

Spain made an interesting beginning in pointing out that we are now working in a new era. It is not necessary to fight each other over suspects, but we can cooperate in achieving justice in an efficient way. We agree with this. Given this new era of cooperation and mutual trust, the formation of a joint investigation team would be a first and logical step in a case like this. This cooperation in an early phase might lead to a joint decision on where prosecution would be most appropriate. A conflict of jurisdiction would in that case be avoided. This sort of cooperation avoids too problems in getting criminal proceedings from abroad.

Since the conflict of jurisdiction has not been avoided, Eurojust can advise on the best solution. As evidence in this case must be gathered in both countries. Eurojust has advised in some Dutch cases where Belgium and Germany issued an EAW for the same suspect. Eurojust assisted in negotiating a prosecutorial solution which took account of the location of the evidence and national law and with which all parties were satisfied. A similar solution might be reached in this case.

Another point brought by France was the fact that executing the EAW would violate the suspect's rights to a family life. They have argued that this is a shadow mandatory ground for refusal.

Although we agree that flagrant abuses of human rights are a ground for refusal, based on the Framework Decision preamble, we do not think this EAW can be refused on this point. The system of the EAW is different from the previous extradition procedures, in that it also allows for nationals to be extradited with the option to request a guarantee they will return after sentencing. In fact some countries such as Poland have had to adapt their laws to allow for nationals.

In basically any case where a national is extradited, his rights to family life would be at stake to a certain extent. If this would be a ground for refusal, without having to offer any proof of special circumstances it would mean that the EAW would in practice no longer be applicable to nationals. We therefore find this EAW cannot be refused because of family life as a shadow mandatory ground of refusal.