

Follow-up to Petruhhin Doctrine: Eurojust and EJM Map Problems

Cornelia Riehle, Thomas Wahl

News

In December 2020, Eurojust and the European Judicial Network in criminal matters released a [report on the extradition of EU citizens to third countries](#). It details practical and legal challenges that arose from the CJEU's landmark judgment in *Petruhhin* (→ [eucrim 3/2016, 131](#)). In this case – subsequently confirmed by other judgments – the CJEU established that an EU Member State faced with an extradition request from a third country concerning a citizen of another EU Member State is obliged to initiate a consultation procedure with the Member State of nationality of the EU citizen, thus giving the latter the opportunity to prosecute its citizen by means of a European Arrest Warrant. The application of this case law has proven difficult in practice, and in June 2020, the Council invited Eurojust and the EJM to analyse the reasons behind this development. Eurojust and EJM have mapped a number of unclear issues and made recommendations to resolve them, e.g.:

- Uncertainties as to the scope of the CJEU's case law, e.g., lack of clarity as to the extent of the requested Member State's obligations in case of an extradition request for execution of a custodial sentence and possible application of the consultation mechanism in cases that do not fulfil all the conditions of CJEU case law;
- Difficulties concerning the consultation procedure, including:
 - Identification of the competent authorities in the Member State of nationality;
 - Responsibilities for translation of the information and the bearing of translation costs;
 - Different practices relating to the required information to be provided to the Member State of nationality concerning the extradition request;
 - Different practices as regards the time limits given for the prosecution decision of the Member State of nationality;
 - Which judicial cooperation instrument to use, in particular if the thresholds for issuing a national and/or European arrest warrant are not met.
- Tensions between obligations under EU law, on the one hand, and bilateral and multilateral extradition treaties, on the other;
- Questionable results of the consultation procedure, since most cases do not lead to prosecution of the EU citizen concerned in his home country;
- The existence of several parallel channels used to inform and transmit information between the Member States involved, often leading to duplication of effort, uncertainty, and confusion.

One of the main conclusions is that both Eurojust and the EJM play a key role in facilitating and supporting the consultation procedure and in solving the problems raised. The report also states that procedural

AUTHORS

Cornelia Riehle

Deputy Head of Section
Academy of European Law

Thomas Wahl

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

Published in
2020, Vol. 15(4) [eucrim p 288](#)
ISSN: 1862-6947
<https://eucrim.eu>



differences across national legal systems and the specific circumstances of each case call for more clarity and flexibility.

The full, joint Eurojust/EJN report as well as an [one-page overview](#) are available in English. The [executive summary](#) of the report is available in all EU languages.

Whether the CJEU will stick to its case law remains to be seen. AG *Hogan* recently acknowledged the practical and legal problems of the Petruhhin judgment and recommended that it no longer be followed (→ [opinion in case C-398/19](#) (*BY – Generalstaatsanwaltschaft Berlin* concerning extradition to Ukraine; →[eucrim 3/2020](#), 190-191).

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**