refuse to surrender only those minors (a) who are the subject of a European Arrest Warrant and (b) who, under the law of the executing Member State, have not yet reached the age at which they are regarded criminally responsible for the acts that formed the basis of the arrest warrant.

In its second question, the referring court sought to ascertain, in essence, whether Art. 3(3) FD EAW is to be interpreted (a) as meaning that the executing judicial authority must simply verify whether the person concerned has reached the minimum age required to be regarded as criminally responsible in the executing Member State for the acts on which a EAW is based or (b) as meaning that that authority may also determine whether additional conditions relating to an assessment of the circumstances of the minor in the case, which the prosecution and conviction are specifically subject to under the law of that Member State, have been met.

The CJEU favours the first alternative. The executing authorities simply need to verify the minimum age requirement for being held criminally responsible in the executing State for the acts on which the EAW is based. Any additional conditions relating to an assessment of the individual cannot be considered. The CJEU argues that this approach results from the wording, the context, and the overall scheme of Art. 3(3) as well as from the objectives pursued by the FD EAW. Any additional conditions leading to an assessment would run counter the principle of mutual recognition enshrined in the FD EAW.

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