

ECJ: EU Member State Cannot Enforce Prison Sentence without Consent of Sentencing State

Thomas Wahl

If a Member State issues a European arrest warrant (EAW) for the enforcement of a custodial sentence and another Member State then enforces the custodial sentence itself without the consent of the issuing (=sentencing) State, the issuing State may maintain the EAW and seek to have the person concerned back. This was decided by the Grand Chamber of the European Court of Justice (ECJ) in its [judgment](#) of 4 September 2025 in [Case C-305/22 \(C.J.\)](#). According to the ECJ, the fact that the requested state may enforce the custodial sentence itself in accordance with Art. 4(6) of [Framework Decision 2002/584/JHA](#) on the European arrest warrant (FD EAW) instead of surrendering the person concerned to the issuing state is an exception that must be interpreted narrowly. The issuing state must agree to this procedure, which the ECJ derives from [Framework Decision 2008/909/JHA](#) "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."

Background of the case

The background to the ruling was a dispute between Italy and Romania. In 2017, a Romanian national was sentenced to imprisonment by the Bucharest Court of Appeal. On 25 November 2020, after the judgment became final, this court issued an EAW for the enforcement of this sentence. The person concerned was arrested in Italy on 29 December 2020. However, the Italian judicial authorities refused to hand him over to the Romanian authorities and decided to recognise the Romanian criminal judgment and enforce the sentence in Italy. They justified this on the grounds that enforcing the sentence in Italy would increase the man's chances of rehabilitation, given that he was a legal resident there. In addition, they took into account the time he had already served in Italy, suspended the enforcement of the sentence and placed him under house arrest.

The Romanian judicial authorities did not agree with either the recognition of the criminal judgment or its enforcement in Italy. They continued to consider the EAW valid and insisted on the person's surrender for the enforcement of the sentence in Romania. The case eventually ended up before the ECJ after being referred by the Bucharest court.

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The ECJ's ruling

The judges in Luxembourg first pointed out that the EAW is based on the principle of mutual trust. Member States are generally required to execute every EAW. Refusal to execute it can only occur in exceptional cases.

The Italian authorities could not invoke better chances of rehabilitation. According to the ECJ, this objective is not absolute and must be reconciled with the basic rule that Member States must execute every EAW. It is emphasised that non-execution of an EAW in order to execute the sentence in the state where the person against whom the arrest warrant is directed is located only permissible if the executing judicial authority complies with the conditions and procedure laid down for the recognition of the criminal judgment and the assumption of responsibility for the enforcement of the sentence. Without the consent of the issuing state, a judicial authority cannot refuse to execute the arrest warrant and assume responsibility for the enforcement of the sentence itself. Instead, the issuing state may uphold the EAW and enforce the sentence in its own territory.

This does not violate the prohibition of double punishment (*ne bis in idem*, Art. 3(2) FD EAW). However, according to Art. 26 FD EAW, the total length of detention may not exceed the original prison sentence. As a result, the ECJ's decision therefore only affects persons who were released early during their first imprisonment.

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