ECJ: Execution of EAW if Offence Was Committed Also in the Territory of Executing State

eucrim
European Law Forum: Prevention • Investigation • Prosecution

News

Thomas Wahl

In its judgment of 12 February 2026 in Case C-712/25 PPU (*Rastoshev*), the ECJ ruled that the executing authorities cannot automatically refuse the execution of a European Arrest Warrant (EAW) if the offence has been committed in whole or in part in the territory of the executing Member State. This was the first time that the ECJ had delivered an interpretation in respect of the optional refusal ground of Art. 4(7) of Framework Decision 2002/584/JI (FD EAW). Pursuant to Art. 4(7)(a) FD EAW, the executing judicial authority may refuse to execute the EAW where it relates to offences which are regarded by the law of the executing Member State as having been committed in whole or in part in the territory of the executing Member State or in a place treated as such.

AUTHOR

Thomas Wahl

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

Published in
2026, Vol. 21(1) eucrim
ISSN: 1862-6947
https://eucrim.eu

CC BY ND

Background of the case and question referred

The main proceedings concern the execution of an EAW in Bulgaria. The EAW was issued by the Court of Marseille, France, against Bulgarian national XM for the purpose of prosecuting several offences allegedly committed between 2018 and 2024. Those offences were committed within the framework of an international criminal organisation with the aim of rigging sports competitions and took place in the territory of multiple Member States, including France and Bulgaria. The referring *Sofiyski gradski sad* (Sofia City Court, Bulgaria) has doubts as to whether it can refuse the surrender on the basis of Art. 4(7))(a) FD EAW. It points out the existence of two divergent lines of case law regarding the interpretation of the provision transposing Art. 4(7)(a) FD EAW into Bulgarian law. According to the first line of case law, the fact that the offence was committed, in whole or in part, in the territory of Bulgaria cannot, in itself, justify a refusal to enforce the sentence; rather, an overall assessment must be carried out. Conversely, according to the second line of case law, such a circumstance should be regarded as sufficient grounds to refuse execution, since the Bulgarian Criminal Code is applicable to all offences committed in the territory of that Member State, without exception. The Sofia court wondered which line of case law complies with the FD EAW.

The ECJ's decision and reasoning

At the outset, the ECJ recalled that Art. 4 FD EAW sets out optional refusal grounds. Depriving executing Member State's judicial authorities of the possibility to have a margin of discretion would substitute the mere option to refuse with a genuine obligation, even though the refusal of an EAW constitutes the exception, the execution of the EAW being the general rule.

As regards specifically Art. 4(7)(a) FD EAW, the judges in Luxembourg noted that the Union legislature intended to allow the person who is the subject of an EAW issued for the purposes of conducting a criminal prosecution, to be prosecuted by the authority in the most appropriate position for the proper administration of criminal justice.

Furthermore, a refusal solely on the ground that the offence in question was also committed in the territory of the executing Member State, without considering the specific circumstances of each case, would undermine the objective of the EAW mechanism: ensuring that perpetrators do not remain unpunished in the area of freedom, security and justice. This objective is also included in Art. 3(2) TEU.

In conclusion, the application of the ground for non-execution set out in Art. 4(7)(a) FD EAW should be left to the discretion of the executing judicial authority. This applies a fortiori where the offences giving rise to the EAW form part of a complex international criminal organisation affecting the territories of multiple Member States.

Lastly, the ECJ clarified the circumstances that the executing judicial authority must take into account in its assessment. These include, *inter alia*:

- The nature and characteristics of the offence;
- The international dimension of the offence(s);
- The place where the damage resulting from that offence materialised;
- The progress of the criminal proceedings in the issuing Member State and, depending on the case, in the executing Member State.

As a result, Bulgarian law interpreted in the sense that the fact that the offence, for which an EAW was issued for the purposes of conducting a criminal prosecution, was committed, in whole or in part, on the territory of the executing Member State (here: Bulgaria) is insufficient ground for refusing the execution of the 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 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