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Provisional text

JUDGMENT OF THE COURT (Third Chamber)

20 March 2025 (\*)

( Reference for a preliminary ruling – Area of freedom, security and justice – Judicial cooperation in criminal matters – European arrest warrant – Framework Decision 2002/584/JHA – Conflict between a European arrest warrant and an extradition request presented by a third State – Article 16(3) – Concept of ‘competent authority’ – National legislation conferring power on a body of the executive to rule on whether the European arrest warrant or the extradition request takes precedence, in the event of a conflict – Right to a remedy )

In Case C763/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the tribunal judiciaire de Marseille (Court of Marseille, France), made by decision of 14 December 2022, received at the Court on 16 December 2022, in the criminal proceedings against

**OP**

intervener:

**Procureur de la République,**

JUDGMENT OF THE COURT (Third Chamber)

composed of K. Jürimäe (Rapporteur), President of the Second Chamber, acting as President of the Third Chamber, K. Lenaerts, President of the Court, acting as Judge of the Third Chamber, N. Jääskinen, M. Gavalec and N. Piçarra, Judges,

Advocate General: N. Emiliou,

Registrar: M. Krausenböck, Administrator,

having regard to the written procedure and further to the hearing on 28 November 2023,

after considering the observations submitted on behalf of:

- OP, by P. Ohayon, avocat,
- the French Government, by R. Bénard, B. Dourthe, B. Fodda and E. Timmermans, acting as Agents,
- the Spanish Government, by A. Gavela Llopis, acting as Agent,
- the Netherlands Government, by J.M. Hoogveld, acting as Agent,
- the Polish Government, by B. Majczyna and J. Sawicka, acting as Agents,
- the European Commission, by S. Grünheid and J. Hottiaux, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 5 September 2024,

gives the following

### **Judgment**

1 This request for a preliminary ruling concerns the interpretation of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24) ('Framework Decision 2002/584').

2 The request has been made in criminal proceedings brought in France against OP, a French national, who is accused of acquiring and possessing material for counterfeiting payment cards and of participating in a criminal association in connection with the forgery of payment cards between 2010 and 2012.

### **Legal context**

#### ***European Union law***

3 Recitals 5, 7 and 8 of Framework Decision 2002/584 read as follows:

'(5) The objective set for the Union to become an area of freedom, security and justice leads to abolishing extradition between Member States and replacing it by a system of surrender between judicial authorities. Further, the introduction of a new simplified system of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal sentences makes it possible to remove the complexity and potential for delay inherent in the present extradition procedures. Traditional cooperation relations which have prevailed up till now between Member States should be replaced by a system of free movement of judicial decisions in criminal matters, covering both pre-sentence and final decisions, within an area of freedom, security and justice.

...

(7) Since the aim of replacing the system of multilateral extradition built upon the European Convention on Extradition of 13 December 1957 cannot be sufficiently achieved by the Member States acting unilaterally and can therefore, by reason of its scale and effects, be better achieved at Union level, the Council may adopt measures in accordance with the principle of subsidiarity as referred to in Article 2 [TEU] and Article 5 [EC]. In accordance with the principle of proportionality, as set out in the latter Article, this Framework Decision does not go beyond what is necessary in order to achieve that objective.

(8) Decisions on the execution of the European arrest warrant must be subject to sufficient controls, which means that a judicial authority of the Member State where the requested person has been arrested will have to take the decision on his or her surrender.'

4 Article 1 of that framework decision, headed 'Definition of the European arrest warrant and obligation to execute it', provides:

‘1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.

3. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 [TEU].’

5 Under Article 16 of that framework decision, headed ‘Decision in the event of multiple requests’:

‘1. If two or more Member States have issued European arrest warrants for the same person, the decision on which of the European arrest warrants shall be executed shall be taken by the executing judicial authority with due consideration of all the circumstances and especially the relative seriousness and place of the offences, the respective dates of the European arrest warrants and whether the warrant has been issued for the purposes of prosecution or for execution of a custodial sentence or detention order.

...

3. In the event of a conflict between a European arrest warrant and a request for extradition presented by a third country, the decision on whether the European arrest warrant or the extradition request takes precedence shall be taken by the competent authority of the executing Member State with due consideration of all the circumstances, in particular those referred to in paragraph 1 and those mentioned in the applicable convention.

...’

6 Article 28 of that framework decision, headed ‘Surrender or subsequent extradition’, is worded as follows:

‘1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States which have given the same notification, the consent for the surrender of a person to a Member State other than the executing Member State pursuant to a European arrest warrant issued for an offence committed prior to his or her surrender is presumed to have been given, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

2. In any case, a person who has been surrendered to the issuing Member State pursuant to a European arrest warrant may, without the consent of the executing Member State, be surrendered to a Member State other than the executing Member State pursuant to a European arrest warrant issued for any offence committed prior to his or her surrender in the following cases:

(a) where the requested person, having had an opportunity to leave the territory of the Member State to which he or she has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it;

(b) where the requested person consents to be surrendered to a Member State other than the executing Member State pursuant to a European arrest warrant. Consent shall be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's national law. It shall be drawn up in such a way as to make clear that the person concerned has given it voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel;

(c) where the requested person is not subject to the speciality rule, in accordance with Article 27(3)(a), (e), (f) and (g).

3. The executing judicial authority consents to the surrender to another Member State according to the following rules:

- (a) the request for consent shall be submitted in accordance with Article 9, accompanied by the information mentioned in Article 8(1) and a translation as stated in Article 8(2);
- (b) consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Framework Decision;
- (c) the decision shall be taken no later than 30 days after receipt of the request;
- (d) consent shall be refused on the grounds referred to in Article 3 and otherwise may be refused only on the grounds referred to in Article 4.

For the situations referred to in Article 5, the issuing Member State must give the guarantees provided for therein.

4. Notwithstanding paragraph 1, a person who has been surrendered pursuant to a European arrest warrant shall not be extradited to a third State without the consent of the competent authority of the Member State which surrendered the person. Such consent shall be given in accordance with the Conventions by which that Member State is bound, as well as with its domestic law.'

#### ***Spanish law***

7 Article 57(2) of Ley 23/2014 de reconocimiento mutuo de resoluciones penales en la Unión Europea (Law 23/2014 on the mutual recognition of judgments in criminal matters in the European Union) of 20 November 2014 (BOE No 282 of 21 November 2014, p. 1) provides that, where there is a European arrest warrant and a competing extradition request presented by a third State, the Spanish judicial authority is to stay the proceedings and forward all the documents concerned to the Ministry of Justice, which is in turn to submit to the Council of Ministers a draft decision on whether the European arrest warrant or the extradition request takes precedence.

#### **The dispute in the main proceedings and the question referred for a preliminary ruling**

8 OP, a French national, is accused of participating in a criminal association in France, Romania and Thailand between May 2010 and January 2012, with a view to committing offences connected with the counterfeiting or forgery of payment cards, of acquiring and possessing material for the counterfeiting or forgery of payment cards and of possessing and using false administrative documents. Those acts constitute offences punishable by at least five years' imprisonment.

9 In connection with those acts, OP was brought before the Criminal Chamber of the Tribunal judiciaire de Marseille (Court of Marseille, France), the referring court in the present case. When he was to stand trial in September 2021, his counsel informed that court that he had been apprehended and incarcerated in Spain in the context of execution of an extradition request issued by the Swiss authorities.

10 As a result of OP's request that he be able to appear at his trial in France, and his opposition to extradition to Switzerland, the referring court decided to issue a European arrest warrant against him on 3 June 2022.

11 However, that court was informed, by an order of the Juzgado Central de Instrucción nº 3 de Madrid (Madrid Central Court of Preliminary Investigation No 3, Spain) of 2 September 2022 that the Spanish Council of Ministers had decided to give precedence to the extradition request issued by the Swiss authorities and, therefore, not to act on the European arrest warrant.

12 It is apparent from the request for a preliminary ruling that Article 57 of Spanish Law 23/2014 provides that, where there is a European arrest warrant and a competing extradition request presented by a third State, the Spanish judicial authority must stay the proceedings and forward all the documents concerned to the Ministry of Justice. The decision on which of those instruments takes precedence lies with the Council of Ministers, and no remedy can be sought against it.

13 At a hearing before the referring court on 2 December 2022, OP's counsel invited that court to refer a question to the Court of Justice for a preliminary ruling on whether Spanish law complies with the provisions of Framework Decision 2002/584. The Office of the Public Prosecutor submitted that no such question can be referred because the referring court did not have a legitimate interest in the main proceedings enabling it to raise such a question.

14 Disagreeing with that view, the referring court notes that the Spanish legislation conferred power to take a decision on whether a European arrest warrant or an extradition request from the authorities of a third State takes precedence, in the event of a conflict between those two instruments, not on a judicial authority but instead on a governmental body, specifically the Council of Ministers. That conferral of power is contrary to Articles 6 and 7 of Framework Decision 2002/584, which refer only to judicial authorities.

15 The referring court's power to compel OP to appear and its ability to administer justice depend directly on the decision taken by the Spanish authorities in the present case. That court therefore has a legitimate interest in the Court of Justice answering a question referred for a preliminary ruling on whether Spanish law complies with Framework Decision 2002/584.

16 In those circumstances the tribunal judiciaire de Marseille (Court of Marseille) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Does Framework Decision [2002/584] preclude the legislation of a Member State from granting a governmental authority the power to decide, between a European arrest warrant and a concurrent extradition request issued by a third State, which of the two is to be executed, without any possibility of legal remedy?'

### **Admissibility**

17 The Spanish Government submits that the request for a preliminary ruling is inadmissible. First, it claims that the referring court has not identified either the Spanish judicial and governmental decisions likely to be affected by the answer to the question referred or the provisions of Framework Decision 2002/584 about which that court is enquiring, contrary to the requirements of Article 94 of the Rules of Procedure of the Court of Justice. Second, the Spanish government argues that the question is hypothetical. The answer to the question referred cannot contribute to resolving the dispute in the main proceedings since it concerns whether a Spanish procedural mechanism is compatible with that framework decision.

18 As regards, in the first place, the argument that the request for a preliminary ruling does not satisfy the requirements in Article 94 of the Rules of Procedure, it is clear from that request that the referring court is expressing doubts, in essence, as to whether Article 57(2) of Law 23/2014 is compatible with Article 16(3) of Framework Decision 2002/584. That court also refers to a decision of the Spanish Council of Ministers, which gave precedence to the extradition request issued against OP by the Swiss authorities and was mentioned in the order communicated to the referring court by the Juzgado Central de Instrucción nº 3 de Madrid (Madrid Central Court of Preliminary Investigation No 3) following the issuing of the European arrest warrant against OP.

19 The referring court has therefore defined the legal and factual context of its request for interpretation sufficiently for the purposes of enabling the Court to understand the scope of the question referred and of providing the referring court with useful answers, while ensuring that the governments of

the Member States and the interested parties referred to in Article 23 of the Statute of the Court of Justice of the European Union had an opportunity to exercise their right to submit written observations, which the Court has a duty to safeguard (see, to that effect, judgment of 28 November 2023, *Commune d'Ans*, C148/22, EU:C:2023:924, paragraph 47 and the case-law cited).

20 As regards, in the second place, the argument that the question put to the Court is hypothetical, it should be noted that according to settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which the main proceedings have been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted by the national court concern the interpretation of EU law, the Court is, in principle, bound to give a ruling (judgment of 31 January 2023, *Puig Gordi and Others*, C158/21, EU:C:2023:57, paragraph 50 and the case-law cited).

21 The Court may refuse to rule on a question referred by a national court for a preliminary ruling only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 31 January 2023, *Puig Gordi and Others*, C158/21, EU:C:2023:57, paragraph 51 and the case-law cited).

22 As the Advocate General stated in points 25 and 26 of his Opinion, in the context of the system of cooperation put in place by Framework Decision 2002/584, the court of the issuing Member State may need clarification as to whether the conditions for the execution of the European arrest warrant in the executing Member State are compatible with EU law. Such a situation occurs, in particular, when the requested interpretation of that framework decision would allow the referring court in question to determine the proper course of action when issuing or withdrawing a given European arrest warrant, or when issuing a new European arrest warrant, where the execution of a previous arrest warrant has been refused (judgment of 31 January 2023, *Puig Gordi and Others*, C158/21, EU:C:2023:57, paragraph 54 and the case-law cited).

23 In the present case, the Court's answer to the question referred for a preliminary ruling is likely to enable the referring court to act on an informed basis and, if necessary, to withdraw the European arrest warrant forwarded to the Spanish courts.

24 In those circumstances, the question referred cannot be found to be hypothetical. The request for a preliminary ruling is therefore admissible.

### **The need to adjudicate**

25 At the hearing before the Court, OP's counsel stated that OP had been extradited to Switzerland by the Kingdom of Spain and that he was therefore no longer in Spanish territory. According to the European Commission, the request for a preliminary ruling has therefore become devoid of purpose and the Court should rule that there is no need to adjudicate.

26 However, the information relating to OP's extradition was not confirmed by the Spanish Government even though it was specifically examined on that point at the hearing before the Court. Similarly, the referring court has neither informed the Court of a change in circumstances that may affect the referral nor withdrawn its request for a preliminary ruling, in accordance with paragraph 26 of the Court of Justice Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling

proceedings (OJ 2019 C 380, p. 1). In those circumstances, it is not appropriate to rule that there is no need to adjudicate.

### **Consideration of the question referred**

27 By its single question, the referring court asks, in essence, whether Article 16(3) of Framework Decision 2002/584 must be interpreted as meaning that a body of the executive may, in the event of a conflict between a European arrest warrant and an extradition request, take the decision granting precedence to one of those instruments and that, as the case may be, a judicial remedy must be available against such a decision.

28 Under Article 16(3) of Framework Decision 2002/584, in the event of a conflict between a European arrest warrant and a request for extradition presented by a third State, the decision on whether the European arrest warrant or the extradition request takes precedence is to be taken by the competent authority of the executing Member State with due consideration of all the circumstances, in particular of those referred to in paragraph 1 and those mentioned in the applicable convention.

29 In the first place, it is necessary to determine whether a body of the executive may be covered by the concept of ‘competent authority’ within the meaning of that provision.

30 First of all, it is clear from the wording of that provision that, in the event of a conflict, the decision on whether the European arrest warrant or the extradition request takes precedence is to be taken by the ‘competent authority’ of the executing Member State, and that that concept can, in principle, encompass any national authority, including a body of the executive.

31 Next, as regards the context of Article 16(3) of Framework Decision 2002/584, it should be noted that, in the event of competing European arrest warrants issued by two or more Member States against the same person, Article 16(1) confers power on the ‘executing judicial authority’ to decide which of those warrants must be executed. Article 16(3), on the other hand, provides that, in the event of a conflict, it is for the ‘competent authority’, rather than the executing judicial authority, to decide whether the European arrest warrant or the extradition request takes precedence. Accordingly, in the context of that article, the concepts of ‘judicial authority’ and ‘competent authority’ cannot be treated as being the same.

32 It should also be noted that the foregoing distinction follows the same rationale as that in operation in Article 28 of Framework Decision 2002/584, which addresses situations of surrender or extradition subsequent to the execution of a European arrest warrant. Article 28(1) to (3) sets out the circumstances in which a person who has been surrendered to the issuing Member State pursuant to such a warrant may be surrendered to another Member State, different from the executing Member State, pursuant to a European arrest warrant issued for an offence committed before the initial surrender. In that context, under Article 28(3) the subsequent surrender is, in principle, conditional on the consent of the judicial authority that executed the first European arrest warrant.

33 By contrast, Article 28(4) of Framework Decision 2002/584, which addresses specifically the case of a subsequent extradition, provides that a person who has been surrendered pursuant to a European arrest warrant cannot be extradited to a third State without the consent of the ‘competent authority’ of the executing Member State.

34 In common with Article 16(3) of Framework Decision 2002/584, Article 28(4) of that framework decision confers decision-making power on a ‘competent authority’ where the relevant decision concerns an extradition request, rather than to the judicial authority concerned, as in the situations that relate solely to one or more European arrest warrants. That concept of ‘competent authority’ is the expression of the discretion allowed to the Member States to designate the authority that must make a decision on an extradition request.

35 Last, that interpretation of Article 16(3) of Framework Decision 2002/584 is borne out by the objectives pursued by that framework decision.

36 The foregoing distinction drawn by Framework Decision 2002/584 between the concept of ‘judicial authority’ and that of ‘competent authority’ is explained by the fact that, as is apparent from recitals 5 and 8 thereof, the framework decision is intended, inter alia, to create a simplified procedure for situations that concern exclusively the surrender of persons sentenced for or suspected of infringing the criminal law, in the context of judicial cooperation within the European Union established by that framework decision, and is not intended to harmonise extradition procedures.

37 Although Framework Decision 2002/584 requires the surrender procedure between Member States to be implemented by the judicial authorities of those States, extradition requests may, within the Member States, fall within the competence of other authorities, including bodies of the executive.

38 By using that concept, the EU legislature therefore sought to take into account the specific features of extradition procedures, which are fundamentally different from the surrender system put in place by Framework Decision 2002/584. Extradition procedures, which are governed, inter alia, by international agreements, are founded on the principle of reciprocity between the States concerned and involve political and diplomatic considerations. Framework Decision 2002/584, by contrast, as is apparent in particular from Article 1(1) and (2) and from recitals 5 and 7 thereof, is intended to replace the multilateral system of extradition between Member States with a system of surrender between judicial authorities of convicted or suspected persons for the purpose of enforcing judgments or of conducting prosecutions, the system of surrender being based on the principle of mutual recognition (judgment of 24 November 2020, *Openbaar Ministerie (Forgery of documents)*, C510/19, EU:C:2020:953, paragraph 28 and the case-law cited).

39 In the event of a conflict between a European arrest warrant and an extradition request, the decision that one or the other takes precedence cannot, of necessity, be a matter solely for a system of judicial cooperation. Framework Decision 2002/584 therefore allows the Member States to confer on the authority with competence for extraditions power to adopt the decision on precedence referred to in Article 16(3) of that framework decision.

40 As the Advocate General observes in point 68 of his Opinion, by leaving the Member States broad discretion to designate the authority responsible for taking a decision on whether a European arrest warrant or an extradition request takes precedence, in the event of a conflict between the two, the EU legislature took into consideration the fact that, according to the specific features of the national systems, such a decision may be based on considerations that are not exclusively judicial.

41 In that regard, Article 16(3) of Framework Decision 2002/584 provides that the competent authority is to take its decision on precedence with due consideration of all the circumstances of the case, in particular those referred to in Article 16(1), that is to say, the relative seriousness and place of the offences, the respective dates of the European arrest warrant and of the extradition request and also the circumstances mentioned in the conventions applicable to the extradition request in question. By referring to both the criteria set out in Article 16(1), laid down for the case of competing European arrest warrants, and to the criteria laid down by the conventions applicable to extradition requests, Article 16(3) enshrines the choice made by the EU legislature to take into consideration the fact that the decision on precedence may be taken by a body of the executive, since it may be based on considerations for which the rationale is not exclusively judicial.

42 Accordingly, Article 16(3) of Framework Decision 2002/584 must be interpreted as meaning that, in the event of a conflict between a European arrest warrant and an extradition request, a body of the executive may be competent to take a decision granting precedence to one or the other of those instruments.



43 In the second place, the referring court is uncertain whether there must be a judicial remedy against decisions on precedence pursuant to Article 16(3) of Framework Decision 2002/584.

44 It should be emphasised that that article does not comprehensively establish the procedure governing situations where there is a conflict between a European arrest warrant and an extradition request. It specifies only certain procedural aspects relating to the decision that one or other of those instruments takes precedence, leaving the Member States to choose the form of that decision and the time at which it must be made.

45 In that regard, Article 16(3) states that the competent authority must give due consideration to all the circumstances of the case, including those set out in paragraph 41 of the present judgment. It follows that, although that authority has broad discretion when making its decision on precedence, the fact remains that it cannot dispense with the need to give consideration to the interests of the person concerned.

46 In view of the right of the person concerned by the decision on precedence not to be subject to a decision taken in disregard of that discretion, it follows from the first paragraph of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter') that the Member States must provide that that person has an opportunity for an effective judicial remedy capable of guaranteeing respect for the requirements referred to in the preceding paragraph of the present judgment.

47 In the absence of detailed procedural rules for the adoption of the decision on precedence, on the one hand, and for such a judicial remedy, on the other, it is for the internal legal order of each Member State, pursuant to the principle of procedural autonomy, to establish the procedural rules governing that remedy and, in general terms, those intended to govern situations where there is a conflict between a European arrest warrant and an extradition request.

48 Although, in accordance with that principle, the Member States retain the option of adopting rules in that regard which may differ from one Member State to another, they must nevertheless ensure that those rules do not frustrate the requirements arising from Framework Decision 2002/584 (see, to that effect, judgment of 26 October 2021, *Openbaar Ministerie (Right to be heard by the executing judicial authority)*, C428/21 PPU and C429/21 PPU, EU:C:2021:876, paragraph 60 and the case-law cited).

49 In that regard, it should be borne in mind that, by virtue of Article 1(3) thereof, that framework decision cannot have the effect of modifying the obligation to respect the fundamental rights and fundamental legal principles enshrined in Article 6 TEU.

50 In particular, first, the right to an effective judicial remedy guaranteed in the first paragraph of Article 47 of the Charter necessarily means that the review in question must take place before the European arrest warrant or the extradition request is executed, and that the judicial authority with jurisdiction to hear that action must be able to review whether the decision on precedence was taken with due consideration of all the relevant criteria referred to in Article 16(3) of Framework Decision 2002/584.

51 Second, the judicial remedy in respect of the decision on precedence provided for in Article 16(3) of Framework Decision 2002/584 must enable the person concerned to challenge any interference with his or her fundamental rights and freedoms enshrined in the Charter.

52 As the Advocate General observed in point 91 of his Opinion, that decision on precedence is liable to have a significant impact on the legal situation of the person concerned. If, for example, precedence was given to the extradition request and no remedy could be sought against the decision on precedence, the effect would be that any risk of infringement of the fundamental rights and freedoms of the person concerned enshrined by the Charter could be ignored because, in the vast majority of situations, extradition procedures are not a matter of EU law.

53 In the present case, it should be noted that, at the hearing before the Court, the Spanish Government explained, in that respect contradicting the premisses set out by the referring court in its request for a preliminary ruling, that there was in fact a remedy against decisions on precedence taken by the Council of Ministers, within the limits of the discretion conferred on that body.

54 On that latter point, although, as is clear from paragraph 45 of the present judgment, the competent authority referred to in Article 16(3) of Framework Decision 2002/584 enjoys discretion when deciding on precedence, that discretion is circumscribed by the obligation to give 'due' consideration to all the circumstances referred to in that provision, meaning that the competent authority has an obligation to state reasons for the decision taken so that the person concerned can exercise his or her right to a remedy. It is clear from settled case-law that if the judicial remedy guaranteed in the first paragraph of Article 47 of the Charter is to be effective, the person concerned must be able to ascertain the reasons on which the decision taken in relation to him or her is based (see, to that effect, judgment of 25 April 2024, *NW and PQ (Classified information)*, C420/22 and C528/22, EU:C:2024:344, paragraph 81 and the case-law cited).

55 In the light of all the foregoing reasons, the answer to the question raised is that Article 16(3) of Framework Decision 2002/584 must be interpreted as meaning that, in the event of a conflict between a European arrest warrant and an extradition request, a body of the executive may take a decision granting precedence to one of those instruments. There must be an effective judicial remedy against that decision subject to the procedural conditions that it is for the Member States to determine.

#### **Costs**

56 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

**Article 16(3) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009,**

**must be interpreted as meaning that, in the event of a conflict between a European arrest warrant and an extradition request, a body of the executive may take a decision granting precedence to one of those instruments. There must be an effective judicial remedy against that decision subject to the procedural conditions that it is for the Member States to determine.**

[Signatures]

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\* Language of the case: French.