

# ECBA Requests Mutual Recognition of Certain Extradition Decisions in Favour of Individual

## News

Thomas Wahl

In June 2022, the European Criminal Bar Association (ECBA) published a [statement on mutual recognition of extradition decisions](#). The statement deals with the situation that individuals have currently no means or legal remedies to successfully and effectively challenge Interpol Red Notices or alerts in the Schengen Information System (SIS) although an extradition request or European Arrest Warrant (EAW) was refused in one Member State. In general, decisions taken by one Member State (e.g. Member State A) are not binding for other Member States and persons are re-arrested if they cross borders. The same extradition request is then re-assessed in Member State B, and the persons concerned are possibly extradited to the requesting country. This is also true even though the request was refused by the authorities of Member State A due to disproportionality, breaches of fundamental rights, or political persecution. As a consequence, these persons are deprived of their liberty to free movement within the European Union.

The statement mainly concludes the following:

- Entering alerts into the SIS or Interpol systems is technically independent from EAW or extradition procedures; thus, a national judicial decision denying surrender pursuant to an EAW or refusing extradition does not in itself affect the subsistence of the alert, and the requested person could therefore be re-arrested in another state;
- Under the governing laws, requested persons have no opportunity to contest a request for extradition or an EAW at EU level with binding effect on all Member States. Furthermore, they have no opportunity to obtain a decision prior to entering another Member State, nor can they trigger pre-emptive proceedings in another Member State;
- Currently, there is no mechanism which could avoid the culmination of extradition detentions in different EU Member States;
- Although Interpol and SIS regulations provide for rights to challenge certain data stored, the procedures remain unclear and ineffective.

As a result, the ECBA demands that, as a general principle, certain extradition decisions should have binding effect within the European Union and Schengen area in order to ensure the effective exercise of the right to freedom of movement. Therefore, it is suggested:

- That a decision by a judicial authority of a Member State is binding upon the authorities of another Member State and as such prevents arrest and extradition or surrender if the denial is based on a

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Published in  
2022, Vol. 17(2) eucrim p 122

ISSN: 1862-6947

<https://eucrim.eu>

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permanent reason for refusal, in particular if a court has found the request for extradition to violate the principle of *ne bis in idem* or to be disproportionate;

- That a decision by a judicial authority of a Member State is binding upon the authorities of another Member State and as such prevents arrest and extradition or surrender if the denial is based on a risk of a violation of fundamental rights (e.g. risk of ill-treatment, flagrant denial of a fair trial), as long as it has not been established that the requesting state has taken steps to remediate this risk;
- That an independent, harmonised mechanism at the EU level is created in order to regulate the issuance and subsistence of alerts in the SIS (and the execution and continued effects of an INTERPOL alert within the EU) and to provide effective procedural safeguards on national and European levels with regard to the access and effective remedies against alerts.

Lastly, the statement encourages that said solutions are also applied by all Council of Europe Member States.

Put in focus:

The ECBA statement takes up some specific issues from the 2017 “[Agenda 2020](#)” that seeks to further promote procedural safeguards in criminal proceedings across the EU, thereby strengthening the principle and application of mutual trust and recognition (→ [H. Matt, Guest Editorial, eucrim 1/2017, 1](#))

The statement builds upon the CJEU’s judgment in Case C-505/19 (*WS v Bundesrepublik Deutschland* → [eucrim 2/2021, 100-101](#)), in which the judges in Luxembourg acknowledged that a final judicial decision by one Member State establishing that the Schengen/EU-wide *ne bis in idem* principle applies is binding on other Member States and prevents the provisional arrest and extradition upon Interpol Red Notices in these other Member States. The statement seeks to extend the spirit of this judgment to other extradition refusals, especially those connected with disproportionality, political persecution and fundamental rights infringements in the issuing/requesting country.

The statement also follows up long-standing [previous demands by academics](#) that the principle of mutual recognition must not only apply to judicial decisions which have a negative effect on an individual, but also to those that have been taken in favour of the individual. Otherwise, a single legal area in the EU that is trusted by all citizens cannot be established.

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



Co-funded by  
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