

ECJ Ruled on EAW Competing with Extradition Request

Thomas Wahl

News

On 20 March 2025, the ECJ delivered its [judgment](#) in Case C-763/22 (*Procureur de la République v OP*). The case concerned a decision by an EU Member State to resolve a conflict between a European Arrest Warrant and an extradition request relating to the same person.

Background of the case

In the main proceedings, both France (via an EAW) and Switzerland (via a conventional extradition request) requested Spain to surrender a French national accused of committing offences relating to the counterfeiting and forgery of payment cards.

Under Spanish law, the *Consejo de Ministros* (Council of Ministers) – a governmental body – ruled on the multiple requests and gave precedence to extradition to Switzerland. The referring French court asked the ECJ to assess the compatibility of Spanish law with Art. 16(3) of the Framework Decision on the European Arrest Warrant (FD EAW).

The ECJ's ruling

The first aspect of the criticism from France concerned the question of whether, in the European Arrest Warrant system – which is essentially geared towards purely judicial proceedings – an executive body can be called upon to decide in the event of a conflict. The ECJ answered in the affirmative. The wording of Art. 16 and the legislative context between paragraphs 1 and 3 of the provision already distinguish between "executing judicial authority" and "competent authority". With the latter term, the EU legislator expresses the discretion that Member States have under international extradition law, where executive bodies are generally involved in assessing political or diplomatic issues. This distinction also corresponds to the objectives of the FD EAW, which sought to establish a separate system for the surrender of persons convicted of or suspected of a criminal offence within the Union, but did not aim to harmonise extradition procedures.

The second aspect of the case concerned the question of whether legal proceedings must be brought against the decision on precedence provided for in Art.16(3) FD EAW. Spanish law does not provide for an appeal against the decision of the Council of Ministers. The ECJ acknowledged that Art.16(3) does not exhaustively regulate the procedure for cases where an EAW coincides with an extradition request, and that the deciding authority has considerable discretion. However, it held that this discretion must be subject to judicial review through an effective legal remedy. This follows from Art. 47 CFR and the fact that the decision on precedence may have significant implications for the legal situation of the person concerned.

AUTHOR

Thomas Wahl

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

Published in
2025, Vol. 20(1) [eucrim](#)
ISSN: 1862-6947
<https://eucrim.eu>



Put in focus

The ECJ's judgment followed the Advocate General's opinion in the case (→[eucrim 3/2024, 193](#)). In the specific case, the ECJ judgment is likely to result in Spain's decision of precedence in favour of Switzerland being upheld.

The judgment primarily affects the regulatory systems of the EU Member States: on the one hand, they are granted greater procedural autonomy regarding the jurisdiction for deciding on multiple requests, provided that a request based on traditional or conventional extradition procedures coincides with a European Arrest Warrant against the same person. This also endorses the differing arrangements for the allocation of jurisdiction in such cases between the individual EU Member States. On the other hand, EU Member States must now verify whether the appropriate legal remedies are available to the individual against the granting decision and, where necessary, make legislative adjustments.

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**