

European Parliament resolution of 27 February 2014 with recommendations to the Commission on the review of the European Arrest Warrant (2013/2109(INL))

- Preamble: *“Whereas concern exists inter alia about:
(iii) the lack of regular review of the Schengen Information System (SIS II) and Interpol alerts as well as the lack of an automatic link between the withdrawal of an EAW and the removal of such alerts, and uncertainty as to the effect of a refusal to execute an EAW on the continued validity of an EAW and the linked alerts with the result that persons subject to EAWs are unable to move freely within the area of freedom security and justice without the risk of future arrest and surrender”;*
- Calls for: *“a regular review of non-executed EAWs and consideration of whether they, together with the corresponding SIS II and Interpol alerts, should be withdrawn; also calls for the withdrawal of EAWs and the corresponding SIS II and Interpol alerts where the EAW has been refused on mandatory grounds, such as on the ground of ne bis in idem or incompatibility with human rights obligations; calls for provision to be made for SIS II and Interpol alerts to be mandatorily updated with information on the grounds for refusing the execution of the EAW corresponding to the alert and for appropriate updating of Europol files”*

INTERPOL's Rules

<https://www.interpol.int/en/Who-we-are/Legal-framework/Legal-documents>

- INTERPOL Constitution
- Rules on the Processing of Data
- CCF Statute
- Repository of Practice on Article 3

<https://www.interpol.int/en/Who-we-are/Commission-for-the-Control-of-INTERPOL-s-Files-CCF/CCF-sessions-and-decisions>

- Anonymised CCF Decisions

CCF Decision 2018-15

39. The grounds for extradition refusals can ... be very diverse, depending on the particular bilateral extradition situations. They can be either related to procedural or to substantive elements, connected to a specific criminal case or rather linked to the requested person's individual situation. Moreover, they are not always ascertainable to the Commission, or not always conveyed to it

No extradition request received

Facts supporting deletion (legal basis) <i>Inaction by requesting country</i>	Facts against deletion (legal basis) <i>There is a good reason not to request extradition</i>
Requesting state knows of arrest but does nothing to seek extradition (RPDs art 81(3)(d))	Extradition is not sought because there is a nationality bar (CCF Decision 2019-3)
Failure to seek extradition after arrest of requested person (RPDs art 84(2))	Can't meet requirements of extradition – i.e. return to serve sentence (CCF Decision 2019-2)
Does not act diligently to provide information requested by the arresting country (RPDs, art 87(b))	Requesting country wasn't notified of the arrest (CCF Decision 2018-1)
	Failure to transfer prosecution to country of residence (CCF Decision 2018-3)
	Need more than a lack of engagement during extradition proceedings (CCF Decision 2018-16)
	No extradition treaty (CCF Decision 2019-7)

Timing and content of extradition request

Facts supporting deletion (legal basis)	Facts against deletion (legal basis)
Extradition used prematurely (i.e. investigative purposes) (CCF Decision 2017-14)	Inaccuracies are only minor (CCF Decision 2019-9)
Insufficient, inaccurate or misleading information (RPDs art 83(2) and CCF Decision 2019-7)	<i>NB – can result in requests for additional information or correction only</i>
Failure to link the wanted person to the alleged criminality (CCF Decision 2018-1)	Dual criminality (CCF Decision 2017-2)
No domestic arrest warrant in requesting country (RPDs art 83(2)(b)(v))	Statute of limitations precludes extradition (CCF Decision 2017-3)
No judicial data / judicial decision underlying the warrant (RPDs art 84(3), CCF Decision 2018-1)	

Proportionality

Facts supporting deletion (legal basis)	Facts against deletion (legal basis)
Less than 2 years' imprisonment accusation and less than 6 months' imprisonment conviction (RPDs art 83(1)(a)(ii))	De minimis likely to be met
Not a "serious ordinary law crime" (cf RPDs art 35)	Seriousness widely interpreted
Not of interest for the purposes of international police cooperation (cf RPDs art 83(1)(a))	Takes account of whether other countries would extradite
Maybe? Age of adult, passage of time, minor offence (CCF Decision 2019-7). NB - Link to inaccurate information in that case.	
Unfunded cheques (unpublished guidance)	UNLESS: over USD10,000 or multiple cheques (unpublished guidance) BUT CCF Decision 2018-3
Efforts to pay off debts (CCF Decision 2019-1)	Unfunded cheques - scheme of fraud (CCF Decision 2018-2)

Human Rights

Article 2 – Constitution

“To ensure and promote the widest possible mutual assistance between all criminal police authorities within the limits of the laws existing in the different countries and in the spirit of the Universal Declaration of Human Rights”. [emphasis added]

RPDs, art 11(1)

“data processing in the INTERPOL Information System should be authorized with due regard for ... the basic rights of the persons who are the subject of the cooperation, in accordance with ... the Universal Declaration of Human Rights”

Human rights (Article 2 Constitution)

Facts supporting deletion (legal basis)	Facts against deletion (legal basis)
Death penalty of minor	Death penalty generally. Also assurances given in extradition proceedings (CCF Decision 2018-6)
Torture: Clear finding of a real risk if extradited (CCF Decision 2018-3)	Generalised concerns about human rights or prisons in requesting country (cf CCF Decision 2019-9)
Reliance on torture evidence (CCF Decision 2018-3) NB decisions of UN bodies too	In absentia trial attributable to defendant's conduct or guarantee of re-trial (CCF Decision 2017-12)
Medical: Clear, individualised finding by national extradition court (CCF Decision 2019-5)	Medical: Requires a clear case-specific finding of a national court (CCF Decision 2019-2)
Fair Trials: Individualised assessment of flagrant breach (CCF Decision 2018-3)	Generalised concerns about judicial independence or procedural rights (CCF Decision 2017-12)
Heightened risk due to discrimination (CCF Decision 2018-3)	Double jeopardy (CCF Decision 2019-6)

Ordinary law crime (improper motivation?)

Article 3 – Constitution

“It is strictly forbidden for the Organization to undertake any intervention or activities of a political, military, religious or racial character.”

RPDs, art 34(3)

To determine whether data comply with Article 3 of the Constitution, all relevant elements shall be examined, such as:

- (a) nature of the offence, namely the charges and underlying facts;*
- (b) status of the persons concerned;*
- (c) identity of the source of the data;*
- (d) the position expressed by another National Central Bureau or another international entity;*
- (e) obligations under international law;*
- (f) implications for the neutrality of the Organization;*
- (g) the general context of the case.*

Extraneous considerations

Facts supporting deletion (legal basis)	Facts against deletion (legal basis)
Offences that are by their nature, political, religious, or racial (Repository of practice) or these are predominant elements of the offence	Except terrorism
Membership of a political organization; desertion from the armed forces; and recruitment or propaganda for particular religions or racial groups (Repository of practice)	Membership of terrorist organisations (INTERPOL AG-2004-RES-18)
Damaging to INTERPOL's perception as a neutral organisation (CCF Decision 2018-7)	NB – if political elements only CCF may recommend addendum stating this (CCF Decision 2017-02)
Growing international consensus that it is political (CCF Decision 2017-5)	
Freedom of expression (Repository of Practice)	BUT criminal damage

Refugees and non-refoulement:

2017 General Assembly Resolution

“In general, the processing of red notices and diffusions against refugees will not be allowed if the following conditions are met:

- 1. The status of refugee or asylum-seeker has been confirmed;*
- 2. The notice or diffusion has been requested by the country where the individual fears persecution;*
- 3. The granting of refugee status is not based on political grounds vis-à-vis the requesting country”*

CCF decision 2018-7 (former refugee given citizenship):

“In such situation, ... the most important factor is to assess whether the situation which had put the individual at risk and initially justified the protective status has substantially changed. If there is no indication that the situation has changed, the processing of data provided by the NCB of the country of origin in order to request extradition, would still generally be found not compliant with INTERPOL’s rules as the purpose for the registration of data would not be achievable while respecting the principle of non-refoulement.”